

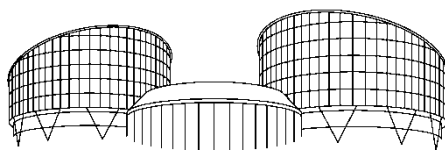
La Corte Edu sulla necessità di svolgere indagini efficaci nei casi di violenza di genere (CEDU, sez. I, sent. 27 febbraio 2025, ric. n. 40733/22)

La pronuncia resa dalla Corte di Strasburgo si inserisce nell'ambito del giudizio promosso da una cittadina la quale, dopo essere stata vittima di stupro, ha lamentato il mancato adempimento da parte dello Stato degli obblighi positivi di condurre indagini e azioni penali efficaci ai sensi degli artt. 3 e 8 della Convenzione Edu.

In via generale la Corte ribadisce che, per potersi ritenere efficace, un'indagine deve essere sufficientemente approfondita per cui le autorità nazionali devono adottare ogni misura a loro disposizione per acquisire prove relative al reato in questione. Inoltre, gli obblighi positivi degli Stati contraenti ai sensi degli articoli 3 e 8 della Convenzione devono essere considerati come richiedenti l'effettiva penalizzazione e persecuzione di qualsiasi atto sessuale non consensuale, anche qualora la vittima non abbia opposto resistenza fisica.

Facendo applicazione di tali principi al caso di specie, la Corte ravvisa una serie di carenze da parte delle autorità investigative e giudiziarie dello Stato convenuto, evidenziandosi una conclusione eccessivamente frettolosa delle indagini. A ciò si aggiunge, ancor più gravemente, che la credibilità della ricorrente sembra essere stata valutata attraverso stereotipi di genere pregiudizievoli e atteggiamenti di colpevolizzazione della vittima.

Dunque, la Corte osserva che il caso esaminato rivela alcuni pregiudizi nei confronti delle donne che hanno impedito l'effettiva tutela dei diritti della ricorrente in quanto vittima di violenza di genere e che, se non invertiti, rischiano di creare un contesto di impunità, scoraggiando la fiducia delle vittime nel sistema di giustizia penale, nonostante l'esistenza di un quadro legislativo soddisfacente. Considerate le numerose carenze, la Corte conclude nel senso di ritenere che la risposta delle autorità investigative alle accuse di stupro non abbia rispettato l'obbligo positivo dello Stato di applicare le disposizioni penali pertinenti nella pratica attraverso indagini e azioni penali efficaci, determinandosi quindi una violazione degli articoli 3 e 8 della Convenzione.



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

FIRST SECTION

Dirittifondamentali.it (ISSN 2240-9823)

CASE OF X v. CYPRUS

(Application no. 40733/22)

JUDGMENT
STRASBOURG
27 February 2025

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

In the case of X v. Cyprus,

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

Ivana Jelić, *President,*

Erik Wennerström,

Georgios A. Serghides,

Frédéric Krenç,

Alain Chablais,

Artūrs Kučš,

Anna Adamska-Gallant, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 40733/22) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Ms X (“the applicant”), on 17 August 2022;

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

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

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 (AIRE Centre), which were granted leave to intervene by the President of the Section;

Having deliberated in private on 28 January 2025,

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

INTRODUCTION

1. The case concerns complaints about the failure of the domestic authorities to effectively discharge their positive obligations under Articles 3 and 8 of the Convention to investigate and prosecute the applicant’s allegations of rape.

THE FACTS

2. The applicant was born in “omissis” and lives in “omissis”. She was represented by Mr M. Polak, a lawyer practising in London.

3. The Government were represented by their Agent, Mr G. L. Savvides, the Attorney General of the Republic of Cyprus.

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

I. THE APPLICANT’S STATEMENTS TO THE POLICE

5. In the context of the investigation of her complaints of rape, the applicant gave four statements to the police (see paragraphs 23, 52 and 53 below). The contents of the first three statements are summarised below. The contents of the last statement are not given because the Supreme Court held that the statement had not been made under the necessary safeguards (see paragraph 68 below).

A. Background facts as described by the applicant in her statements

6. The applicant stated that she had visited Ayia Napa in Cyprus on 10 July 2019. She stayed at P.N.R., an apartment complex (‘the Hotel’) hosting young people, and shared a room with two friends, R.C.P. and C.L.

7. On 13 July 2019 she met a man named S.Y., who was from Israel, in the lounge of the Hotel. He was also staying at the Hotel. They flirted and exchanged messages.

8. In all three statements to the police the applicant stated that she had had consensual sex with S.Y. on two occasions prior to the alleged rape. The exact dates of the previous two occasions were not clear from the applicant’s statements.

9. As regards the first occasion, she said in her second and third statements that while she and S.Y. had been in the room having consensual sex, his friends had walked into the room and even though they had been asked to leave they kept coming back. In her second statement she stated that two or three of them had tried to make video-recordings of her and S.Y. and to “grab [her] from behind”. In her third statement she added that one of S.Y.’s friends had tried to film her while she had been getting dressed.

10. As regards the second occasion, the applicant said in her second statement that she had met S.Y. in his room after he had texted her. She said in her third statement that the night before that, S.Y. had been messaging her through his Instagram account but she had not replied. He had then messaged her through his friends’ Instagram accounts, but she had still not replied. On that day, one of S.Y.’s friends told her that S.Y. no longer loved her as she had not replied to his texts. She had gone out with her friends and when she returned S.Y. had invited her to go to his room, which she did. In all three statements she said as regards the second occasion that while she and S.Y. were having sex in his room, two or three of his friends broke into the room, that another person had been hiding in the room and that someone had climbed up the outside of the building to the window. In her second statement, the applicant said that some of S.Y.’s friends had also been making video recordings of her: they had started hitting and mocking her. She felt uncomfortable and left. She also added in her second statement that S.Y.’s friends had not had intercourse with her before although while she was engaging in sexual activities with S.Y. one of his friends had tried to have intercourse with her, but she could not remember whether he had done so, or who the person was, as she had been drunk and had not realised exactly what was going on.

B. The day of the alleged rape as described by the applicant in her statements to the police

1. The applicant's first statement to the police (17 July 2019, 7.30 am to 9.40 am)

11. Regarding the alleged rape, the applicant stated that on 17 July 2019 at around 12.30 a.m. she had been socialising outside while quite drunk. At some point while she was in the hotel patio, S.Y. had approached her and asked her to follow him and they went to his room. After having a conversation, they got into bed. He had pulled most of her clothes off, but she still had her bodysuit on. She stated that she had been lying on the bed, and he had been aggressive, different from previously, forcing her to do "everything and anything he wanted". He had forced himself into her as she had been crying and shouting at him, and she had scraped him with her fingernails, but he would not stop, and had ignored her. At one point he was on top of her face and had forced himself in her mouth. At that time, he had shouted to his friends to come in.

12. She stated that she had not been able to see exactly how many persons had entered the room as S.Y. had been forcing himself in her mouth and forcing her down, but she remembered that there were a lot of people. S.Y. had grabbed her head and pushed it down as she had been trying to look up. He had reached over, and both his hands had been behind him pinning her knees down beside him as she had been trying to push his hands away with her legs. The men argued between them as to who would go first. Only one person had penetrated her at a time for a short while either vaginally or anally before ejaculating, some in a condom and some in her mouth, as S.Y. had been holding her head by her hair forcing her and moving her to suit the men. Some of the men threw their condom outside the window, and others on the floor. S.Y. had shouted at them to pass him a condom after approximately fifteen minutes. A man named Y.I.A. had then passed him a condom and S.Y. had asked her to put the condom on him. At that point she had managed to get up, crying. She had rushed to get her shorts and ran off without her shoes. Her shorts had not been buttoned up. They had thrown her shoes at her down the stairs.

13. In her statement to the investigating authorities, the applicant also said that when she was running outside, she slipped on a puddle and fell to the floor. At that point six men, two of them being S.Y. and E.I.B., had caught up with her. S.Y. hugged her and she ran towards the basement crying and shouting for help because she was terrified. She had found J.G.D. – a British man – and her friend R.C.P., who had come out of her room because of all the noise. Those two, along with A. – another British man who had also come out of his room because of the noise – had taken her to the hotel doctor.

14. The applicant reiterated that she could not recall how many persons exactly had entered the room: she had counted twelve but could not remember exactly how many of them had penetrated her, but she thought it was around twelve, and two or three of them had ejaculated on her face. She clarified that most of them had had a condom on and that she remembered two people making a video-recording. She remembered that E.I.B. had had sex with her. She gave the police a description of him. However, she stated that she could not describe any of the others as they had been numerous, but she would be able to recognise them if she were able to see them face to face.

15. She believed S.Y. had probably changed the way he behaved towards her because earlier that day he had asked her to go to his room, but she had said no because she was going out with friends.

2. The applicant's second statement to the police (17 July 2019, 5.20 p.m. to 5.50 p.m.)

16. The applicant stated, *inter alia*, that originally, she had wanted to have sex with S.Y. but that when he became violent she had asked him to stop, but he would not. She had not wanted to have sex with the others, but they had had sex with her without her consent.

3. *The applicant's third statement to the police (27 July 2019, 7.15 p.m. to 11.00 p.m.)*

17. The applicant added that on the night of 16 July 2019 she had been out with two male friends (R. and N.). S.Y. had seen her and had started shouting because she had been speaking with one of them. She had felt embarrassed and told him that she would meet him later at the Hotel. They went to a club with her friends but could not get in because the club opened at 2 a.m. and they were too early. They had returned to the Hotel, where she saw S.Y. waiting for her with his friends in the pool area. She went to S.Y.'s room, but she could not remember where everyone else went. S.Y. had pushed her on the bed and with some difficulty managed to remove her shorts. She had left her bodysuit on. He had placed his knees on her shoulders and forced himself in her mouth. She could not shout and tried to push him away. He had then started shouting in his own language and all his friends had come into the room. She had been trying to shout but she could not because he was continuing to force himself into her mouth. She had crossed her legs but S.Y. had reached his hands behind her and opened them while the men were fighting between them as to who would penetrate her first. She stated that there had been about twelve persons in the room, but she could not remember how many had penetrated her. She repeated that some of them had been using condoms and some had not. After a while S.Y. had lifted his knees from her shoulders and asked his friends to pass him a condom. As he had been trying to put a condom on, she had managed to run away.

18. She reiterated that as she had been running and trying to put her shorts on, some of S.Y.'s friends had run after her and managed to catch up with her as she was approaching the basement when she fell. S.Y. had also gone to the basement. J.G.D. and A. came out while she was shouting and told S.Y. and his friends to leave as some of them were continuing to ask her to return to the room. She stated that the incident had probably lasted for over an hour.

19. The applicant stated that the next thing she could remember was being at the hotel clinic. The police had arrived and transferred her to the police station. She had informed J.G.D., A. and R.C.P. of the rape but she could not recall whether she had told the doctor.

20. She stated that she could only remember the names of two of S.Y.'s friends who had been in the room – Y.I.A. and E.I.B. – and she had been able to describe them.

21. Lastly, the applicant stated that she knew that on the second occasion (see paragraph 10 above) Y.A. had made a video-recording while she was in S.Y.'s room. She stated that she did not know whether anyone had recorded her on the day of the rape.

II. POLICE INVESTIGATION

A. Complaint to the police and the opening of the investigation

22. In the early hours of 17 July 2019, the Hotel's in-house doctor called the police informing them of an allegation of rape. The police subsequently picked up the applicant from the doctor's office and took her to the police station.

23. The applicant informed the Criminal Investigation Department of Famagusta ('Famagusta CID') at 6.00 a.m. on the same day about her alleged rape.

At 7.10 a.m. the applicant gave the clothes and underwear she had been wearing on the day of the alleged rape to a female police officer.

At 7.30 a.m. the applicant gave her first written statement to the same female police officer. This interview lasted until 9.40 a.m. (see paragraphs 11-15 above).

Between 2 p.m. and 5 p.m. the applicant was at the Famagusta General Hospital, where she underwent a medical examination by a male forensic pathologist, Dr So.So., who was also the Director of the State Forensic Pathology Service, in the presence of the above-mentioned female police officer. Between 2.30 p.m. and 2.51 p.m. Dr So.So. obtained a hygiene pad with traces of blood on it from the applicant, and took swabs from her face, vagina, and rectum, with her consent, in order to collect DNA samples. At 3.45 p.m. a nurse took urine and blood samples from the applicant. These were sent for toxicology testing and later revealed traces of cocaine in the applicant's urine. At 3.53 p.m. the same female police officer took two swabs from the applicant's cheek.

Between 5.20 p.m. and 5.50 p.m. the applicant gave a second statement to the same female police officer at the police station (see paragraph 16 above).

24. In the meantime, at 1.40 p.m. the same day, the Chief Investigator had applied to the Famagusta District Court for arrest warrants for twelve suspects (S.Y., I.D., O.A., G.L., G.N., O.B.D., O.B., O.D.D., Y.I.A., E.I.B., Y.G. and T.Z.) and for a search warrant for room 723, where the alleged rape had taken place. In his statement to the court, the Chief Investigator stated that members of the Famagusta CID had visited the Hotel where they had located S.Y. and interrogated him orally. Although S.Y. had at first told them that he had not had contact with any British girl (*sic*), he later said that he and a friend of his had intercourse with a British girl, but they had been alone when doing so. He had subsequently changed his statement saying that the act had taken place in the presence of many other young men from his home country, and he had either named them or pointed their hotel rooms out to the police. S.Y. had further mentioned that, as the applicant had said, some of the men had recorded the incident on their mobile phones.

25. At 1.53 p.m. the same day, the court issued a search warrant for room 723. The court also issued arrest warrants for all twelve suspects.

26. Between 2.10 p.m. and 3.10 p.m. of the same day the police arrested the twelve suspects.

27. Following the suspects' arrests, the police took possession of the mobile phones of eleven of the twelve suspects with their consent. Subsequently, the police obtained DNA samples from all suspects.

28. Between 9.10 p.m. and 10 p.m. the same day, the police searched room 723, where the alleged rape had taken place, accompanied by Dr So.So., a translator and S.Y. There they found and took away five used condoms and thirteen open condom wrappers. The used condoms had been found in various places in the room. Two condoms were found on top of the air conditioning unit, and one was found under the bed near the window. The police had shown the condoms to S.Y. who had replied that he had used two condoms and his friend had used one. The police also took away four bedsheets and took photographs of the room.

29. On 19 July 2019 the Famagusta CID asked the Director of the District Welfare Office of Famagusta to refer the applicant to a specialist psychologist of the Mental Health Services to provide her with psychological support that same day.

30. On the same day, Interpol Nicosia sent an urgent message to Interpol Manchester asking whether the applicant had been involved in similar cases in the past. This was done after an email had been sent to the police by a male Israeli national, telling them that the applicant had been

involved in a case of false reporting of rape in the past and urging them to check whether she had intended all along to make a report against the suspects with the sole aim of claiming compensation. Interpol Manchester replied in the negative.

31. In addition, again on the same day, the police sent the evidence they had obtained on 17 July 2019 (see paragraphs 23 and 28 above) to the Institute of Neurology and Genetics, and the State Government Laboratory and Technological Development Department for scientific examination. As regards the suspects' mobile phones, the police instructed the forensic lab to find and extract video-recordings made and photographs taken using the cameras of those phones between 12 and 17 July 2019, including any photographs or video-recordings which had been deleted. The police further instructed the lab to examine whether photographs or video-recordings taken during the specified dates had been transferred *via* mobile applications to other persons.

32. On 25 July 2019 the Institute of Neurology and Genetics prepared a confidential preliminary report informing the police of the progress of the examinations of the applicant's clothes and underwear, some of the condoms and the bed sheets. It said that the genetic material of an unknown male had been found on the trousers and underwear worn by the applicant on the date of the alleged rape. Genetic material from the applicant, S.Y., I.D. and Y.I.A. had been found on some of the condoms. E.I.B.'s DNA had been found on a bedsheet. No genetic material from the remaining eight of the twelve suspects had been traced on any of the evidence tested.

33. Five of the suspects were released that day without being charged because of a lack of evidence incriminating them or indicating that they were involved in the case. Seven suspects (S.Y., O.A., I.D., Y.I.A., E.I.B., O.B. and G.N.) remained in custody.

34. On 26 July 2019 Dr So.So. prepared a report outlining his findings from the applicant's and the suspects' medical examinations of 17 July 2019.

As regards the applicant, the forensic pathologist noted multiple recent bruises to the anterior region of her right shin, two traumatic bruises to the lateral upper third of her left shin; traumatic bruising to the left gluteal area; three traumatic bruises in the right hip region and a traumatic bruise to the lateral upper third of her right thigh. He observed that there had been no injuries to the vagina or outer genital area or to the anal or perianal area. He noted that blood had been found inside the applicant's vagina without injuries to the vaginal wall that had, according to the report, been caused "most possibly due to menstruation secondary to stress".

As regards S.Y., the doctor had observed abrasions on his chest and shoulder blades.

The doctor had also observed bruises and scratches on E.I.B. which had allegedly been caused by other foreign men during a fight.

The doctor had also found bruises on Y.G.

35. On 27 July 2019 police officer A.N. prepared a report describing, *inter alia*, the content of the video-recordings retrieved from some of the suspects' phones following their forensic examination. According to the report, one video-recording had been made on 17 July 2019 and several other video-recordings had been made on the days immediately prior to the alleged rape. The video-recording of 17 July 2019 had shown the applicant engaging in sexual activities with S.Y. only, while some young men were entering the room and were being told to leave by S.Y. and the applicant. Other video-recordings made prior to the date of the alleged rape had shown the applicant engaging in sexual activities with S.Y. while young people outside the bedroom had been trying to watch them

through the door. In one such video-recording, while the applicant had been having sex with S.Y., two other men, O.B. and I.D., were seen to hit her on the buttocks. Officer A.N. reported that in another video-recording the applicant could be seen getting dressed in front of some people in the same room.

B. Statements taken by the police

36. In the meantime, between 17 and 27 July 2019 the police had also collected written statements from over thirty persons, including the applicant, her friend and roommate (R.C.P.), another British person (J.G.D.), the hotel doctor (Dr Se.Se.), the twelve suspects, four persons who were friends of the suspects and also came from Israel, the two hotel owners, a receptionist, a cleaner, a housekeeper, as well as a pub owner (P.K.) and a pub employee (M.E.W.) who had come into contact with the applicant a few days prior to the alleged rape.

1. Suspects' statements

37. Seven out of the twelve suspects stated, with the assistance of an interpreter, that they had been present at the scene of the alleged rape in room 723, albeit at different times and without admitting involvement in the incident; they said they had merely entered or gone in and out of the room. They denied that a group rape had taken place. G.L., T.Z., O.B.D., O.D.D. and Y.G., denied having been present or having had any involvement in the alleged incident.

38. S.Y. stated, *inter alia*, that he had had sex with the applicant on three different occasions.

On the first occasion they had been alone in his bedroom (room no. 723) but his friends had been going in and out of the room.

On the second occasion, his friends O.A. and I.D. had been in the room. While he had been having sex with the applicant, she had been performing oral sex on O.A. and I.D. had been watching. S.Y. had previously asked the applicant if his friends could join them and she had chosen O.A. and I.D. At a later stage in his statement, he stated that on that second occasion the applicant had also given oral sex to I.D.

S.Y. said that on the third occasion, on 17 July 2019 at 2.30 a.m., he and O.A. had had sex with the applicant in his room. During that time, Y.I.A., I.D., O.B. and G.N. had been persistently opening the bedroom door and watching them. The applicant kept asking them to close the door and they did so. After that, during sex, he had asked the applicant whether she would allow Y.I.A. and I.D. to participate but she had refused. He stated that as a result I.D. had asked her to leave, and she did. A while later she had returned to get her shoes and S.Y. had gone to get dressed. After some time Y.I.A. informed him that the applicant had fallen over. S.Y. had seen her after a while crying and she hugged him for one or two minutes but had stopped when a British man he did not know appeared. O.B. had also informed him a day prior to his statement to the police that on 17 July 2019 he had made a video-recording on his phone. As regards the scratches on his back and chest, he stated that those had been made by the applicant during the three times they had engaged in consensual sex.

39. O.A. stated that on one occasion the applicant had had sex with S.Y. while she had been performing oral sex on him and I.D. On that occasion I.D. made a video-recording. O.A. stated, *inter alia*, that he had seen the applicant on 17 July 2019 in S.Y.'s room and she had asked him and S.Y. to have sex. O.A. stated that on that night he had engaged in consensual sex with the applicant while some of their friends were opening the bedroom door and watching, but they had not entered the

room. At some point I.D. had gone into the room and had asked the applicant in a normal tone to leave.

40. I.D. said in his statement to the police that he had engaged in oral sex with the applicant on previous occasions but had denied ever having sex with the applicant in the form of vaginal or anal penetration. I.D. further stated that on the night of the alleged rape, G.N., Y.I.A. and O.A. had been outside the bedroom door waiting and he had heard one of them asking S.Y. if he could enter the bedroom but S.Y. had refused. However, I.D. had immediately opened the door and asked O.A., who was already in the bedroom, to leave. The applicant had allegedly insulted him and as a result he had told her to leave the flat. He added that prior to the events on the night of 17 July 2019 the applicant had drunk half a bottle of vodka, and that she had also offered vodka to O.A.

41. O.B. stated that he had engaged in sex with the applicant on 12 July 2019, after she had chosen him from among some of the other suspects. He had had a condom on, which he had thrown out of the window. He denied that he had had any sexual contact with her on 17 July 2019, the date of the alleged rape. He stated that on that night he had merely made a video-recording of S.Y. and the applicant engaging in sex. Concerning 17 July 2019, he also stated that:

“About 01.40am [Y.I.A. and G.N.] went to where the boxing machine is, and they were waiting for [X] to come there because I think that they thought they might have a chance of having sex with her.”

42. Two other suspects, namely Y.I.A. and G.N., stated that they had been hoping that they would be able to have sex with the applicant on 17 July 2019 because, according to Y.I.A. “[S.Y.] said to us that he was going to arrange for us to fuck [X]”, but the applicant had refused. G.N. also stated that he and Y.I.A. “thought and expected” he would have sex with the applicant on that day. He stated that the applicant had never told them that she wanted to have sex with them, but they assumed she would from her behaviour, and he gave examples of the applicant boasting about having sex with others on previous dates. According to these two suspects’ accounts, on the day of the alleged rape I.D. had been hiding in the bedroom although the applicant had wanted him to leave; sometime later I.D. had re-entered the room and shouted to the applicant to leave.

43. Two suspects, namely E.I.B. and O.B.D., stated that at about midnight or 1 a.m. of 17 July 2019 when they were on their way out to a club they had seen S.Y., Y.I.A., G.N., O.A. and I.D. and asked them to come with them to the club. E.I.B. and O.B.D. told the police that the four men had refused to go out with them saying that they would stay in the room.

E.I.B. specifically stated, among other things, the following:

“[S.Y.] told me that he is not [going out] because the girl that was in our flat on Friday 12/7/2019 is coming again and they were going to fuck her ass and fuck her big style. I heard them saying all of them that they wanted to fuck her and they were laughing and talking to each other discussing what they were going to do with her. They were saying that they were going to fuck her ass, fuck her big style and they will tear up her ass. They were laughing all the time saying these things. ... After the police took us to the police station we were sitting all together in a room, I hear [I.D.] and [O.A.] whispering to each other that [X] probably reported us.”

O.B.D. also stated, among other things, the following:

“The night of 16/07/2019 me and [E.I.B.] were in our flat drinking and listening to music. At about midnight, am not sure, we left our flat to go to Ayia Napa square ... As we went downstairs of our

building I saw that [S.Y., Y.I.A., G.N., O.A. and I.D.] were there and [E.I.B.] asked them if they are coming at [the club] with us but they said that they were going to stay in our flat because the English girl [X] was coming there later and they were going to fuck her all of them. They were bragging about it and laughing saying that they were going to do orgies with her. They were saying these things in a very bad and aggressive way and they look like they were ready all of them to fuck her that night. ... At the police station where we were after the Hotel all of the boys were talking about our case. [O.A.] said that he fucked the English girl [X] and she reported us and [S.Y.] said that the police will see all the videos and they will understand that it wasn't rape and that she enjoyed it. Also he said that he did a mistake that he deleted some of the videos from his phone. Also someone said that I.D. also is on some video and I.D. started crying about this. Y.I.A. said that he didn't do anything and everybody should say that they didn't do anything. Also I want to add that S.Y. show me a video on his phone with him having sex with [X] and [E.I.B.] is doing a video selfie but he wasn't having sex. I have no idea if [E.I.B.] had sex with any girl in our room 732."

2. Other statements

44. The applicant's friend, R.C.P., stated that on the night of the alleged rape the applicant, she and C.L. had gone out and had returned to the Hotel at around 1 a.m. At some point following their return to the Hotel, S.Y. had shouted at the applicant in the presence of his friends because he had been annoyed with her for talking with some other men at the Hotel. Eventually the applicant had gone to S.Y.'s room. After some time R.C.P. had gone to her room and at some point she had heard men talking to the applicant, who had sounded concerned, so she had left her room to check. According to R.C.P.:

"[X] was screaming, crying and generally she was hysterical. She collapsed on the ground and she kept saying that they were coming up to her. She was terrified and really scared. We been to our room and she was lay *[sic]* on my bed and grabbing my hand. I ask her if she was raped by [S.Y.] and she said yes but not just him. ... After that, I went to the clinic in the hotel to ask for help ... [X] said to the doctor that while she was having sex with [S.Y.] he went on top of her face and put his peanuts *[sic]* in her mouth and then shout his friends in. So his friends came and [S.Y.] was holding his leg open by force and all of them, about 11-12 had sex with her without consent. Some of them finished on her face and then she managed to go because the boys were distracted to get another condom. So that's when she run out and came down to the basement where I met her. One day [X] said that while she was having sex with [S.Y.] about three of his friends wanted to join them but she refused and [S.Y.] told them to go away."

45. A British man, J.G.D., who was also staying at the Hotel, stated that in the early hours of 17 July 2019 he had returned to the Hotel after work and in the basement he had seen a fully dressed blonde woman being hugged by a man, and that there had been two other males standing behind him. He said that the woman had been crying and that when he asked what was wrong the men ran away. He had then asked the woman what had happened, and she had gone up to him crying and said that earlier on she had gone to the room with the man who had been hugging her since she had known him from previous days as they had been sleeping together. She had then told him that on that night she had gone to the man's room, to see him and to relax, and they were alone, but after a while she heard a knock on the door and eleven guys entered the room and they all had sex with her. J.G.D. further stated that she had told him that some had been holding her by the hands and

had raped her. J.G.D. stated that he could not smell whether she had been drunk. He and R.C.P. then took the woman to the hotel's private clinic and then the police arrived.

46. The hotel doctor, Dr Se.Se., stated that at 3.33 a.m. on 17 July 2019 he had received a call for help. He had gone to the clinic where he had seen three young women and two young men from the United Kingdom. One of the women was in a panic, crying and had refused to let him go near her. A friend of hers had informed him that she had been raped. Because of the difficulty of the situation, he had suggested that the people accompanying the applicant should sit in the reception area of the hotel infirmary to give her time to relax and that they should give her some water while he called the police. One of her friends had mentioned that she had given the applicant sedatives. A little while later a police car had picked them up from the doctor's office.

47. A pub employee (M.E.W.) from the United Kingdom stated that some days before the alleged rape the applicant had informed her that she had had sex with five Israeli nationals, and had shown her bruises she had sustained on the side of her left leg close to her gluteal muscles as a result.

48. The pub owner (P.K.) stated that he had seen his employee and the applicant having that discussion, but he had not heard the conversation between the two women.

49. The hotel receptionist stated that on 17 July 2019 S.Y. had gone to the hotel accompanied by the police and had pointed out other Israeli tourists who had been involved in a rape allegation. She further stated that room 723 had been abandoned "since the night" because when she had gone at 8.30 a.m. to the Hotel room to inform the room occupants that the police had been looking for them, they were not there, and their luggage was missing.

50. The Hotel housekeeper stated that room 723 had remained closed from 17 July 2019 to 18 July 2019 during which time nobody had gone into the room.

C. The applicant's retraction statement and the end of the investigation

51. The Famagusta CID considered that there were various contradictions in the applicant's first two statements, and on 27 July 2019 they asked her to go to the police station to provide a third, supplementary statement and to clarify certain issues.

52. Between 7.15 p.m. and 11.00 p.m. on that day, the applicant gave a third, supplementary statement to a male police officer in the presence of a female police officer and a Social Welfare officer (see paragraphs 17-21 above). The applicant was allowed two fifteen-minute breaks.

53. At 1.15 a.m. on 28 July 2019, while the applicant was still at the police station, she signed a retraction statement saying that her account of the events of 17 July 2019 had been false, that she had not been raped and that she had consented to the events of that night. In the same statement she said that the reason she had lied had been that she had found out at a later stage that she had been filmed and had felt humiliated and offended.

54. The applicant was arrested at 1.35 a.m. of the same day for the commission of the offence of public mischief and was held in custody. A few hours later the District Court of Famagusta issued an arrest warrant against her as a suspect.

55. On the same day the Forensic Electronic Data Laboratory of the Police Headquarters Crime Combating Department prepared a preliminary report on, *inter alia*, the photographs and video-recordings obtained from the suspects' mobile phones.

56. Later that day the Chief Investigator produced a summary report on the rape complaint which included a statement of facts and his own comments on the evidence collected. The Chief

Investigator recited the fact that the doctors who had examined the applicant found no internal or external vaginal or anal injuries and that the suspects' allegations that the applicant had sex with S.Y. and O.A. while I.D. was in the room and O.B. was making a video-recording had been confirmed by the preliminary forensic report showing that DNA material belonging to S.Y., I.D. and O.A. had been found in room 723. He also said that the video-recordings found in some of the suspects' phones had shown that the applicant had been visiting room 723 and had had consensual sex with some of the suspects. The report also stated that the applicant's account of the events of 17 July 2019 could not be valid since a video-recording of the same date taken at 2.56 a.m. had shown the applicant having consensual sex with someone in that room and the images showed a situation very different from the applicant's description. The Chief Investigator found that his interpretation of the evidence was reinforced by the testimony of the pub owner and the employee who had mentioned that the applicant had had consensual sexual contact with five Israeli nationals. He further stated that from the video-recordings it had appeared that the applicant had started visiting room 723 from the early hours on 13 July and had done so again on 16 and 17 July and that she had consensual sex with S.Y. there. Having compared the applicant's statements and the contents of the video-recordings, the Chief Investigator concluded that the applicant had wholly distorted the facts. This, according to the Chief Investigator, raised doubts as to the truth of her complaint. He noted that on 28 July 2019 the applicant had admitted that she had lied, and she was therefore arrested, while the remaining seven suspects were released without being charged. As regards the reason for lying, the applicant had said it was because she had been filmed. The Chief Investigator observed that another criminal file had been opened ('Σ/174/2019') for a breach of Law 125(I)/2018 (see paragraph 83 below), concerning the offence of the manipulation of personal data without the person's consent. He lastly found that given the applicant's admission of having falsified her earlier statement and the remaining evidence against her, such as video-recordings, the coroner's findings and witness testimonies, the rape allegation had been made up. He suggested that the case be classified as 'unsubstantiated'.

57. On 3 August 2019 the applicant's lawyer informed the police that a video-recording of the applicant engaging in sex with S.Y. and being filmed by E.I.B. had been published on a website containing explicit sexual content.

58. On 6 August 2019 the Institute of Neurology and Genetics of Cyprus prepared a final report outlining the examination of the evidence collected. The report said that I.D. and O.A. "could not be excluded as the origin of mixed DNA material" which had been taken from the applicant's underwear. The DNA of an unknown male had also been found on the applicant's underwear. S.Y.'s DNA was found on the applicant's bodysuit and possibly on her belt. DNA material from S.Y., I.D. and O.A. was found on the swab sample taken from the applicant's face. Traces of the applicant's blood was found on one of the condoms recovered from the hotel room. I.D.'s, S.Y.'s and O.A.'s DNA was also found on condoms found inside the room. E.I.B.'s DNA was found on the bedsheets taken by the police from inside the hotel room.

59. On 13 August 2019 the Forensic Electronic Data Laboratory of the Police Headquarters Crime Combating Department issued its final report on the photographs and video-recordings obtained from the suspects' mobile phones (see paragraph 55 above). It had found video-recordings relevant

to the case on the phones of G.N., O.B., S.Y., Y.I. and I.D. Some of the video-recordings had been made by them on those phones and others had been shared to them through WhatsApp.

60. On 5 September 2019 the police forwarded the applicant's case file and the criminal file on the use of the applicant's personal data without her consent to the Attorney General's Office for a decision on how to proceed. The police informed the Attorney General that the applicant had already been indicted for the offence of public mischief.

III. PROCEEDINGS FOR FALSE REPORTING

A. First instance (case no. 2466/18)

61. In the meantime, on 29 July 2019 the applicant was charged for the offence of public mischief under section 115 of the Criminal Code (see paragraph 78 below) before the District Court of Famagusta (Criminal Division).

62. By letter of 18 September 2019, the applicant asked the Attorney General to stay the prosecution explaining how her rights as a victim had been violated by the long and repeated interviews which had led to her retracting her earlier statement.

63. On 25 September 2019 the Attorney General refused to stay the prosecution of the applicant.

64. On 30 December 2019 the court found the applicant guilty of public mischief. The court considered, *inter alia*, that the only time the applicant had told the truth to the police had been during her retraction statement when she admitted that she had falsely accused the suspects of rape in retaliation to the fact that they had filmed her while she had been engaging in sexual acts.

65. On 7 January 2020 the court sentenced the applicant to four months' imprisonment, suspended for three years.

B. Appeal (case no. 4/2020)

66. On 16 January 2020 the applicant lodged a criminal appeal in the Supreme Court challenging her sentence.

67. On 31 January 2022 the Supreme Court overturned the applicant's conviction and acquitted her by two votes to one. The majority held, *inter alia*, as follows.

68. The retraction had not been made under conditions with the necessary safeguards. The first instance court had erroneously admitted it in evidence and had been wrong to find that the retraction had been voluntary. The court highlighted, among other things, the fact that the applicant, who was nineteen at the time, had been called in to the Famagusta CID offices for clarifications of her statement as a complainant in the afternoon but in reality had ended up being interrogated as a suspect for six hours, without a lawyer and without having been informed of her right not to incriminate herself, until she retracted her earlier statement at 1.15 a.m. The applicant had not waived her right to a lawyer.

69. The court further pointed out that the criminal judge had made his assessments on an erroneous basis since he had proceeded from the premise that the applicant's position was that the alleged rape had taken place at 12.30 a.m. on 17 July 2019. The investigator had worked under the same erroneous perception, which had led him to believe that the applicant had been lying because she had been seen in a video-recording having consensual sex with S.Y. much later that night, at 2.56 a.m. However, the court found that the video-recording also showed some men entering the room while S.Y. and the applicant were asking them to leave. The court stressed that the applicant had not specified the time of the alleged rape in her statements and when the investigator had been asked

by defence counsel to look at the applicant's supplementary statement of 27 July 2019 and show the point where the applicant had been asked to clarify the time, he responded that the applicant placed herself in the room before 2.00 a.m. and not at 12.00 a.m.

70. In this connection, the court pointed out that the criminal judge had failed to assess the fact that at the time of the last video-recording of 17 July 2019, at 2.56 a.m. the other men had clearly not been welcome in the room. The criminal judge had further failed to observe that in all the video-recordings made between 13 and 17 July 2019 the applicant was seen having sex or oral sex only with S.Y. The court observed that in one section of footage where the man's face had not been visible, Officer N. had even noted in his report that according to witness statements that man was S.Y. The court stressed that there was no video-recording showing the applicant engaging in group sexual activities, whereas the prosecution had brought evidence showing the presence of DNA, sperm, and prostate-specific antigens belonging to three Israelis, including S.Y., in used condoms, on a bedsheet, on the applicant's clothes, and on her face. The genetic material matched four of the rape suspects, while in one condom the sperm of more than one male had been found. The Supreme Court observed that the criminal judge had erroneously considered that the video-recordings of various dates constituted "testimony which spoke for itself" as regards the events of 13 to 17 July 2019. The court underlined that on the one hand the video-recordings had been made on dates other than 17 July 2019, and on the other hand that the only video-recording concerning the date in question had shown only S.Y. and the applicant with others entering the room while unwelcome. The court stressed that while the video footage had shown sexual liberty beyond measure, which without a doubt might be unacceptable to many, that could not lead to a finding, nor was it evidence, that the applicant's complaint of a rape or rapes during the time period referred to had been false.

71. The court added that the criminal court had been wrong to refuse to admit three witness statements describing the applicant's psychological state at 3.30 a.m. on 17 July 2019 because it regarded that testimony as hearsay. The criminal court had also failed to consider the fact that the doctor who called the police had no reason to hide the truth or distort the facts.

72. As regards the testimony of Dr So.So., the court noted that it too had not been properly assessed by the court and that in reality it had been vague. Dr So.So. took it for granted that the applicant had been raped and abused by twelve people vaginally and anally and examined her on that basis. On that basis he concluded that he had not found any evidence that violence had been inflicted by twelve persons. With reference to the applicant's first and third statements the court observed that the applicant had not given a firm and clear image of a group rape by twelve persons. Even though the court found a lack of clarity as to the number of the alleged perpetrators, Dr So.So. had been positive that there had been no rape because, according to his testimony, he had expected to find evidence of rape and violence by twelve persons and he had not found evidence of violence of that extent.

The court compared Dr So.So.'s testimony with that of Dr M.M. (witness for the defence), who referred to the finding of blood in the applicant's vagina and on one of the condoms, which Dr So.So. had attributed to menstruation due to stress. The court said that Dr M.M. also explained how the absence of injuries did not mean that a person had not been raped. It observed that Dr So.So. had not adequately explained the presence of blood and it further observed that Dr So.So. had failed to

take a history of the offence or any details of the force used from the applicant. The court found Dr So.So.'s testimony to have been general rather than specific and that there were gaps in it.

73. The court did not consider it necessary to examine the applicant's remaining reasons for appeal, which were about the first-instance judge's rudeness and his intimidation of the applicant. The Supreme Court stated however that the first-instance judge's interventions during the trial had been unjustified and unacceptable.

IV. ATTORNEY GENERAL'S DECISION TO NEITHER INVESTIGATE FURTHER NOR PROSECUTE

74. By a letter of 10 March 2022 the applicant asked the Attorney General to have her complaint re-investigated by other investigators who could ensure independence and impartiality, given the serious breaches of the applicant's rights by the prosecuting authorities found by the Supreme Court. The applicant also asked to be informed of any action taken by the Attorney General on the Supreme Court's findings which she said indicated mistakes and omissions made at the investigation stage.

75. On 21 March 2022 the Attorney General's Office advised the Chief of Police that no further investigation had been necessary, and that the evidence had not been sufficient to prosecute the suspects. The relevant report prepared by counsel for the Attorney General stated, *inter alia*, as follows:

"The present case has been re-examined following the Supreme Court's decision ... by the Law Office as if [X's statement of 28 July 2019] had never existed, and the evidence obtained by the police has been re-assessed.

The complainant, prior to 28.7.2019, had made three other statements. In those, she described meeting someone named [S.Y.] and explained that she had consensual sexual relations with him on various occasions. On 17.7.2019 during their intercourse, she claimed that he had been acting differently and was more violent. She resisted, but he continued and at some point he sat on her, inserted his penis in her mouth with violence and shouted at his friends to enter the room. She counted twelve persons in the room and claimed in her first statement that all of them had raped her through the vagina and anus, while in a subsequent statement she mentioned that she had not been sure with how many persons she had had sexual contact. At some point she describes being able to escape and ran out of the bedroom. In all 3 statements the complainant describes the facts and her encounters ('συνευρέσεις') with [S.Y.] in a different way.

In one statement she described how on one of the occasions when she had had sexual contact with [S.Y.] some of his friends had entered the room and tried to touch her and film her, laughing and shouting. On another occasion, while she was with [S.Y.] he asked her if she would like to have sex with other persons, but she refused. During that incident, some of [S.Y.'s] friends entered the room, filmed her, slapped her, while she was giving fellatio to [S.Y.] and he penetrated or tried to penetrate (she does not remember) her anus with his penis. She does not even remember who he was ('δεν θυμάται ούτε ποιος ήταν').

In her third statement she described how during another incident, while she was having sexual contact with [S.Y.], some of his friends had entered the room and tried to touch her and do various things to her, so she became angry and left. It is her claim that at no point did she consent to having sex with anyone other than [S.Y.].

The stories of the suspects who were found and arrested by the police were entirely different. It appeared from the investigation that on 17 July 2019 seven and not twelve persons could have been there in the room at the relevant time. These seven persons said that at no point did they inflict and/or notice any sort of violence being inflicted on the complainant. They claimed that the complainant sometimes consented to having sex simultaneously with [S.Y.] and some of his friends, whom she even chose herself (‘τους οποίους μάλιστα και επέλεξε η ίδια’).

They claimed that at some point prior to 17 July 2019 the complainant was having sex with [S.Y.] and gave oral sex to [O.A.] and [I.D.]. On 17 July, she had sex with [S.Y.] and [O.A.] and the suspects claimed that when [O.A.] was done, she continued with [S.Y.].

The suspects’ mobile phones were taken away for the purposes of the investigation, and when they were forensically examined certain video-recordings were found on them showing the complainant participating, on various dates, in sexual activities with some of the suspects and specifically with [S.Y.], [O.A.] and [I.D.]. It appears that this is consistent with the description that the suspects gave in their statements. In none of the video-recordings does any sort of violence seem to be inflicted and the complainant seems to be enjoying what is happening.

There is also a video from 17 July 2019 showing the complainant at 2.56 a.m. having intercourse with [S.Y.]. She seems to be sitting on someone and the way in which she seems to be coming into contact with him is not consistent with the description in her statements.

On the same day, at about 3.33 a.m. a phone call was received at a clinic asking for the complainant to be examined. Indeed, she was seen by a doctor who describes in his statement how the complainant had been in a panic and crying and her friends told him that she had said that she was a rape victim. The complainant did not speak to the doctor herself, nor did she allow him to examine her.

A few days later, the complainant was examined by a doctor at a clinic, who described her as scared and said that there were no particular traces of violence on her genitals.

The complainant was also examined by a forensic pathologist (‘εξετάστηκε και ιατροδικαστικά’) who stated in his report that there were no injuries in the vagina or to the outer genitals. There were also no injuries around the anal or peri-anal region. During the forensic examination which took place in the afternoon on 17 July 2019, the complainant’s blood and urine were collected for a toxicology examination, which later showed traces of cocaine in the complainant’s urine.

Testimony was also secured from the owner and an employee of a pub in Ayia Napa that the complainant had visited prior to 17 July 2019 and had mentioned to the employee that she had had consensual sexual conduct with five Israelis. [The complainant] showed her marks on her legs which had been caused at the time of the events with the Israelis. She had not talked with complaint about this incident ...

Assessing the material in their entirety it appears that in none of the complainant’s statements did she speak the whole truth. She hid the fact that she had had sex simultaneously with [S.Y.] and other people. The videos which were found presented the facts very differently from the way she described them and in essence refuted her claims as set out in her three statements.

Even though it appears that the videos may have been made without her consent, they can nonetheless not be ignored at the stage of our decision that there should be a criminal prosecution as they contain information and material relevant to the investigation and seem to corroborate in

many aspects the suspects' versions of events, and the suspects rely on them in support of their innocence. Even if the original recording constituted an unlawful act, the subsequent use of the recordings by the suspects in support of their innocence, including the possibility that we take them in mind in the assessment of all relevant factors concerning the decision of pursuing a criminal prosecution, is not excluded, but for the purpose of serving the public interest, it is allowed.

With regard to all the events the complainant describes as having happened on 17 July 2019 and [S.Y.'s] attitude, it appears from the video-recording that at least the narrative about events before 2.56 a.m. was not true and it conflicts with what is seen in the video-recording at that time, which give a completely different picture.

The contrasts in the complainant's statements significantly affect her credibility for the purpose of pursuing a case. From other evidential material obtained, it appears that the facts were very different from those described by the complainant, to the extent that they fatally affect her credibility.

We consider that a basic investigation was duly carried out and that no other action needs to be taken by the police. Lastly, an assessment of the witness statements suggests that there is insufficient evidence to prosecute the suspects for the offence of rape and that the public interest requires that the case is not taken any further."

76. On 21 April 2022 the Attorney General replied to the applicant's letter of 10 March 2022 (see paragraph 74 above) informing her that the case had been re-examined as if the applicant's retraction statement had not been made, and the evidence had been re-assessed. The Attorney General informed the applicant that the present assessment was that there was insufficient evidence to reasonably support or justify a prosecution, and he referred to the contradictions in her statements and the inconsistencies found between her allegations and other evidence, which had significantly undermined her credibility. The applicant was further informed that it was not necessary to investigate further as all appropriate steps in the investigation had already been taken.

77. According to a note dated 6 May 2022 in the police journal, the Attorney General decided that even though the investigation of the issue of the breach of privacy in relation to the applicant's personal data by the making of the video-recordings and the publication of one of them online (see paragraph 57 above) had not been completed, it was not in the public interest to continue it.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code (CAP. 154)

78. Section 115 of the Criminal Code criminalises the offence of public mischief. Under that section, any person who knowingly makes a false report of an offence which did not happen to any police officer is guilty of the offence of effecting a public mischief and is liable to a fine or to imprisonment for one year.

79. At the time of the events of the present case, section 144 defined rape as follows:

Definition of rape

"144. Any person who engages in unlawful intercourse (*έρχεται σε παράνομη συνουσία*) with a woman, without her consent, or with her consent if the consent is obtained by force or fear of bodily harm, or in the case of a married woman, by impersonating her husband, is guilty of the felony of rape."

80. Section 144 was amended by Law 150(I)/2020 of 13 November 2020 and it now reads as follows:

Rape

“144. Any person who engages in unlawful intercourse (*έρχεται σε παράνομη συνουσία*) through vaginal, anal, or oral penetration of the penis into the body of another person, without that person’s consent or with consent obtained by force, threat or fear, is guilty of the felony of rape and is subject to life imprisonment.”

81. Section 145 provided at the time of the events of this case that a person who committed the offence of rape was subject to life imprisonment.

B. Law on the Establishment of Minimum Standards on the Rights, Support and Protection of Victims of Crime of 2016 (51(I)/2016)

82. Law 51(I)/2016 transposed the Victims’ Rights Directive (2012/29/EU) into Cypriot Law. The relevant provisions of the law read as follows:

Section 4 - Obligations of authorities and NGOs

“4. Every authority and or non-governmental organisation involved shall, in applying the provisions of the present law –

(a) in every encounter of the victim with the victims’ support services or the prosecutorial or judicial authorities acting in the context of a criminal procedure treat the victim with dignity, respect, sensitivity, and shall take a personalised approach without discrimination;

(b) ensure the protection and promotion of the rights of victims, without discrimination on any reason including sex ...

...

(g) guarantee that a person who has been subject to violence based on their sex receives special support and protection given the high risk of secondary and repeated victimisation, threats and revenge attacks connected with such violence;

...”

Section 6 – Right to receive information from the first contact with an appropriate authority

“6. (1) Every authority involved shall provide from their first contact with the victim, without unnecessary delay ... the following information:

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

(b) the procedures for making a complaint of a criminal offence and their role in connection with such procedures;

...

(e) how and under what conditions they can access interpretation and translation services;

...”

Section 19 – Right to protection of victims during criminal investigations

“19. Without prejudice to the rights of the defendant and in accordance with the rules of judicial discretion, the prosecuting authorities shall ensure that during criminal investigations:

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

- (b) the number of interviews with victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;
- (c) victims may be accompanied by their legal representative and a person of their choice, unless a decision for which reasons must be given has been made to the contrary;
- (d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.”

Section 20 - Right to protection of privacy

“20. (1) During the criminal proceedings, the appropriate authorities shall take appropriate measures to protect the privacy, including the personal details of the victim given in the individual assessment provided for under Section 21, and any images of victims and of their family members.

(2) ...

(3) The private life and identity of the victim is protected by every authority involved and the processing of personal data is always carried out in accordance with the provisions of the Law on the Processing of Personal Data (Protection of the Person).”

Section 24 – Training of state officers

“24. The State shall provide the necessary funds to the services involved in criminal investigations for both the general and specialist training of their officers who may be involved in any procedures under the present law or who may come into contact with victims or potential victims in any way, with emphasis on the needs of particularly vulnerable victims, for the purpose of increasing their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner; ...”

C. Law on the Protection of Natural Persons with regard to the Processing of Personal Data and for the Sharing of such Data (125(I)/2018)

83. Law 125(I)/2018 was enacted on 31 July 2018 and is the main legislation on data protection in Cyprus. It was passed to bring into domestic law certain provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

II. RELEVANT INTERNATIONAL LAW AND PRACTICE

84. The relevant provisions of various EU laws and Council of Europe materials on the rights of victims of crime and the protection of women against violence, including the Convention on Preventing and Combating Violence against Women and Domestic Violence (“the Istanbul Convention”), which entered into force with respect to Cyprus on 1 March 2018, were recently outlined in *X v. Greece*, no. 38588/21, §§ 23-30 and 32-33, 13 February 2024.

85. On 23 November 2022 the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), an independent expert body responsible for monitoring the implementation of the Istanbul Convention by the Parties to that convention, published its baseline evaluation report on Cyprus. The executive summary highlights numerous “positive legal and policy measures that have been taken by the Cypriot authorities following the ratification of the [Istanbul] convention, which demonstrate firm resolve to prevent and combat domestic violence and violence against women and to ensure gender equality”. The executive summary also mentions “a

number of issues where improvement is warranted in order to reach higher levels of compliance with the requirements of the Istanbul Convention”.

The passages of the baseline evaluation report relevant to the present case read as follows:

“III. Prevention

...

D. Training of professionals (Article 15)

93. GREVIO strongly encourages the Cypriot authorities to take legislative and other measures to ensure systematic and mandatory initial and in-service training on all forms of violence against women for the relevant professionals who deal with victims or perpetrators, particularly prosecutors and judges, law-enforcement officers, social services staff, healthcare personnel, journalists and teachers, in line with the requirements of the Istanbul Convention. Particular attention should be paid to overcoming entrenched stereotypes and a patriarchal culture and to ensuring the continuity and sustainability of the funding of such training, so that it is not project based.

94. In addition, GREVIO urges the Cypriot authorities to ensure the training and relative protocols for law-enforcement officials who directly or indirectly receive reports and investigate cases of violence against women:

...

d. offer instruction on how and where to receive reports and interview victims in a manner that prevents secondary victimisation;

e. sensitise and prepare police officers to deal with reports from women who are in a particularly vulnerable situation, such as migrant/asylum-seeking women and women with disabilities;

f. clarify how to comprehensively collect all relevant evidence in addition to the victim’s statement or, in cases of rape, in addition to the forensic evidence lifted from the victim;

...

95. With regard to prosecutors and judges, GREVIO urges the Cypriot authorities to provide them with robust training on violence against women, as well as guidelines or protocols that address:

a. the debunking of prejudices and patriarchal attitudes;

b. especially for prosecutors, the importance of ensuring the collection of additional evidence other than the victim’s or perpetrator’s statement;

...

d. the dissuasive and revictimising effect that impunity for violence against women has on victims;

e. the implications of the new provision on rape based on lack of consent, including the shift of the onus onto the perpetrator to ensure that all sexual acts are engaged in voluntarily; and the role of interim restraining orders and restraining orders in breaking the cycle of violence in cases of domestic violence and other forms of violence against women, as well as the importance and preventive role of perpetrator programmes.

...

IV. Protection and support

...

G. Support for victims of sexual violence (Article 25)

149. ... GREVIO notes with regret that no rape crisis or sexual violence referral centers capable of providing holistic and comprehensive support to victims of rape and sexual violence are currently in place in Cyprus.

150. ... [Only] four forensic experts, who are responsible for taking evidence in respect of all types of crimes, are available in the whole country. These experts are not specialised in the taking of evidence in cases of rape/sexual violence and are therefore accompanied by a gynaecologist. While they are on call on a 24/7 basis, the scarcity of experts often entails long periods for the victim, further exacerbating their trauma. Moreover, three out of four forensic experts are men.

151. ...

152. ... From the foregoing it follows that currently the provision of specialist support services to victims of rape/sexual violence is not comprehensive, nor provided on a one-stop-shop basis. Currently a rape victim would in fact need to approach, consecutively, several institutions/entities, including the hospital, social welfare services, the telephone helplines and the Women's House and retell her story multiple times before receiving some of the need support. ...

153. With a view to avoiding secondary victimisation and providing comprehensive support to victims of rape and sexual violence, GREVIO urges the Cypriot authorities to set up rape crisis or sexual violence referral centres in sufficient numbers in the country and provide medical and forensic examinations, trauma support and psychological counselling for victims. ... It also urges in the Cypriot authorities in particular to:

- a. ensure that forensic examinations are carried out in line with intentionally recognised standards and that measures are taken to ensure that forensic evidence is collected and stored with the consent of the victims, regardless of whether the matter has been reported to the police;
- b. strengthen protocols/guidelines and training on the management of cases of sexual violence and rape in hospitals.

VI. Investigation, prosecution, procedural law and protective measures

...

2. Effective investigation and prosecution

...

229. ..., reports and information obtained by GREVIO are consistent in pointing to rampant prejudices and patriarchal attitudes among the police, as well as excessive administrative requirements and red tape that have led in many cases, and recently, to a failure to record incidents of violence against women and to detect patterns of abuse, leading also to tragic outcomes. In practical terms, until recently, for an investigation to be opened, the victim needed to provide a sworn affidavit or a formal written statement, in the absence of which no follow-up of the case would ensue. ...In the area of sexual violence and rape, another example of victim-blaming attitudes and inaction of the police is the grave and highly mediatised case of a young British national who alleged being gang raped in July 2019. The young woman turned from being a victim to a suspect after six hours of questioning by the police, in the absence of a defence lawyer, in which she alleged being pressured to withdraw her statement. As a result of this, the investigation into the gang rape was immediately closed and replaced by an investigation for "public mischief" for having lied about the rape, followed by a conviction in first instance and a four-month suspended prison sentence. Even after the reversal of this judgment by the Supreme Court, ascertaining serious shortcomings into the

investigation of the case by the police and the prosecutor, as well as violation of the right to a fair trial, to this day, the investigation into the gang rape has not resumed.

230. GREVIO notes that the above shortcomings, in turn, have led to significant underreporting by victims of violence against women due to lack of trust in the institutions. ...

231. As regards evidence collection, GREVIO's understanding is that thus far, in cases where the victim withdraws her statement, prosecution has often not been pursued as a result of insufficient additional evidence having been collected. GREVIO notes that law-enforcement authorities, under prosecutors' guidance, primarily rely on the testimonies of the victim and the perpetrator and, in some cases, on those of witnesses. Such over-reliance on the victim's statement and the failure to collect additional evidence have resulted in a low number of cases proceeding successfully along the criminal justice chain and ending with a conviction. GREVIO would like to recall that a victim's withdrawal of a statement or the refusal to testify is frequent in cases of domestic violence characterised by power and control dynamics, as well as in other instances of violence against women. For this reason, GREVIO stresses the vital importance of proactively and rigorously collecting all relevant evidence in addition to the victim's statement. This is especially important to ensure effective *ex officio* prosecution of crimes of violence against women, as required by Article 55 of the [Istanbul] convention. Law-enforcement authorities' collection of evidence should entail documenting injuries (with the consent of the victim), taking photographs of the crime scene, collecting DNA samples, taking statements from neighbours and any other potential witnesses, and identifying abuse perpetrated through digital means such as the threat of or the sharing of images without consent, or stalking through spyware or other technical devices.

232. On a positive note, and in response to the above-mentioned shortcomings, as well as with a view to aligning legislation and practice with the Istanbul Convention, some welcome legislative and other measures have been taken through the 2021 VAW law and the new protocols in the area of gender-based violence against women adopted by the police. Notably, Article 20 of the 2021 VAW law now clarifies that investigations must be opened and prosecutions must be initiated whether or not a formal complaint has been filed by the victim, with the possibility of continuing criminal proceedings even in cases where the victim withdraws her complaint. Moreover, under Article 22, prosecutors and courts must, *inter alia*, ensure that criminal proceedings for violence against women offences are conducted without delay and without worsening the trauma of the victim and prosecution and court officials must be duly trained in the area of violence against women.

233. Furthermore, the authorities have shared with GREVIO three protocols currently in force providing guidance on investigations on domestic violence, rape and gender-based violence more generally. The domestic violence protocol helpfully calls for immediate investigations, the systematic carrying out of a risk assessment, the need to open a criminal file for all reports of domestic violence and an obligation to check for prior complaints. It also stresses the importance of continuing an investigation even if the victim does not wish to proceed with the case. On the other hand, GREVIO notes that this protocol does not provide a detailed indication of the importance of collecting all relevant evidence in addition to the victim's and perpetrator's testimony. GREVIO underscores the importance of specific training and guidance in this respect for the reasons mentioned in the previous paragraph. As regards the protocol on gender-based violence, GREVIO notes that while it also calls for prompt investigations, the carrying out of a risk assessment and the

taking of adequate protection measures for the victim, it focuses, once again, on the victim's statement and is not specific to the various forms of violence against women. Finally, GREVIO welcomes some positive elements contained in the 2021 protocol on rape, including the requirement that statements must be taken by a police officer of the same sex as the victim and that the investigation must continue even if the victim does not give a statement. Moreover, detailed guidance is provided with regard to the taking of evidence, including, *inter alia*, the examination of the crime scene for evidence and the taking of photographs, taking statements from neighbours and any other potential witnesses and checking CCTV footage. While GREVIO welcomes this guidance, it also underscores the importance of ensuring that such protocol does not focus exclusively on proof of the use of physical violence/threats or coercion.

234. In sum, GREVIO considers that redoubled action and training is required in order for the new legislation and protocols to bear fruit. For example, the authorities have confirmed that to this date, proceedings on gender-based violence come to an end when a victim withdraws her statement, despite the new provisions and guidance currently in place.

...

236. GREVIO urges the Cypriot authorities to:

- a. provide the newly established specialist investigative units on domestic violence with the training, guidance and the expertise to handle other cases of violence against women, beyond domestic violence, such as stalking, digital forms of violence against women, sexual harassment, FGM, forced marriage and rape;
- b. analyse and assess to what extent the new protocols in place on gender-based violence are being applied, including the obligation to open an investigation, regardless of the lodging of a formal complaint by the victim;
- c. provide guidelines for prosecutors and judges for judicial proceedings in the area of gender-based violence against women;
- d. identify and address all factors that contribute to attrition, in order to increase the number of convictions."

THE LAW

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

86. The applicant complained of a failure of the domestic authorities to effectively discharge their positive obligations to investigate and prosecute acts of rape against her. She relied on Articles 3 and 8 of the Convention, which, insofar as relevant, read as follows:

Article 3

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

Article 8

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

A. Admissibility

1. Failure to exhaust domestic remedies

87. The Government argued that the applicant had failed to raise her complaints before the appropriate domestic courts, and that she could have done so by pursuing civil proceedings for

damages for the alleged violation of her rights. In this connection the Government referred to the case of *Takis Yiallourou v. Evgenios Nicolaou* ([2001] 1 C.L.R. 558) which concerned an alleged violation by another individual of the claimant's right to a private life and correspondence. In that case the Supreme Court, sitting as a full bench, held that claims for human rights violations were actionable rights that could be pursued in the civil courts against those responsible, with a view to recovering from them, *inter alia*, just and reasonable compensation for any damage suffered as a result. Compensation in such cases could be for pecuniary and non-pecuniary damage, including damages for hardship.

88. The applicant disagreed arguing, *inter alia*, that she had raised her complains with the police, who had power to investigate, and with the Attorney General who had been the sole person with authority to initiate criminal proceedings, and, given his refusal, she had had no other available remedy.

89. The Court has already held that effective protection against rape and sexual abuse requires measures of a criminal law nature (see *M.C. v. Bulgaria*, no. 39272/98, § 186, ECHR 2003-XII). The Court has also held, in the context of cyberviolence and cyberharassment, which have been recognised as forms of violence against women, that 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 *Söderman v. Sweden* [GC], no. 5786/08, §§ 83-85, ECHR 2013; *K.U. v. Finland*, no. 2872/02, § 47, ECHR 2008; and *Volodina v. Russia (no. 2)*, no. 40419/19, § 57, 14 September 2021). The same considerations apply in cases concerning serious acts such as rape which have a direct impact on the individual's physical or psychological integrity. As such, the Court considers that civil proceedings which might have been an appropriate remedy in situations of lesser gravity would not have been able to achieve these objectives in the present case.

2. Victim status

90. The Court considers that although the respondent State did not raise an objection in relation to the applicant's victim status this issue calls for consideration by the Court in view of the Supreme Court's findings (see paragraphs 67-72 above) as these are closely linked to the question of the effectiveness of the investigation (see, for example, *D.J. v. Croatia*, no. 42418/10, § 68, 24 July 2012; *İ.G. v. Türkiye*, no. 32887/19, § 29, 27 August 2024; and, *mutatis mutandis*, *Döner and Others v. Turkey*, no. 29994/02, § 81, 7 March 2017). The Court therefore joins the issue of victim status to the merits (see paragraph 114 below).

3. Conclusion on admissibility

91. The Court notes that this complaint 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. Submissions of the parties' and the third party

(a) The applicant

92. The applicant argued that there had been numerous shortcomings in the investigation and that it had been neither thorough nor effective. It had been conducted by persons lacking the appropriate training and expertise and she had been re-victimised by the process.

93. The applicant claimed specifically that the room had not been cordoned off immediately after her complaint to the police, and that the police had delayed in taking blood and urine samples from her to determine whether she had consumed alcohol and the extent of any debilitation. The applicant also claimed that the police had further failed to secure fingerprints from room 723 or from the condom wrappers seized – including condoms other than just those found at the scene – which should have been done in order to identify the number of potential suspects and also because the DNA of an unknown male had been found. The applicant further claimed that the police had not checked the text messages on the suspects' mobile phones, which could have revealed conversations between the suspects showing the offence had been pre-planned. The applicant argued moreover that when the police were establishing the facts after having collected evidence, they interviewed only the applicant and none of the suspects, who had only been interviewed once. The applicant claimed that the police had additionally failed to take a statement from, *inter alia*, the man (A.) and woman (C.) and that they had failed to establish whether she had indeed been given a tranquilliser which could have affected her capacity when she was making her statement. They further failed to establish who the men were that the applicant had been talking to, who had upset S.Y. and who could have corroborated her testimony about the reason S.Y. had changed his stance.

94. The applicant further said that her medical examination by the forensic pathologist and the report he had produced had been substandard. Among other failures, he had only photographed the applicant's torso clothed, and he had not conducted any "body mapping"; he had not taken the applicant's medical history or details of her height or weight; and he had assumed the source of vaginal blood to have been her period without enquiring about the details of her menstrual cycle. The amount of blood had not been described and there was a general reference to recent bruising without trying to establish how recent the bruising was or the possible causes of it.

95. The applicant added that the forensic pathologist, police, and counsel for the Attorney General had placed undue weight on the absence of internal injuries instead of focusing on the absence of consent, indicating an apparent lack of modern understanding of the act of rape. In this connection, she argued that the authorities had failed to objectively assess the evidence available, while the counsel for the Attorney General had been merely repeating mistakes and biases made by the Chief Investigator. According to the applicant, the police had been biased from the start as they inquired into whether she had been involved in similar incidents in the past. The applicant claimed that the authorities had also failed properly to consider the evidence, such as the video-recordings, which showed that S.Y.'s friends had kept entering the room even though they had been told to leave, and the fact that the applicant had expressed on various occasions that she had not wanted to engage in sex with multiple partners. They had also ignored statements by some of the suspects expressing their intention to have sex with the applicant and crudely suggesting that her consent was unimportant to them. In addition, the authorities had failed to consider the accounts of R.C.P., J.G.D. and Dr Se.Se. which supported her account of the events of 17 July 2019. They had further failed to consider statements that some of the suspects had wished or even expected to have sex with the applicant, presuming that she would consent because of her previous conduct. In addition, the authorities had placed reliance on the applicant's prior consensual activity with S.Y. instead of focusing on whether she had consented to sex with those involved at the time of the rape.

96. The applicant argued, *inter alia*, that both the Chief Investigator and counsel for the Attorney General had criticised her for allegedly not disclosing her prior sexual relations with some of the suspects, even though the applicant had disclosed her involvement with S.Y.'s friends in her second statement. They had both considered the applicant unreliable because of alleged inconsistencies in her statements as to the number of men who had raped her, even though the applicant had said in her statements that she did not know the exact number of men who had entered the room or how many had raped her. In addition, the applicant said that both the Chief Investigator and counsel for the Attorney General had misinterpreted her statements as regards the time of the alleged rape. She further argued that the authorities had over-relied on her statement, held minor discrepancies against her even though her statements had been given in the absence of a translator or lawyer and after she had just suffered a traumatic experience, and that they had not held the suspects to the same level of accountability. The applicant argued with reference to S.Y.'s first statements to the police that the authorities had failed to notice the inconsistencies in the suspects' statements or to question their credibility as they had questioned hers.

97. The applicant argued that the above failures had led to the Attorney General's decision not to prosecute despite the presence of sufficient evidence for doing so. She claimed in addition that the Attorney General had not been impartial.

98. Overall, according to the applicant, the investigation had been systemically flawed and inadequate and had failed to respect her as a victim of a criminal offence of a sexual nature.

(b) The Government

99. The Government argued that the investigation had been fully in line with Convention requirements. The authorities had taken numerous statements, not just from the applicant and suspects, and had obtained forensic evidence both from the scene of the alleged crime and from the applicant and the suspects. The Government submitted that asking the investigating authorities to investigate further than they already had would have been unreasonable and unduly burdensome. The investigation had also been prompt and expeditious, without delays. The Government further argued that the Supreme Court's judgment had focused mainly on the wrongful acceptance of the applicant's statement retracting her complaint and the criminal court's errors in finding that that retraction had been voluntary and admitting it in evidence. This omission had, according to the Government, been rectified in full by the Attorney General's Office which had re-examined the case having excluded the retraction statement. The Government asserted that the Attorney General had "render[ed] the said 'mistake' a historically isolated one".

100. As regards the decision not to prosecute, the Government submitted that the domestic authorities were not obliged to prosecute in the absence of significant failures in the investigation or decision-making process for which they should be held accountable. In this regard the Government added that there had in any event been no sufficient or satisfactory evidence in the investigation file pointing towards prosecution.

101. In respect of the applicant's argument that the Attorney General had failed to consider the testimony of R.C.P. and J.G.D. when he reviewed the case, the Government replied that those two witnesses could not be regarded as independent or credible as they were either friends of the applicant or British and had every reason to support her. As for Dr Se.Se.'s statement that the applicant had been in a panic, the Government argued that the said statement "(if actually true) can

only be attributed to and/or explained by the fact that she had found out about the video-recordings of the consensual (group) sexual activities of the early hours of 17 July 2019 and, therefore, felt humiliated and offended". As regards the failings and omissions of the State forensic pathologist, Dr So.So., the Government said that even if the medical examination had had some "minor weaknesses", the Attorney General's Office could not reasonably have been expected to rectify them by ordering a new examination of the applicant after the final judgment, given the considerable passage of time. As regards the applicant's argument that the Government ought to have searched the suspects' text messages or other communication data on their phones, the Government submitted that searching the video-recordings had been sufficient and searching any other communication data could not have served any purpose and the tension it would have created would have affected the overall quality of the investigation.

102. Lastly, the Government informed the Court that they did not wish to submit written observations in reply to the third party's submissions as they considered them general and not commenting on the facts of the case.

(c) The Advice on Individual Rights in Europe Centre's (AIRE Centre) submissions

103. The AIRE Centre provided information on States' positive obligations under Articles 3 and 8 of the Convention when investigating complaints of rape and other forms of sexual violence. They stressed the importance of effective investigations in maintaining public confidence in the rule of law and preventing the perception that domestic authorities tolerate acts of violence. They further emphasised, *inter alia*, that in any investigation concerning allegations of rape, the focus of the national authorities should go beyond securing physical evidence and should extend to the issue of lack of consent. They further submitted that because sexual assault is usually conducted in private the credibility of the victim, rather than the determination of the issue of lack of consent, becomes disproportionately central to the complaint. The third party further provided information about the State's obligations stemming from the Istanbul Convention, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights all of which were ratified by Cyprus.

2. The Court's assessment

(a) General principles

104. The relevant principles concerning the State's obligation inherent in Articles 3 and 8 of the Convention to investigate cases of ill-treatment, and in particular sexual abuse committed by private individuals, are set out in *M.C. v. Bulgaria* (cited above, §§ 149, 151 and 153), *M.G.C. v. Romania* (no. 61495/11, §§ 54-59, 15 March 2016) and more recently in *X v. Greece* (no. 38588/21, § 103, 13 February 2024).

105. The Court has held that where serious acts such as rape are concerned, the State's positive obligation under Articles 3 and 8 to safeguard an individual's physical integrity may also extend to questions relating to the effectiveness of a criminal investigation and to whether reparation and redress can be obtained, although there is no absolute right to the prosecution or conviction of any particular person where there were no culpable failures in the authorities' attempts to hold perpetrators of criminal offences accountable (see *M.G.C. v. Romania*, cited above, § 58).

106. As regards the Convention requirements relating to the effectiveness of an investigation the following are of particular relevance in the context of the present case. The Court has held that in

order to be effective, the investigation must be sufficiently thorough. The authorities must take reasonable measures available to them to obtain evidence relating to the offence in question. They must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation. Any deficiency in the investigation which undermines its ability to establish the facts or the identity of the persons responsible will risk falling foul of this standard *X and Others v. Bulgaria* ([GC], no. 22457/16, § 185, 2 February 2021).

107. However, the obligation to conduct an effective investigation is an obligation not of result but of means. Furthermore, the Court is not concerned with allegations of errors or isolated omissions in the investigation: it cannot replace the domestic authorities in the assessment of the facts of the case, nor can it decide on the alleged perpetrators' criminal responsibility. Likewise, it is not the Court's task to call into question the lines of inquiry pursued by the investigators or the findings of fact made by them, unless they manifestly fail to take into account relevant elements or are arbitrary. Nevertheless, a failure to pursue an obvious line of inquiry can decisively undermine the investigation's ability to establish the circumstances of the case and the identity of those responsible (*ibid.*, § 186).

108. In addition, in accordance with contemporary standards and trends in the area, Contracting States' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the effective penalisation and prosecution of any non-consensual sexual act, including where the victim has not resisted physically (see, among many authorities, *M.G.C. v. Romania*, cited above, § 59, and *I.C. v. Romania*, no. 36934/08, § 52, 24 May 2016).

109. The Court has previously observed that the evolving understanding of the way rape is experienced by the victim has shown that victims of sexual abuse often put up no physical resistance because of a variety of psychological factors or because they fear violence from the perpetrator (see *M.C. v. Bulgaria*, cited above, § 164). Moreover, the development of law and practice in that area reflects the evolution of societies towards effective equality and respect for individuals' sexual autonomy (*ibid.*, § 165).

(b) Application of these principles to the present case

110. Turning to the circumstances of the present case, the Court observes the existence of a legislative framework to protect the rights of victims of sexual violence. Specifically, Cypriot law criminalises rape (see paragraph 79 above) making direct reference to the absence of consent, while the state has further enacted legislation concerning the rights, support and protection of victims of crime including, that of rape (see paragraph 82 above). What is important however, is to discern how the domestic authorities applied those provisions in practice (see, *M.G.C. v. Romania*, cited above, §§ 63-64).

111. The Court observes that police began investigating without undue delay. They opened an investigation as soon as the applicant made her complaint, they traced the suspects quickly, secured warrants, collected DNA samples and other evidence from the applicant and suspects and did not delay in interviewing witnesses (see paragraphs 23 to 27, and 36 above). The speediness of the investigation is not therefore at issue in the present case.

112. Nevertheless, the case is marked by a series of shortcomings on behalf of the investigative authorities, the prosecutorial authorities and the first instance domestic court that shaped its trajectory. At the heart of the case lies the overly hasty termination of the investigation into the

applicant's allegations of rape, prompted by the applicant's retraction of her initial statements (see paragraph 56 above) and the immediate initiation of criminal proceedings against the applicant herself, culminating in her conviction for public mischief at first instance (see paragraphs 54, 61 and 64 above). However, this conviction was ultimately overturned on appeal, raising significant concerns about the handling of the case (see paragraph 67 above).

113. In overturning the applicant's conviction, the Supreme Court identified some of the failures in the investigation of the applicant's complaint, including the failure of the police to establish the time of the alleged rape and the forensic medical examiner's assumption that the applicant had not been raped in the absence of injuries, his failure to explain the existence of blood in her vagina or to take her medical history, or to enquire into the force used against her (see paragraphs 69 to 72 above). The Supreme Court further noted the first-instance court's failure to address the evidence in the video-recording of 17 July 2019 showing that other men besides S.Y. had not been welcome in the room and that there had been no other video-recording showing the applicant engaging in group sexual activities. The Supreme Court found that that evidence, coupled with the presence of DNA of three suspects could not have led to a conclusion that the applicant's complaint of rape had been false (see paragraph 70 above). The court also noted the first instance court's failure to address witness statements describing the applicant's psychological state after the alleged rape (see paragraph 71 above). Therefore, the Supreme Court, which is better placed to evaluate the evidence adduced before it than the present Court (see, among many authorities, *Winterwerp v. the Netherlands*, 24 October 1979, § 40 Series A no. 33), established certain deficiencies in the first-instance court's assessment, which were also reflective of the omissions of the police when conducting their investigation.

114. While the Supreme Court's judgment amounts to an acknowledgment of flaws at the initial stage of the investigation and by extension a lack of thoroughness, the Court examining this point of its own motion, considers that the applicant has not lost her victim status under Article 34 of the Convention. The Supreme Court's findings cannot satisfy the requirement of an effective investigation, because those initial flaws had an impact on the effectiveness of the entire investigation (see, *mutatis mutandis*, *D.J. v. Croatia*, cited above, §§ 94-96). Moreover, despite those findings, as the Court will explain below, counsel for the Attorney General, when reviewing the decision to discontinue the investigation into the applicant's allegations of rape, endorsed the approach followed by both the Chief Investigator and the first instance court in her assessment, with the main exception that she did not take into account the applicant's retraction statement. In addition, the applicant made additional complaints as to the effectiveness of the investigation (see paragraphs 93 to 96 above). Thus, the applicant may still claim to be a victim of the violation complained of under Article 34 of the Convention.

115. In this respect, the Court observes first that it is indeed unclear at what time room 723 was cordoned off, but it appears that the police had not yet secured the crime scene at 8.30 a.m., when the hotel receptionist went to the room searching for the suspects (see paragraph 49 above). The Court notes that the police had however been informed by the hotel doctor of the applicant's allegation of rape in the early hours of 17 July 2019 and the applicant's complaint was officially recorded at 6 a.m. (see paragraphs 22, 23 and 46 above). Second, it is unclear from the documents available to the Court whether the police considered taking fingerprints from the condom wrappers

– if that was not objectively impossible – to identify who had used them. The Court notes that the report prepared by the Institute of Neurology and Genetics states that the DNA of an unknown male was found on the applicant's underwear (see paragraph 58 above). That male remained unidentified. Third, it appears that the police limited their search for physical evidence to room 723 and it is unclear whether they looked anywhere outside the bedroom for the missing condoms, which could have also assisted in the identification of possible suspects. The Court observes that the applicant stated that some of the suspects had been throwing condoms out of the bedroom window (see paragraph 12 above). This claim seems to be consistent with the finding of two condoms on top of the air-conditioning unit and one under the bed near the window (see paragraph 28 above). Fourth, the police only searched the suspects' phones for video-recordings and photographs (see paragraphs 27 and 31 above), without examining any text messages exchanged by the applicant and S.Y. or other suspects (see paragraphs 7 and 10 above). Fifth, it is not apparent from the case-file whether or not the police also tried to trace the applicant's two male friends (R. and N.) (see paragraph 17 above) or the other men at the Hotel with whom the applicant said she had been speaking when she had made S.Y. angry by doing so (see paragraph 44 above). The authorities' omissions in following the said lines of inquiry undermined the investigation's ability to establish the circumstances of the case and verify the various accounts of the alleged rape (see, *X. and Others v. Bulgaria*, cited above, § 186). Sixth, the Chief Investigator had decided to close the investigation on 28 July 2019 on the basis of the applicant's retraction of her allegations, before the final reports of the Institute of Neurology and Genetics of Cyprus and the Forensic Electronic Data Laboratory of the Crime Combatting Department had been produced (see paragraphs 58 and 59 above). In the Court's view the preliminary reports (see paragraphs 32 and 55 above) could not justify the closing of the investigation, as they presupposed and required the production of a final report.

116. The Court observes that the above failings cannot be considered isolated omissions in the investigation. The Court reiterates that investigating authorities are under an obligation to take whatever steps they reasonably can to secure all available evidence about the incident they are investigating. In similar cases, the Court has expressed the opinion that it was for the authorities to explore all the facts and decide on the basis of all the surrounding circumstances. Notwithstanding its subsidiary role in the matter the Court has been particularly critical in rape allegation cases where the investigating authorities, faced with irreconcilable versions of facts, did not make a consistent effort to establish all the surrounding circumstances and to engage in a context-sensitive assessment of the credibility of the statements (see *M.C. v. Bulgaria*, cited above, §§ 176-77, and *Z v. Bulgaria*, no. 39257/17, § 74, 28 May 2020).

117. Furthermore, the Court attaches particular importance to the failure of the authorities in their central task of examining whether there had been consent. Neither the Chief Investigator nor the counsel for the Attorney General in the ensuing re-assessment of the investigation file engaged in any meaningful examination of the evidence which could signify a lack of consent. Their assessment made no mention of the testimonies that the applicant had consumed alcohol (see paragraphs 11 and 40 above) or of the traces of cocaine in her urine (see paragraph 23 above) and how that could have affected her capacity to consent. No mention was made of her express disagreement with the suggestion of having sex with some of the suspects (see paragraphs 38, 40 and 42, above); the fact that at least one of them (I.D.) had felt offended by the applicant (see paragraphs 38 and 40 above);

the fact that the suspects had shown little regard for the applicant's wish for privacy both on prior occasions (see paragraphs 9, 10, and 35 above) and on 17 July 2019 when they had persisted in entering the room despite being expressly asked to leave (see paragraphs 35, 40 and 70 above). No inquiry seems to have been made as to the steps the suspects took to ensure that the applicant consented to sex on 17 July 2019 but there was testimony to the effect that some of the suspects had hoped and expected that they would have sex with the applicant, assuming that they would be able to do so merely from her prior behaviour (see paragraphs 41 and 42 above).

118. Moreover, the police and subsequently the investigator took the suspects' statements that no rape had taken place at face value despite testimony that S.Y. had said he would arrange for his friends to have sex with the applicant (paragraph 42 above); that certain suspects had crudely expressed their intention to have sex with the applicant on 17 July 2019 (see paragraph 43 above); that blood was found on a condom (see paragraph 58 above), on the hygiene pad worn by the applicant (see paragraph 23 above) and in the applicant's vagina (see paragraphs 34 and 72 above), which could have signified abuse; that there were bruises on the applicant's body (see paragraph 34 above) and scratches on S.Y.'s body (see paragraph 34 above); that there had been no prior relationship between the applicant and most of the other suspects; and the applicant's behaviour after the incident (see paragraphs 44 and 46 above) (see, *mutatis mutandis*, *Z v. Bulgaria*, cited above, § 79). At the same time, the authorities made no mention of the inconsistencies in the suspects' statements (see paragraphs 24, 28 and 38 above).

119. In this context the Court finds it difficult to accept the Government's position that there had been no sufficient or satisfactory evidence which would warrant the initiation of a prosecution (see, *mutatis mutandis*, *I.P. v. the Republic of Moldova*, no. 33708/12, § 33, 28 April 2015). Rather, it appears that the authorities' disinclination to pursue the investigation further or to initiate criminal proceedings had been based on the applicant's sexual liberty and conduct. The applicant's credibility appears to have been assessed through prejudicial gender stereotypes and victim-blaming attitudes (see the GREVIO report, cited at paragraph 85 above). By focusing on the applicant's prior conduct, the authorities seemed to suggest by implication that because she had allegedly participated in group sexual activities before, she would not have refused to engage in such activities on the day of the alleged rape. The Court reiterates that circumstances concerning the victim's behaviour or personality cannot excuse the authorities from the obligation to carry out an effective investigation (see *D.J. v. Croatia*, cited above, § 101).

120. The Court further observes a selective and inconsistent approach to the assessment of evidence, indicative of bias. While information submitted from Israeli nationals seemed to have been accepted by the authorities in corroboration of the suspects' accounts (see paragraph 36 above), testimony provided by British nationals such as R.C.P. and J.G.D. was treated with suspicion, despite, as noted by the Supreme Court, being corroborated by Dr Se.Se. who was an independent party (see paragraph 101 above).

121. In addition to the above, the Court observes that while the decision of the Chief Investigator to discontinue the investigation and the decision of the Attorney General not to reopen it were largely based on alleged inconsistencies in the applicant's statements, they failed to consider the circumstances under which those statements had been made. The first statement was made not long after the alleged rape. The authorities failed to consider the psychological effect that the alleged rape

might have had on her at the time. There is no evidence that they considered the possibility that at the time of her first statement she could still have been intoxicated by alcohol or cocaine or affected by sedatives administered to her by her friend (see paragraph 46 above). In addition, it is not clear whether the applicant was given time to sleep or rest between the alleged rape and her first and second statements. At 3.33 a.m. she was at the hotel doctor's office (see paragraphs 22 and 46 above). The police then transferred her to a police station and officially recorded her complaint at 6 a.m. This was followed by a two-hour interview starting at 7.30 a.m., immediately after which she was transferred to the Famagusta General Hospital, where she underwent a forensic examination by a male doctor and then gave blood and urine samples to a nurse, followed by the female police officer accompanying her taking cheek swabs. It appears that she was finally transferred back to the police station for her second statement, which she gave at 5.20 p.m. (see paragraph 23 above).

122. The Court observes that the applicant, who at the time was eighteen years old and a foreigner, alone in Cyprus, was only referred to a psychologist on 19 July 2019, and even though she had been interviewed by a female police officer for her first two statements, that was done in the absence of a lawyer, a psychologist, or the social welfare services (see paragraphs 23 and 52 above). Her third statement was given to a male police officer, in the presence of the female police officer who had previously interviewed her and an officer from the social welfare services. Following six hours of investigation in the evening of 27 July 2019, the applicant retracted her complaint after midnight (see paragraph 53 above). Having regard to these circumstances, there is force in her argument that it was the long and repeated interviews which had led to the retraction (see paragraph 62 above).

123. The above, together with the numerous interviews the applicant had had to undergo repeating her statement to the authorities, also constitute evidence of re-victimisation through the authorities' failure to adopt a victim-sensitive approach and to conduct their investigation so as to mitigate distress to the applicant (see, *mutatis mutandis*, *Y. v. Slovenia*, no. 41107/10, § 109, ECHR 2015 (extracts), and *X v. Greece*, cited above, § 86. In this context the Court also refers to GREVIO's recommendations, points 149-153 of the report cited in paragraph 85 above).

124. Lastly, as regards the applicant's complaint relating to the Attorney General's impartiality in the case (see paragraph 97 above) the Court considers that in view of the findings above concerning the effectiveness of the investigation, it is not necessary to decide on this issue.

125. In conclusion, the Court observes that the present case reveals certain biases concerning women in Cyprus which impeded the effective protection of the applicant's rights as a victim of gender-based violence and which, if not reversed, run the risk of creating a background of impunity, discouraging victims' trust in the criminal justice system, despite the existence of a satisfactory legislative framework (see, *mutatis mutandis*, *J.L. v. Italy*, no. 5671/16, § 140, 27 May 2021).

126. Having regard to the numerous shortcomings identified above, the Court concludes, without expressing an opinion on the suspects' guilt, that the investigative and prosecutorial authorities' response to the applicant's allegations of rape in the present case fell short of the State's positive obligation to apply the relevant criminal provisions in practice through effective investigation and prosecution (see, *mutatis mutandis*, *M.C. v. Bulgaria*, cited above, § 153). There has accordingly been a violation of Articles 3 and 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. Article 41 of the Convention provides:

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

Damage and costs and expenses

1. *The applicant's submissions*

128. The applicant claimed over 30,000 euros (EUR) in respect of non-pecuniary damage with reference to *Nicolaou v. Cyprus* (no. 29068/10, § 152, 28 January 2020) arguing that the State's failure to investigate is ongoing and that she suffered damage to her personal integrity.

129. The applicant also claimed EUR 246,054 in respect of “special damages”. The applicant submitted a table, which included legal fees for representation in the domestic courts and for the proceedings before this Court, as well as for the preparation of various expert reports such as a report prepared by a former detective who had worked on the police investigation, a psychologist's report, expenses incurred by the applicant's mother in travelling from the United Kingdom to Cyprus and her living expenses while in Cyprus.

2. *The Government's submissions*

130. The Government rejected the applicant's claims for non-pecuniary damage as exaggerated. The Government argued that the case of *Nicolaou* (cited above) could be distinguished as it concerned the finding of a violation under Article 2 for failure to properly investigate the death of the applicants' child and sibling and it had therefore been of a very serious nature. The Government added that the suffering and distress experienced by the applicant had not arisen from the investigation and the case was therefore lacking the necessary causal link for a compensation claim.

131. The Government further dismissed the applicant's claims for “special damages” arguing that they had not been sufficiently itemised and were not supported by relevant documentation, and that they had not been necessarily incurred to prevent or redress the breach of the Convention found by the Court, and were not reasonable as to quantum.

3. *The Court's assessment*

132. As regards the applicant's claim for non-pecuniary damage, the Court has found that the Cypriot authorities failed in their obligation to effectively investigate the applicant's complaint of rape and to adopt a victim-sensitive approach when doing so. Accordingly, the Court is satisfied that the applicant must be regarded as having suffered anguish and distress because of the authorities' failure to effectively investigate her complaint. Ruling on an equitable basis, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

133. As regards the applicant's claim for “special damages” the Court notes that most of them relate to the costs of the proceedings. Various invoices have been provided, not all of which are however sufficiently itemised, and it was not always possible to ascertain the precise nature of the services rendered or whether they had been objectively necessary. However, the Court acknowledges that the applicant must have incurred certain costs in connection with the proceedings before the Court. The Court considers it reasonable to award her, on an equitable basis, the sum of EUR 5,000 in respect of costs and expenses, plus any tax that may be chargeable to the applicant (see, for example, *L.M. v. Slovenia*, no. 32863/05, § 197, 12 June 2014).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the issue of the applicant's victim status to the merits of the complaints under Articles 3 and 8 of the Convention and *holds* that the applicant has victim status in relation to those complaints;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of the respondent State's procedural obligations under Articles 3 and 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:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar

Ivana Jelić President