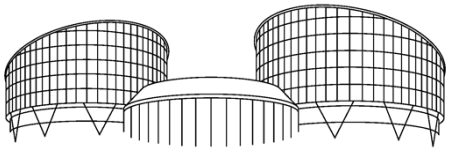

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF VUČKOVIĆ v. CROATIA

(Application no. 15798/20)

JUDGMENT

Arts 3 and 8 • Positive obligations • Commutation of a ten-month prison sentence imposed on applicant's co-worker to community service, after he had been convicted of sexual violence against her • Domestic court's commutation of sentence without careful scrutiny of all relevant considerations • Failure to give adequate reasons or consider interests of the victim • Context of specific social danger of violence against women and the need to combat it with efficient and deterrent actions • State's failure to sufficiently discharge procedural obligation to ensure sexual violence applicant had suffered was dealt with appropriately

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 December 2023

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 Vučković v. Croatia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 15798/20) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Ms Maja Vučković ("the applicant"), on 19 March 2020;

the decision to give notice to the Croatian Government ("the Government");

the parties' observations;

Having deliberated in private on 14 November 2023,

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

INTRODUCTION

1. The case concerns the applicant's complaints under Articles 3 and 8 of the Convention that commuting a ten-month prison sentence imposed on her co-worker to community service, after he had been convicted of sexual violence against her, had resulted in a disproportionately lenient punishment, given the seriousness of the offences he had committed.

THE FACTS

2. The applicant was born in 1978 and lives in Rijeka. She was represented by Ms I. Bojić, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

5. On 18 June 2015 the applicant filed a criminal complaint against her work colleague M.P., accusing him of sexual violence inflicted during shifts when they had worked together as an ambulance nurse and ambulance driver, respectively. She submitted that on one occasion during a night shift, M.P. had locked her in a room, taken off his clothes and tried to undress her, after which he had grabbed her by the neck and pushed her head towards his erect penis, telling her to put it in her mouth. He had stopped only after the applicant had shouted that she would faint. On another occasion M.P. had

repeatedly touched the applicant on her arms, thighs and breasts while they had been in the ambulance vehicle, before he had unzipped his trousers and tried to put her hand inside them. His actions had been accompanied by inappropriate language and threats that she would be fired if she ever told anyone about what had happened.

6. Following the applicant's complaint, on the following day the police questioned M.P. and several witnesses. M.P. stated that he had only joked with the applicant by telling her on a number of occasions to grab his sexual organ. He also admitted that he was occasionally touching her thighs and her bottom "just for fun", and stated that he believed that the applicant had been attracted to him because she had said so to another colleague.

7. On 26 June 2015, as a consequence of harassment of the applicant, M.P. was transferred to another post, to work as an ambulance driver in a different town. It would appear that at around the same time some of the other male ambulance drivers who worked with the applicant signed a petition not to be assigned the same shifts as her.

8. On 30 June 2015 the police forwarded a special report to the competent State Attorney's Office stating that there was a reasonable suspicion that throughout April, May and June 2015 M.P. had sexually abused the applicant on several occasions, thereby committing the criminal offence of performing lewd acts. Criminal proceedings ensued.

9. Following a complaint by the applicant submitted to the local gender equality office, on 7 July 2015 the Ombudsperson for Gender Equality wrote to the applicant's employer requesting further information on the actions taken to what she considered to have been attempted rape of the applicant by M.P. A copy of the letter was also sent to the Rijeka County State Attorney's Office for investigation. The said office ultimately established that the facts of the case did not reveal the commission of attempted rape, but another criminal offence against sexual freedom and morals.

10. On 8 May 2018 the Rijeka Municipal Court (*Općinski sud u Rijeci*) found M.P. guilty of two counts of committing lewd acts under Article 155 of the Criminal Code and sentenced him to ten months' imprisonment. As regards the sentence, the first-instance court stated as follows:

> "The court appreciates that the fact that the accused has no previous convictions is [a] mitigating [factor], while it deems his persistence in the delinquent misconduct [an] aggravating [circumstance], which is reflected by the fact that the criminal offences were committed in relation to the same victim within a short period of time, [and] the intensity of his unlawful actions indicates a strong intent in the execution of the criminal acts. In particular, the accused's illegal behaviour did not manifest itself through only one socially unacceptable act representing a violation of sexual freedom [and] morality ... of the victim, but through several acts in which he persisted, all with the aim of satisfying his sexual drive, which is indicative of a high degree of criminal liability on the part of the accused."

11. Following an appeal by M.P., on 2 July 2019 the Varaždin County Court (*Županijski sud u Varaždinu*) upheld his sentence, but replaced

imprisonment with community service. That judgment was final and not amenable to an appeal before a higher court. The relevant part of that judgment reads as follows:

> "The [first-instance] court reasonably assessed the lack of prior convictions of the accused as a mitigating circumstance, and his persistence in engaging in incriminating behaviour as an aggravating circumstance, given the fact that he had committed lewd acts against the same victim on two occasions within a short period of time without her consent. The first-instance court also correctly assessed the above circumstances that influenced the choice of the type and range of punishment, both in determining individual prison sentences for each criminal offence (six months for each criminal offence) and in imposing an aggregate prison sentence of ten months.
>
> However, according to the assessment of this court, the aggregate prison sentence of ten months which was imposed does not need to be served in order to achieve the purpose of punishment referred to in Article 41 of the 2011 Criminal Code. Instead, that purpose can be expected to be achieved by replacing the prison sentence which was imposed with community service, especially bearing in mind the lack of prior convictions of the accused and the fact that four years have passed since the commission of the criminal offences of which the accused was found guilty, during which time, on the basis of the information from the case file, the conduct of the accused has been compliant with the law.
>
> For these reasons, [this] court allows in part the appeal lodged by the accused against the decision on the punishment, and amends the impugned judgment by upholding the individual ... sentences and the aggregate ... sentence imposed [by] the first-instance court, but replacing the aggregate ... sentence imposed with community service. It is this court's assessment that such a sanction will achieve the purpose of punishment referred to in Article 41 of the 2011 Criminal Code, that is, to express appropriate social condemnation of the committed criminal offences, strengthen the public's trust in the legal order based on the rule of law, discourage the perpetrator and all others from committing criminal offences by raising awareness of the dangers of committing criminal offences and of the fairness of punishment, and allow the perpetrator to reintegrate into society."

12. The applicant did not lodge a constitutional complaint against that judgment. According to a document published on the Constitutional Court's website, judgments by which a victim sought to challenge a judgment acquitting an accused were not amenable to constitutional review.

13. Meanwhile, on 18 June 2018 the applicant had brought a civil claim for damages against M.P. and her employer. She subsequently lodged another civil claim against her employer for discrimination. Both sets of civil proceedings still appear to be pending before the first-instance court.

14. According to the information provided by the Government, M.P. performed 610 hours of community service at a charity association aimed at helping the homeless between 10 January and 20 November 2020, thereby serving his sentence.

15. According to the applicant, she had been on sick leave between 19 and 30 June 2015 as a result of an injury to her arm caused by M.P.'s violence towards her. She was also on sick leave from 1 July until 30 September 2015 as a result of post-traumatic stress disorder (PTSD), and between 29 October

2019 and 31 January 2020, after she had received the second-instance judgment, owing to an acute psychological condition caused by her reliving the 2015 events.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Domestic legislation

16. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette no. 125/2011 with subsequent amendments), as in force at the material time, read as follows:

The purpose of punishment
Article 41

"The aim of punishment is to express appropriate social condemnation of the committed criminal offences, strengthen the public's trust in the legal order based on the rule of law, discourage the perpetrator and all others from committing criminal offences by raising awareness of the dangers of committing criminal offences and of the fairness of punishment, and allow the perpetrator to reintegrate into society."

Sentencing
Article 47

"(1) In choosing the type and range of punishment, the court shall, starting with the degree of guilt and the purpose of punishment, assess all the circumstances that affect the severity of the punishment as regards its type and range (mitigating and aggravating circumstances), and especially the severity of the endangerment or violation of the protected interest, the motives for the criminal offence, the seriousness of the breach of the perpetrator's duty, the manner in which the criminal offence was committed and the effects of the offence, the perpetrator's life prior [to the offence], his personal and financial circumstances and his behaviour after the commission of the criminal offence, [his] relationship with the victim and [any] effort to compensate for the damage [caused].

(2) The amount of punishment shall not exceed the degree of guilt."

Community service
Article 55

"(1) A court may replace a fine of up to three hundred and sixty day-fines which has been imposed, or [a sentence of] imprisonment of up to one year which has been imposed, with community service. When it imposes [a sentence of] imprisonment of up to six months, the court shall replace this with community service unless the purpose of punishment cannot thereby be achieved.

(2) When the court replaces a fine with community service, it shall replace one day-fine with two hours of work, and when it replaces imprisonment with community service, it shall replace one day of imprisonment with two hours of work.

(3) In addition to community service, the court may order protective supervision of the perpetrator under Article 64 of this Code, the duration of which may not exceed the time within which the perpetrator must perform the community service.

(4) Community service shall be performed only with the consent of the convicted person.

(5) After giving [his or her] consent to the competent probation body, the convicted person shall perform the community service within the time-limit determined by that body after taking into account the convicted person's capacity to perform community service, given his or her personal circumstances and employment. The time-limit may not be shorter than one month or longer than two years, [running] from the beginning of the performance of community service. The type of community service shall be determined by the competent probation body in cooperation with the convicted person, and by taking into account his or her abilities.

(6) If the convicted person fails to report to the competent probation body within eight days from the day on which he or she was summoned to appear, or if the summons could not be delivered to the address that he or she provided to the court, or if he or she fails to consent to community service, the competent probation body shall notify the competent sentence-execution judge of that [fact] if a prison sentence was replaced with community service, or [notify] the court if a fine was replaced with community service.

(7) If the convicted person fails to perform community service through some fault of his or her own, the court shall immediately issue a decision ordering the execution of the sentence imposed, [either] in part, [in relation to the part of the sentence] not yet executed, or in its entirety. If the convicted person fails to perform community service through no fault of his or her own, the competent probation body shall extend the time-limit referred to in paragraph 5 of this Article.

(8) If the convicted person fails, [either] fully or to a great extent, to fulfil the obligations referred to in paragraph 3 of this Article, [or] if he or she breaches them severely or persistently, or if he or she persistently avoids the protective supervision referred to in Article 61 of this Code, or if he or she, without a justified reason, breaches the obligations imposed on him or her by the security measure, the court shall issue a decision ordering the execution of the punishment originally imposed. If it is determined that the perpetrator failed to fulfil the obligations for justified reasons, or avoided protective supervision for justified reasons, the court may replace those obligations with others, or it may impose protective supervision on the perpetrator if no [such supervision] has previously been imposed, or it may release him or her from the obligations or from protective supervision, or it may extend the time-limit for fulfilling the obligations imposed or completing the [period of] protective supervision.

(9) Community service is performed without compensation."

Sexual intercourse without consent
Article 152

"(1) Whoever engages in sexual intercourse or an equivalent sexual act with another person against his or her consent, or forces another to engage in sexual intercourse or an equivalent sexual act with a third person ... shall be punished by a prison sentence of between six months and five years."

Rape
Article 153

"(1) Whoever commits the criminal act from Article 152 of the Code using force or threat of direct attack on the life or limb of the raped person or another individual, shall be punished by a prison sentence of between one and ten years."

Lewd acts
Article 155

"(l) Whoever, under the circumstances referred to in Article 152 of this Code, [but] where the criminal offence [of sexual intercourse without consent] was not even attempted, commits a lewd act, shall be punished by [a term of] imprisonment not exceeding one year."

B. Relevant domestic jurisprudence

17. A constitutional complaint (case no. U-III-3709/2013) was lodged with the Constitutional Court by family members of a victim who had died in a car accident. The complaint was against the criminal judgment issued in respect of the perpetrator in that case, and the complainants argued, *inter alia*, that the perpetrator's sentence had been reduced below the statutory minimum under the Criminal Code. In its decision dated 16 October 2013, the Constitutional Court declared the complaint inadmissible on the grounds that the case did not concern any of the complainants' civil rights or obligations or any criminal charge against them (see *Smiljanić v. Croatia*, no. 35983/14, §§ 34-35, 25 March 2021).

18. In its decision U-III-2374/2009 of 4 October 2010, the Constitutional Court examined under Article 29 of the Constitution (which corresponds to Article 6 of the Convention) a complaint by a convicted person about the increase by the Supreme Court of his sentence for grave murder from ten to fifteen years' imprisonment without adequate reasoning. In as far as relevant, the Constitutional Court held as follows:

"8.1. ... It is also unquestionable for the Constitutional Court that after the process of establishing the facts that form the subjective and objective characteristics of a specific criminal offence, the facts of the defendant's criminal responsibility and the decisive for the decision on punishment (legal grounds for imposing a lighter or harsher punishment, for mitigating or aggravating the punishment, for exemption from punishment or for the imposition of a suspended sentence), an evaluation process follows, which does not include, nor is it objectively possible, application of the rule '*in dubio pro reo*'. In the evaluation process, the facts are not established, so it is therefore, the unquestionable freedom of the court to evaluate the value and meaning of an individual exclusively according to its conviction established facts and decides whether or not to take them into account.

The Constitutional Court, however, notes that in the specific case the second-instance court increased the sentence (for an additional five years of imprisonment to the already sentenced ten), that is, the Supreme Court evaluated a certain group of facts very differently from the first-instance court.

A different evaluation of the facts would also not be questionable, if we were talking about the facts that are subject to evaluation for the purpose of deciding the sentence and if the Supreme Court's reasons for such an increase of the prison sentence did not amount to a summary and general explanation, mostly reduced to achieving the 'general purpose of punishment'.

...

8.2.2. (b) For the Constitutional Court, it is indisputable that the higher court's assessment of the proportionality and decisiveness of a significant increase of the prison sentence imposed by the first-instance court can be justified by the fact that the higher court 'revalued' those mitigating and/or aggravating circumstances that the first-instance court considered as aggravating or mitigating took into account, or by the fact that the higher court took into account some established aggravating circumstance that the first instance court did not take into account, although it should have. It goes without saying that such unquestionable freedom always requires detailed reasoning.

...

When, therefore, the second-instance court in the specific case carried out its 're-evaluation' of mitigating and aggravating circumstances, which the first-instance court took into account, in the manner described in point 8.2. of this explanation, according to which it remains unclear how and why it evaluated the meaning of the 'new' aggravating circumstances, which the first-instance court 'failed' to evaluate, then it must be concluded that it amended the first-instance decision on the sentence to the detriment of the applicant, and that, from the aspect of protecting the applicant's constitutional right to a fair trial, it did not reason its decision properly and in accordance with the requirements of the circumstances of the specific case.

According to the ECHR, the personal presence of an appellant before the second-instance court is admittedly not necessary, if that court decides only on legal issues on which the appellant has already had the opportunity to state his position... However, the procedure for revising the decision on punishment does not only include the solution of the legal question of whether a certain circumstance is to be regarded as mitigating or aggravating, but, in its continuation, an assessment of the type and range of punishment which best suits the needs of the specific case. That assessment is not discretionary, because it is subject to the principle of legality: when imposing a sentence, the court must take into account the public interests and the interest of the defendant, as prescribed by the Article 50 of the Criminal Code on the purpose of punishment. When, therefore, the first-instance court (or in the specific case the second-instance court, by its 're-evaluation' of the legally determined relevant circumstances for the selection and assessment of punishment) decides on a certain type and range of punishment, it must explain on which basis it came to the conclusion about 're-evaluating' some aggravating or mitigating circumstance, especially where this led to a significant modification of the imposed sentence to the detriment of the accused."

C. Other relevant materials

19. The relevant parts of the 2015 Annual Report of the Ombudswoman for Gender Equality of the Republic of Croatia read as follows:

"**1.4. Sexual harassment in employment and in the workplace, with description[s] of cases**

As already stated, out of 118 cases of complaints related to the field of work and employment [which are] based on gender, 40% of the complaints refer to sexual harassment. All cases [are] related to the protection of women (100%). What makes these forms of discrimination particularly serious is the demeaning of the victim's personal and human dignity. The Ombudswoman attaches special importance to these cases, and has also made reports to the State Attorney's Office with a view to initiating criminal proceedings (... in 2 cases).

...

In case PRS-01-01/15-05, [the offence of] sexual harassment was committed where an external associate of a public company approached a cleaning lady from behind at the employer's premises, after working hours [and] while she was cleaning the toilets, to 'stroke' her bottom, [and] asked if it was okay to continue stroking her bottom. In case PRS-01-01/15-08, through [a] county committee, a case was brought to the Ombudswoman's attention in which the driver of an ambulance at a health centre had tried to have unwanted contact of a sexual nature by attacking his colleague, a nurse, with the use of physical force of minor intensity, and by trying to persuade her to have sexual intercourse. In case PRS-01-01/15-02, the Ombudswoman received an anonymous complaint in which the complainant stated that an ambulance driver at another health centre had been sexually abusing three nurses over a long period of time by grabbing their breasts and buttocks and showing them his genitalia. All three cases described above concerned either an attempt to establish unwanted physical contact of a sexual nature prohibited under section 8 of the Gender Equality Act, or suspicions about actions directed against sexual freedoms under Chapter XVI of the Criminal Code. Therefore, in addition to [issuing] warnings and recommendations to [the relevant] employers regarding their inadequately implemented procedures to protect the dignity of the workers in the cases in question, the Ombudswoman also reported the above-mentioned perpetrators to the competent State Attorney's Offices so that further suspicions about the existence of criminal offences could be investigated.

...

As already pointed out, the complainants' withdrawal from the Ombudswoman's actions after filing a report indicates that a certain number of victims of sexual harassment continue to suffer unwanted behaviour of a sexual nature without reporting the perpetrator in the hope that such behaviour will stop. Therefore, it can be assumed that the number of cases of sexual harassment is significantly higher than the number [of cases] reported. As in previous reporting periods, and according to the Ombudswoman's assessment, fear of social and professional stigma is also one of the reasons for not reporting harassment and sexual harassment.

There is a continuing trend of few sets of civil proceedings being initiated against responsible persons. [In such proceedings,] it is possible to request a ban on further discrimination and compensation for damage [caused], in accordance with the Gender Equality Act and the Prevention of Discrimination Act. ... The reasons for few sets of court proceedings for protection against discrimination being initiated are repeated throughout all reporting periods: litigation initiated in relation to discrimination lasts a discouragingly long time (the situation is similar in criminal proceedings); proceedings are not initiated [by the authorities in the absence of a complaint], but at the request of the victim; State Attorney's Offices do not find sufficient grounds for suspicion against the perpetrator; the victim [experiences] discomfort as regards repeatedly testifying in front of a large number of people about the manner and instances of sexual harassment; the victim fears that the initiation of court proceedings will threaten the stability and security of [her] current workplace; the work environment often denounces the victim

as being jointly responsible for the situation; and so on. Lawyers also do not have enough experience in initiating and conducting anti-discrimination procedures. In the Ombudswoman's experience, the victim most often goes on sick leave when [she is] in such a situation, because she is unable to either solve the situation herself or cope with the pressure and stress caused by the harassment or sexual harassment.

1.4.1. Concluding consideration[s] and recommendations

As [she did] last year, the Ombudswoman again points out that in combination with discrimination based on pregnancy and maternity, the wage gap, the 'glass ceiling' effect and so-called 'leaking pipes', this form of discrimination, apart from having a devastating effect on victims, who most often end up on sick leave, significantly and directly threatens the position of women in the labour market and diminishes efforts to achieve full equality between the sexes. It is still a certain type of taboo which neither the victims (who primarily want to preserve their privacy owing to [their] fear of being exposed to scorn, contempt and/or ridicule) nor the witnesses are inclined to talk about.

..."

II. RELEVANT INTERNATIONAL LAW AND REPORTS

20. The relevant provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention"), which entered into force in respect of Croatia on 1 October 2018, read as follows:

Article 3 – Definitions

"For the purpose of this Convention:

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

Article 36 – Sexual violence, including rape

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

(a) engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;

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

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

Article 45 – Sanctions and measures

"1. Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition."

Article 46 – Aggravating circumstances

"Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

...

b the offence, or related offences, were committed repeatedly;"

..."

Chapter VI – Investigation, prosecution, procedural law and protective measures
Article 49 – General obligations

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

21. On 6 September 2023 the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its Baseline evaluation report on Croatia (GREVIO/Inf(2023)6), the relevant parts of which read as follows:

"4. Sexual violence and rape (Article 36)

...

215. Despite a number of positive legislative changes in recent years with regard to the criminal offence of rape, GREVIO notes that these offences remain under-reported and under-prosecuted. This stems from the widespread lack of knowledge and understanding of the dynamics of these criminal offences and the impact of trauma on victims. GREVIO further notes that when a sexual violence case is brought before the courts, mitigating circumstances are often applied in favour of the perpetrator, where the victim's behaviour is stereotypically interpreted as contributing to the crime. In this respect, GREVIO notes with concern that the defendant's marital status and parenthood are also often taken as a mitigating circumstance, as is their participation in the Homeland War.

216. Moreover, lengthy criminal proceedings expose the victims to re-traumatisation and the sentences imposed on perpetrators fall short of being dissuasive. According to research from the Ombudsperson for Gender Equality, on average, it takes 41 months from the committal of the violent act until the final verdict, but in some cases proceedings have extended to several years. The same study indicates that perpetrators were given suspended or partly suspended sentences, or even community service, in 17.4% of the cases. Moreover, in 79.45% of the cases, sentences imposed on rape perpetrators remain within the lower third of the available scale.

217. GREVIO encourages the Croatian authorities to fully implement the newly adopted provisions of the Criminal Code covering the offences of rape and sexual violence and to ensure their effective application in practice by law-enforcement authorities, prosecutors and the judiciary, including in the absence of resistance by the victim and where the circumstances of the case preclude valid consent. To this end,

training for all relevant professionals should be conducted, and appropriate guidelines developed and implemented.

...

10. Sanctions and measures (Article 45)

233. GREVIO recalls that sentences and measures imposed for all forms of violence against women should be effective, proportionate and dissuasive.

234. While GREVIO welcomes the provision for a range of sanctions for acts of violence against women in Croatian criminal legislation, it notes with concern from the information it has received that there is a wide discrepancy between available sanctions and those that are imposed in practice, particularly in terms of the leniency of the sanctions imposed and the use of conditional sentences. The Ombudsperson for Gender Equality stated in 2020 that less than 10% of the total number of all perpetrators of violence were sentenced to unconditional prison sentences while the majority of the perpetrators were sentenced to relatively light fines or suspended prison sentences.

235. Data from the Ministry of Justice and Administration illustrate the leniency of the penal policy in dealing with violence against women cases. For example, in 2021, over 90% of the prison sentences imposed in cases of stalking were suspended. In domestic violence cases 83% of the prison sentences were conditional and in 70% of the cases the duration of imprisonment was within the lower range of the available sentences, whereas the maximum unconditional prison sentence of between two and three years was imposed in two cases. Similarly, in cases of causing particularly serious bodily injury three out of five sentences were suspended and the maximum unconditional prison sentence of three to five years was imposed in only one case. Last, almost all of the sentences imposed in sexual harassment cases were suspended.

236. GREVIO strongly encourages the Croatian authorities to ensure – through the effective training of members of the judiciary and other appropriate measures – that sentences and measures imposed for domestic violence and other forms of violence against women covered by the Istanbul Convention are effective, proportionate and dissuasive. This would include ensuring the understanding, among the prosecution authorities and members of the judiciary, that conditional or suspended sentences in domestic violence cases and other forms of violence against women do not serve the aims of ensuring justice for victims, ending impunity for perpetrators or deterrence."

22. Recommendation CM/Rec(2017)3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures, adopted on 22 March 2017, established a set of standards to help national legislators to provide a just and effective use of community sanctions and measures. They stress, among other things, the benefits of community sanctions (Rule 1), the need for the nature and the duration of community sanctions and measures be in proportion to the seriousness of the offence and for the decision makers to take due account of the individual's circumstances to make sure that compliance is feasible and relevant in supporting desistance (Rule 3).

23. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the United Nations General Assembly, came into force in respect of Croatia on 9 September 1992, and the Optional Protocol to the Convention on 7 March 2001. On 29 January

1992 the Committee on the Elimination of Discrimination against Women ("the CEDAW Committee") adopted General Recommendation No. 19 on violence against women (updated with its General Recommendation No. 35 in 2017), which established that gender-based violence is "violence that is directed against a woman because she is a woman or that affects women disproportionately" (Article 6) and that it is "a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (Article 1). Other relevant parts of that General Recommendation state as follows:

Article 11

"17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."

24. Article 1 of the United Nations Declaration on the Elimination of Violence against Women, adopted on1993, states that:

"'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

25. The relevant parts of the Report of the Special Rapporteur on violence against women, its causes and consequences, following her visit to Croatia from 7 to 16 November 2012, adopted by the UN General Assembly on 3 June 2013, read as follows:

"**2. Sexual harassment in the workplace**

21. Although sexual harassment in the workplace is prohibited by law, this phenomenon has become more common. According to trade unions, sexual harassment was most pronounced in the textile, leather, trade and catering industries. The Ombudsperson for Gender Equality reported that in 2011 her Office received a total of 1,391 complaints of which 63.9 per cent concerned women. Within this percentage, 65 per cent were related to discrimination against women in the areas of the workplace, employment, social care and the pension system, of which 42 per cent concerned sexual harassment. However, despite more visibility and reporting, she stated that many women were reluctant to take action due to the fear of reprisal. In 2010, a court handed down the country's first conviction for sexual harassment in the workplace, sentencing one defendant to six months in prison for making repeated sexually harassing comments over a three-year period. A second defendant in the case was given a four-month suspended sentence for harassment.

..."

72. Despite the challenges posed by the current economic situation, targeted and coordinated efforts in addressing violence against women, through the practical and innovative use of limited resources, need to remain a priority. The high levels of domestic violence, in part as a consequence of the tendency for violence to become privatized in a post-conflict situation, as well as due to existing patriarchal attitudes, warrant serious attention as regards effective implementation.

73. In light of the above, the Special Rapporteur would like to offer the following recommendations:

...

(e) Promote sentences for domestic violence that are commensurate with the gravity of crimes and refrain from imposing suspended sentences ...”

III. RELEVANT EUROPEAN UNION LAW AND REPORTS

26. The Directive of the European Parliament and of the Council (2012/29/EU) of 25 October 2012 establishes minimum standards on the rights, support and protection of victims of crime. The relevant part of the Directive, which was to be transposed into the national legislations of the European Union member States by 16 November 2015, provides as follows:

Article 22
Individual assessment of victims to identify specific protection needs

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

...

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

27. The EU guidelines on violence against women and girls, adopted on 8 December 2008 by the Council of the European Union, describe violence against women as one of the major human rights violations of today, and focus on reminding States of their dual responsibility to prevent and respond to violence against women and girls. Physical, sexual and psychological violence occurring within the family is mentioned specifically as a form of violence against women and girls. They also emphasise the following:

"3. ... The EU reiterates the three indissociable aims of combating violence against women: prevention of violence, protection of and support for victims and prosecution of the perpetrators of such violence.

...

3.1.4. ... The EU will emphasise that it is essential for States to ensure that violence against women and girls is punished by the law and to see that perpetrators of violence against women and girls are held responsible for their actions before the courts. States must in particular investigate acts of violence against women and girls swiftly, thoroughly, impartially and seriously, and ensure that the criminal justice system, in particular the rules of procedure and evidence, works in a way that will encourage women to give evidence and guarantee their protection when prosecuting those who have perpetrated acts of violence against them, in particular by allowing victims and their representatives to bring civil actions. Combating impunity also involves positive measures such as the training of police and law enforcement officers, legal aid and proper protection of victims and witnesses and the creation of conditions where the victims are no longer economically dependent on the perpetrators of violence."

28. The publication entitled "Violence against women: an EU-wide survey", containing the findings of a survey carried out by the European Union Agency for Fundamental Rights (FRA) between March and September 2012 (published in 2014) and based on interviews with 42,000 women across the then twenty-eight member States, stated the following:

"... one in 10 women has experienced some form of sexual violence since the age of 15, and one in 20 has been raped. Just over one in five women has experienced physical and/or sexual violence from either a current or previous partner, and just over one in 10 women indicates that they have experienced some form of sexual violence by an adult before they were 15 years old. Yet, as an illustration, only 14% of women reported their most serious incident of intimate partner violence to the police, and 13% reported their most serious incident of non-partner violence to the police."

THE LAW

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

29. The applicant complained that, given the seriousness of the acts of sexual violence committed against her by M.P., the punishment imposed on the latter had been disproportionately lenient, which had violated her rights guaranteed by Articles 3 and 8 of the Convention. Those provisions read as follows:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

A. Admissibility

1. The parties' observations

(a) The Government

30. The Government submitted that the applicant had failed to exhaust domestic remedies, in that she had never lodged a constitutional complaint against the Varaždin County Court's judgment. In support of their assertion, the Government relied on a number of Constitutional Court decisions, starting with decision no. U-III-6559/2010 of 13 November 2014, in which that court had examined constitutional complaints concerning the lack of an effective investigation, applying the Court's case-law under Articles 2 and 3 of the Convention. As regards Article 8, the Government submitted the following decisions of the Constitutional Court:

- decision no. U-III-1534/2017 of 19 May 2020, in which a violation of the State's positive obligations under Article 8 had been found in a situation where the perpetrator of a violent physical attack against the complainant had been acquitted in criminal proceedings on the basis of the principle of *ne bis in idem*;
- decision no. U-IIIBi-1732/2019 of 14 July 2020, in which that court had examined on the merits and dismissed the complainant's complaint that the domestic authorities and courts had failed to protect her from serious threats made by a private individual;
- decision no. U-IIIBi-5099/2020 of 23 March 2021, in which a violation of the complainant's Article 8 rights had been found owing to an inefficient response by the authorities in a medical negligence case.

31. Alternatively, the Government maintained that the applicant could have lodged a civil claim for damages against M.P.

(b) The applicant

32. The applicant maintained that at the time she had lodged her application with the Court, a constitutional complaint had not been an effective remedy, because the Constitutional Court had systematically declared inadmissible complaints lodged against criminal judgments adopted in proceedings against third parties, as attested by its practice (see, for instance, Constitutional Court decisions nos. U-III-835/2004, U-III-568/2002

and U-III-3709/2013), and the instructions for lodging constitutional complaints published on that court's website had stated that such judgments were not amenable to constitutional review.

33. As regards the Government's claim that the applicant should have claimed damages from M.P., the applicant stated that she had indeed lodged a civil claim against M.P. and her employer, and that those proceedings were still pending (see paragraph 13 above). However, in her view, those proceedings – which had been initiated against private individuals and aimed to obtain compensation for non-pecuniary damage caused by the fact that she had been the victim of a crime – were irrelevant to her application before the Court, in which she complained that the State had failed to adequately punish the perpetrator of the sexual abuse against her.

2. The Court's assessment

34. The general principles concerning the exhaustion of domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

35. The Court notes that in *Kušić and Others v. Croatia* ((dec.), no. 71667/17, §§ 77-81, 10 December 2019) it concluded that in 2019 a constitutional complaint had become an effective domestic remedy for complaints concerning ineffective investigations under Articles 2 and 3 of the Convention (ibid., §§ 93 and 99).

36. It appears from the jurisprudence submitted by the Government (see paragraph 30 above) that the Constitutional Court has meanwhile also examined a number of complaints concerning both the positive and procedural obligations under Article 8 of the Convention, applying the relevant criteria developed in the Court's case-law.

37. However, according to the Court's jurisprudence, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. It is true that the Court has occasionally accepted that in certain situations this rule could be subject to exceptions, which might be justified by the particular circumstances of each case (see *Kušić and Others*, cited above, § 101, and the cases cited therein). However, this has been in situations concerning ongoing violations (relating to the length of proceedings or ineffective investigations, for example), or where specific new remedies had been introduced with a view to redressing at domestic level the Convention grievances of persons whose applications before the Court concerned similar issues.

38. In the present case, the applicant decided not to lodge a constitutional complaint against the judgment of the Varaždin County Court of 2 July 2019, deeming that it would be pointless. The Court notes that at the relevant time, in principle, the Constitutional Court declared inadmissible complaints lodged by victims against criminal court judgments rendered in respect of

third parties (see paragraph 17 above). This was further confirmed by the instructions on the Constitutional Court's website that were applicable until January 2023, which expressly excluded judgments by which a victim sought to challenge a judgment acquitting an accused from the list of decisions amenable to constitutional review (see paragraph 12 above, and compare *Štitić v. Croatia* [Committee] (dec.), no. 18869/22, §§ 8-9, 14 June 2022).

39. The Court further notes that all the decisions relied on by the Government post-dated the applicant's application to the Court (see paragraph 30 above) and that they have failed to demonstrate convincingly that the applicant had a real prospect of success before the Constitutional Court at the relevant time.

40. In the circumstances, the Court concludes that the applicant cannot be blamed for not having first addressed her complaint to the Constitutional Court. Nor does it consider it necessary or appropriate in the present case – where the time-limit for lodging a constitutional complaint under section 62 of the Constitutional Court Act has long since expired – to make an exception to the exhaustion rule.

41. As regards the Government's argument that the applicant could have instituted civil proceedings for damages again M.P., the Court notes that she did indeed bring such a claim and that it has been pending for some five years before the first-instance court (see paragraph 13 above). However, the Court is inclined to agree with the applicant that the said proceedings do not concern the same subject matter as her application to the Court, and that in any event effective deterrence against serious attacks on the physical integrity of a person requires efficient criminal-law mechanisms that would ensure adequate protection in that regard (see *Remetin v. Croatia*, no. 29525/10, § 76, 11 December 2012, and the cases cited therein, and *Pulfer v. Albania*, no. 31959/13, § 71, 20 November 2018).

42. It follows that the Government's objections must be dismissed.

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

B. Merits

1. The parties' observations

(a) The applicant

44. The applicant maintained that the State had failed to fulfil its positive obligations under Articles 3 and 8 of the Convention, in that the punishment ultimately imposed on M.P. had been neither deterrent nor proportionate to the criminal offences committed.

45. In her view, the State was under a duty to adequately punish perpetrators in order to achieve the recognised purposes of criminal sanctions,

which included retribution as a form of justice for victims, general deterrence from new violations, and the rule of law. In the applicant's case, where the domestic courts had indisputably established that the perpetrator had committed two criminal offences seriously violating her mental and physical integrity, community work could not be considered an appropriate sanction which could achieve those purposes.

46. The applicant considered that M.P. had not suffered any serious consequences following his repeated sexual abuse of her in their workplace; according to the information she possessed, he had performed community work with an association one week per month on average, working for short periods of time. Consequently, it could not be said that he had been severely reprimanded in a way which would ensure that he would refrain from violating the law and committing further sexual assaults in the future, and this had therefore resulted in his virtual impunity. On the other hand, the applicant had suffered severe mental consequences as a result of the violence in question.

(b) The Government

47. The Government maintained that, upon being informed of the applicant's accusations against M.P., the national authorities in her case had reacted promptly and established all the circumstances of the events complained of in a thorough and comprehensive manner. The accused and two witnesses had been heard hours after the police had received the applicant's complaint, after which M.P. had been indicted and convicted as charged by an impartial and independent tribunal. All reasonable steps had been taken to secure all evidence and clarify the events in question.

48. The Government further noted that M.P. had been sentenced to ten months' imprisonment, and that his sentence had been replaced with 600 hours of community service. He had performed 610 hours of community service within less than a year, the time frame which had been set for its completion. Moreover, his sanction had been proportionate to the seriousness of the criminal offences committed against the applicant, and had had the necessary dissuasive effect on him, as he had committed no further criminal or minor offence since.

2. The Court's assessment

(a) General principles

49. The Court reiterates at the outset that rape and serious sexual assault amount to treatment that falls within the ambit of Article 3 of the Convention and also engages fundamental values and essential aspects of "private life" within the meaning of Article 8 (see *Y v. Bulgaria*, no. 41990/18, §§ 63-64, 20 February 2020, and the cases cited therein).

50. The Court has repeatedly stressed that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal laws that effectively punish rape, and to apply them in practice through effective investigation and prosecution (see *M.C. v. Bulgaria* , no. 39272/98, § 153, ECHR 2003-XII, and *B.V. v. Belgium*, no. 61030/08, § 55, 2 May 2017). That positive obligation further requires the criminalisation and effective prosecution of all non-consensual sexual acts (see *M.G.C. v. Romania*, no. 61495/11, § 59, 15 March 2016; *Z v. Bulgaria*, no. 39257/17, § 67, 28 May 2020; and *E.G. v. the Republic of Moldova*, no. 37882/13, § 39, 13 April 2021).

51. The Court has also recently summarised its case-law on the procedural obligation under the converging principles of Articles 2, 3 and 4 of the Convention (see *S.M. v. Croatia* ([GC], no. 60561/14, §§ 311-20, 25 June 2020). It has noted, in particular, that whereas the general scope of the State's positive obligations might differ between cases where the treatment contrary to the Convention has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the procedural requirements are similar: they primarily concern the authorities' duty to institute and conduct an investigation capable of leading to the establishment of the facts and to the identification and – if appropriate – punishment of those responsible.

52. Moreover, when the official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of Article 3 of the Convention (see *Sabalić v. Croatia*, no. 50231/13, § 97, 14 January 2021). While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow grave attacks on physical and mental integrity to go unpunished, or allow serious offences to be punished by excessively lenient sanctions. The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, might be deemed to have submitted the case to careful scrutiny of all the relevant considerations related to the case (compare also *Smiljanić v. Croatia*, no. 35983/14, § 99, 25 March 2021).

53. Finally, the Court has found violations of the States' procedural obligation in a number of cases of manifest disproportion between the gravity of the act and the results obtained at domestic level, fostering the sense that acts of ill-treatment went ignored by the relevant authorities and that there was a lack of effective protection against acts of ill-treatment (see *Sabalić*, cited above, § 110; *Identoba and Others v. Georgia*, no. 73235/12, § 75, 12 May 2015).

(b) Application of the general principles to the present case

54. The Government did not dispute that the treatment suffered by the applicant fell within the scope of both Articles 3 and 8 of the Convention. Bearing in mind its case-law on the matter (see, for instance, *Pulfer*, cited above, § 76, and *E.G.*, cited above, § 39), the Court sees no reason to hold otherwise and considers it appropriate to examine the present case under both Articles 3 and 8 of the Convention.

55. The applicant's complaint in the present case was not directed against any flaws in the way in which her complaint of sexual violence had been investigated, but rather against the manner in which the second-instance court had decided the sentence imposed on the perpetrator would be served (see paragraphs 44-46 above, and, *mutatis mutandis*, *Stoyanova v. Bulgaria,* no. 56070/18, § 66, 14 June 2022). This is therefore not a case in which the perpetrator fully escaped any criminal liability as a result of, for example, an amnesty or statutory limitation period, nor is it a classic case of a manifest disproportion between the criminal acts committed and the criminal sanction imposed (compare the cases cited at paragraph 53 above). In the present case, the applicant's complaint concerns the commutation of the prison sentence imposed on the perpetrator by the first instance trial court to community service, as decided by the appeal court, which according to the applicant rendered the punishment excessively lenient. Accordingly, and bearing in mind the wide margin accorded to the States in matters of criminal justice and sentencing policy, the focus of the Court's review must be directed at assessing whether, in the circumstances of the present case, the domestic court exercised the requisite careful scrutiny when commuting the sentence. Thus, the Court will examine whether the commutation in this case was based on criteria and reasons which were adequate so as to ensure that the punishment remained commensurate with the nature and gravity of the ill-treatment involved in the criminal acts committed against the applicant as victim.

56. Before entering into this assessment, the Court sees a need to emphasise that it is indeed mindful of, and endorses, the growing importance of community service as an integral and useful component of modern penal policy in the Member States of the Council of Europe (see Recommendation CM/Rec(2017)3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures cited at paragraph 22 above). Moreover, it is clearly not the task of the Court to draw up in any detail the scope of application, or the substance, of any given scheme of such service. Additionally, it is evident that there are differences throughout Europe regarding the use, content and efficiency, and hence also the deterrent effect, of community service as an alternative to a prison sentence. Those differences mirror a variety of approaches that can to a large degree be justified by the particular domestic context, penological system and tradition, all factors that need to be taken into account when adjudicating these cases at

an international level, in line with the principle of subsidiarity as expressed in the Preamble to the Convention. That having been said, and by way of a general observation also in light of the broad international consensus on the need to stand firm on sexual abuse and violence against women, the Court would agree that domestic courts need to pay particular attention when deciding to apply community service instead of prison for such crimes.

57. In this connection, the Court reiterates that sexual abuse of women is unquestionably a very serious type of wrongdoing, with debilitating effects on its victims. As a particular manifestation of violence against women, it is a form of gender-based violence proscribed by Croatian law and a number of international treaties (see paragraphs 20-21, 23-25 and 27 above). The Court has also reiterated the crucial role played by prosecution and punishment in the institutional response to gender-based violence and in combating gender inequality (see *J.L. v. Italy*, no. 5671/16, § 141, 27 May 2021). Moreover, in its case-law on violence against women and on domestic violence, the Court has often been guided by the relevant international law standards on the matter, and notably the Istanbul Convention (see, for instance, *Kurt v. Austria* [GC], no. 62903/15, §§ 167-68, 15 June 2021)

58. In the present case, the criminal courts established that the applicant had been the victim of two counts of lewd acts committed by a colleague in her workplace (in this connection, see the serious concerns relating to sexual harassment in the workplace expressed by the Croatian Ombudswoman for Gender Equality, cited at paragraph 19 above). Lewd acts under domestic law are any actions with a sexual connotation which fall short of sexual intercourse without consent (see paragraph 17 above). Although it is not for the Court to question the domestic courts' finding that M.P.'s acts did not qualify as attempted rape, but only as "lewd acts" in violation of Article 155 of the Criminal Code (see in this connection paragraph 9 above), the Court cannot but note that any force applied by M.P against the applicant (such as locking the door, grabbing her by the neck, pushing her head towards his erect penis and telling her to put it in her mouth as described in paragraph 5 above), would clearly also be relevant for the sentencing of the perpetrator.

59. The perpetrator was imposed a ten-month prison sentence, which, however, the appeal court commuted to duly performed community service. In deciding on his sentence, the domestic courts assessed mitigating and aggravating factors in accordance with Article 47 of the Criminal Code. It is not for the Court to say whether the national courts properly assessed the interplay of those factors; the Court cannot act as a domestic criminal court or hear appeals against the decisions of national courts, and it is not for it to pronounce on any points of criminal liability (see, among other authorities, *Myumyun*, cited above, § 75, and *Y v. Bulgaria*, no. 41990/18, § 94, 20 February 2020).

60. However, the Court cannot but note that the domestic courts never took into consideration a number factors which were relevant under the

domestic law in the sentencing process, such as the consequences of the offence on the applicant (her diagnosis and long absences from work, see paragraph 15 above), M.P.'s behaviour following the committal of the criminal offences in question (his alleged threats to the applicant as described in paragraph 5 above; see also his statement cited at paragraph 6 above), or his apparent lack of remorse or any effort to compensate for the damage caused to the applicant.

61. What is more, the first-instance court clearly held that the degree of M.P.'s criminal liability was particularly high in the circumstances, given the fact that he had committed the sexual offences against the applicant repeatedly and within a short period of time, which pointed to his particularly strong intent (see paragraph 10 above). It is therefore striking that, when deciding to commute M.P.'s prison sentence, despite stating that it agreed with the assessment of the mitigating and aggravating factors done by the first-instance court, the second-instance court held that commuting his sentence would serve the purpose of punishment in the present case, solely in view of the fact that four years had passed since the commission of the offences and the perpetrator had not committed any further crimes (see paragraph 11 above). In doing so, the appeal court did not even mention the perpetrator's high degree of criminal liability or his strong intent in committing the sexual offences at issue. It also did not put forward any plausible reasons to explain why the mere passage of time – which could in no way be imputable to the applicant and must have only further traumatised her as a victim (see *S.Z. v. Bulgaria*, no. 29263/12, § 52, 3 March 2015; see also paragraph 21 above) – outweighed the above-mentioned serious aggravating circumstances.

62. In view of the foregoing, it cannot be said that commuting of M.P.'s prison sentence has taken place following a careful scrutiny of all the relevant considerations related to the case (compare *Smiljanić*, cited above, § 99).

63. Furthermore, while the Court is mindful that the Contracting Parties in principle enjoy broad discretion in matters of penal policy (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 85, 24 January 2017), it has already stressed that retribution as a form of justice for victims and general deterrence aimed at preventing new violations and upholding the rule of law are among the main purposes of imposing criminal sanctions (see *Jelić v. Croatia*, no. 57856/11, § 90, 12 June 2014). The Court refers in this respect also to the jurisprudence of the Croatian Constitutional Court, which confirmed that the obligation of an appeal court to provide thorough and detailed reasoning when departing from a sentencing decision of the first instance court went beyond the sentencing as a matter of a penal policy and fell within the scope of the Constitution and the Convention (see paragraph 18 above).

64. In a case like the present one, which had been considered as borderline by the domestic authorities themselves (see paragraph 9 above), the Court

therefore finds it concerning that despite the repeated nature of the serious sexual violence suffered by the applicant, the appeal court chose to replace M.P.'s prison sentence with community service without giving adequate reasons and without considering in any way the interests of the victim, which the domestic courts are obliged to take into account when deciding on the sentence to be imposed in a particular case (see Article 47 of the Criminal Code cited at paragraph 16 above).

65. Such an approach by the domestic courts, in the Court's view, may be indicative of a certain leniency in punishing violence against women, instead of communicating a strong message to the community that violence against women will not be tolerated. Such leniency may in turn discourage victims from reporting such acts, whereas according to the scarce data available in this context, violence against women is worryingly common and remains seriously underreported (see the FRA's report cited at paragraph 28 above, indicating that one in ten women in the European Union has reported having been exposed to some form of sexual violence since the age of 15, whereas only about 14% of the victims of such conduct seem to report it).

66. The above considerations are further supported by the GREVIO's recent report on Croatia, in which it was pointed out that the Croatian authorities showed leniency of the penal policy in dealing with domestic violence and violence against women cases, and the authorities were invited to ensure that sentences and measures imposed in such cases remained effective, proportionate and dissuasive (see the GREVIO report cited at paragraph 21 above).

67. It follows that, in the particular circumstances of the case, bearing in mind the specific social danger of violence against women and the need to combat it with efficient and deterrent actions, in its response to the violence suffered by the applicant, the State did not sufficiently discharge its procedural obligation to ensure that the repeated sexual violence she had suffered in her workplace was dealt with appropriately.

68. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Articles 3 and 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Article 41 of the Convention provides:

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

A. Damage

70. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government contested that claim.

72. In view of the violations found in respect of the applicant's complaints under Articles 3 and 8 of the Convention and ruling on an equitable basis, the Court awards the applicant EUR 10,000 for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicant also claimed EUR 3,050 for the costs and expenses incurred before the Court.

74. The Government contested that claim.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023).

76. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,050 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,050 (three thousand and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
      (iii) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President