



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

SECOND SECTION

CASE OF M.G. v. LITHUANIA

(Application no. 6406/21)

JUDGMENT

Art 3 (procedural) • Effective investigation • Positive obligations • Failure to adequately address child's particular vulnerability and corresponding needs during excessively long criminal proceedings regarding an attempted sexual assault • Length of proceedings attributable to the authorities • Repeated medical examinations due to failure of previous experts to provide duly reasoned and comprehensive reports • Psychological assessment several years after the impugned events risking additional trauma • Lack of adequate and convincing reasons to justify the suspension of the perpetrator's sentence • Sanction manifestly disproportionate to the gravity of the offence

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 February 2024

FINAL

20/05/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of M.G. v. Lithuania,

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. 6406/21) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr M.G. (“the applicant”), on 16 January 2021;

the decision to give notice to the Lithuanian Government (“the Government”) of the applicant’s complaint concerning the procedural limb of Article 3 of the Convention and to declare inadmissible the remainder of the application;

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

the parties’ observations;

Having deliberated in private on 23 January 2024,

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

INTRODUCTION

1. The case concerns the applicant’s complaint that the duration of criminal proceedings against a person who had attempted to sexually assault him when he had been a minor had been excessive and that the punishment given to the perpetrator had been too lenient.

THE FACTS

2. The applicant was born in 1996 and lives in Kaunas. He was represented by Mr D. Svirinavičius, a lawyer practising in Kaunas.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

4. On 14 August 2014 the applicant, who was then 17 years old, complained to the police that at around 12.15 that morning he had been attacked at his home by his aunt’s live-in partner, R.V. He stated that R.V., his aunt and a few other relatives had been drinking that night in the flat in which the applicant lived with his mother and two-year-old brother. After the applicant had asked them to be quiet, R.V. had become aggressive, at which

point the applicant had locked himself in the room he shared with his brother and had called the police. R.V. had entered the room by force, hit the applicant several times in the head and torso, squeezed his neck and genitals, removed his underwear and threatened to rape him. However, the attack had been interrupted by the arrival of the police.

5. From 14 to 25 August 2014 the applicant was hospitalised at the Hospital of the Lithuanian University of Health Sciences. According to the medical documents issued at that hospital, he had sustained blows to his stomach and right kidney, and a minor concussion, and moreover, was suffering from tinnitus and adjustment disorder (*adaptacijos sutrikimai*).

I. PRE-TRIAL INVESTIGATION

6. On 14 August 2014 the Kaunas police opened a pre-trial investigation. On the same day the applicant was granted the status of a victim and questioned, and the police ordered a forensic examination in order to determine the extent of his bodily injuries.

7. On 19 August 2014 R.V. was officially notified that he was suspected of causing the applicant a minor health impairment (*nesunkus sveikatos sutrikdymas*), an offence under Article 138 § 1 of the Criminal Code (see paragraph 54 below). He was questioned by the police and denied having attempted to rape the applicant or having hit him but acknowledged that he might have injured him; R.V. stated that he regretted the incident. He was ordered not to leave the country and his identity documents were confiscated; he was also ordered not to contact the applicant or visit his home.

8. Between August 2014 and March 2015 the police questioned ten witnesses: the applicant's relatives who had been at his home on the night of the events, other persons who had seen him shortly afterwards and the police officer who had arrived at the scene; some of them were questioned more than once. The applicant and R.V. were each additionally questioned twice. The police also obtained the audio recording of the phone call which the applicant had made to the police on the night in question.

9. On 18 September 2014 the legal classification of the suspected criminal offence was changed to attempted sexual assault of a minor under Article 22 § 1 and Article 150 § 3 of the Criminal Code (see paragraphs 53 and 56 below).

10. On 13 October 2014 the State Forensic Medicine Service (hereinafter "the SFMS") issued a report based on the examination of the applicant's injuries; it had been carried out by an expert of that Service and had consisted of a physical examination of the applicant and an analysis of his medical documents. The report stated that no external injuries had been detected on the applicant's body. On the basis of the documents issued by the Hospital of the Lithuanian University of Health Sciences (see paragraph 5 above), the expert found that the applicant had sustained two or more blows to his

stomach and right kidney with a hard blunt object, which could have occurred on 14 August 2014. The injuries had not been life-threatening and constituted a negligible health impairment (*nežymus sveikatos sutrikdymas*). The report also stated that there had not been any objective medical data demonstrating blows to the head or a minor concussion, and that they therefore had not been taken into account when determining the seriousness of the injuries.

11. On 29 October 2014 the prosecutor supervising the pre-trial investigation requested the SFMS to carry out a new examination of the applicant's injuries. The prosecutor noted that the applicant had been hospitalised for more than ten days (see paragraph 5 above) and that injuries leading to hospital stays of that length were generally considered to constitute a minor health impairment (see paragraph 54 below) rather than a negligible health impairment (see paragraph 55 below). Moreover, the applicant had alleged that he had been hit in the head, and at the hospital it had been found that he had sustained a minor concussion and was suffering from tinnitus (see paragraph 5 above), but the expert's report had not assessed the diagnosis of tinnitus and had not provided adequate reasons for dismissing the diagnosis of a minor concussion. Those shortcomings gave grounds to doubt whether the seriousness of the bodily injuries sustained by the applicant had been assessed correctly.

12. On 25 November 2014 R.V. was officially notified that he was suspected of attempted sexual assault of a minor, which attempt had not been completed for reasons independent of his will, under Article 22 § 1 and Article 150 § 3 of the Criminal Code (see paragraphs 53 and 56 below).

13. On 28 November 2014 the applicant lodged a civil claim in the criminal proceedings. He claimed 40,000 Lithuanian litai (LTL – approximately 11,585 euros (EUR)) in respect of non-pecuniary damage.

14. In December 2014, at the prosecutor's request, the time-limit for completing the pre-trial investigation was extended until March 2015, on the grounds that the results of the second medical examination had still not been received (see paragraphs 65 and 66 below).

15. On 15 January 2015 the SFMS delivered the conclusions of the second examination of the applicant's injuries, which had been carried out by three experts of that service on the basis of his medical documents. The report stated that the documents obtained from the Hospital of the Lithuanian University of Health Sciences did not contain any objective data showing injuries to the applicant's head and that the diagnosis of a minor concussion had been based only on his complaints of vertigo, headache, nausea and vomiting; however, his medical history showed that he had already suffered from headaches before the impugned events. As for tinnitus, it could be caused by various factors unrelated to physical injuries, and no injuries had been detected in the applicant's ears. Nor had any external injuries been detected on his stomach or right kidney and the previous diagnosis had been essentially based on his complaints of pain in those areas. Accordingly, the

experts concluded that the applicant had not sustained any bodily injuries on 14 August 2014.

16. On 29 January 2015 the prosecutor instructed the police to investigate whether R.V. might have caused a negligible health impairment or physical pain to the applicant within the meaning of Article 140 § 1 of the Criminal Code (see paragraph 55 below). Although normally an investigation under that Article should be opened only when the victim had lodged a complaint, the prosecutor considered that the applicant was unable to defend his interests because he had been a minor at the time of the alleged criminal activity, his father was deceased and his mother had been barred from representing him in the criminal proceedings for acting contrary to his interests.

17. On 20 February 2015 the prosecutor requested the SFMS to carry out a new examination of the applicant's injuries. The prosecutor noted that the conclusions of the two previous expert reports were contradictory. Moreover, the experts who had prepared the second report had based their conclusions only on medical documents and had not examined the material of the pre-trial investigation, which contained witness testimonies confirming the presence of external signs of injuries on the applicant's body. Nor had the latter experts taken into account the fact that, after the attack, the applicant had received and was still receiving outpatient treatment in several medical facilities. For that reason, the second examination had not been sufficiently thorough and a new examination by different experts was necessary.

18. On 20 February 2015 R.V. was officially notified that he was also suspected of causing negligible health impairment or physical pain to the applicant, under Article 140 § 1 of the Criminal Code (see paragraph 55 below).

19. In March 2015 R.V. asked the prosecutor to lift the ban on him leaving the country (see paragraph 7 above), on the grounds that he lived and worked in the United Kingdom and that he was unable to provide for his family because of the lengthy investigation. On 7 April 2015 the prosecutor granted the request and lifted the ban on him leaving the country. The prosecutor noted that R.V. had not violated the previous remand measure and that his participation in the proceedings could be ensured by the payment of bail in the amount of EUR 3,000.

20. In March 2015, at the prosecutor's request, the time-limit for completing the pre-trial investigation was extended until June 2015, on the grounds that the results of the third medical examination had still not been received (see paragraphs 65 and 66 below).

21. On 16 April 2015 the SFMS informed the police that the applicant had to undergo additional medical examinations and to provide their results to the SFMS. The police forwarded that information to the applicant on an unspecified date. On 12 June 2015 the police informed him that it had still not received the requested documents from him.

22. In June and August 2015, at the prosecutor's request, the time-limit for completing the pre-trial investigation was extended, each time by a further three months, on the grounds that the results of the third medical examination had still not been received (see paragraphs 65 and 66 below).

23. On 15 September 2015 the police asked the SFMS to inform them when the examination of the applicant's injuries would be carried out. They emphasised that such an examination should be carried out as speedily as possible in view of the fact that the applicant had been a minor at the time of the alleged criminal activity and the investigation concerned a serious crime, namely sexual assault.

24. On 23 September 2015 the SFMS informed the police that a meeting of a commission of experts had been scheduled on 22 September 2015 but that it had been cancelled because several experts had failed to attend. The SFMS further stated that, after examining the available medical documents, it had been established that an additional medical examination of the applicant was necessary. The police were asked to inform the applicant that he was to appear for an examination on 15 October 2015.

25. On 29 October 2015 the SFMS delivered the conclusions of the third examination of the applicant's injuries, which had been carried out by four experts of that service and had consisted of a physical examination of the applicant and an analysis of his medical documents and of the investigation file. The report stated that all the injuries which had been indicated in the applicant's medical documents had been identified essentially on the basis of his complaints alone and had not been supported by any objective data. Moreover, an additional examination of his hearing had not found any disorders. Accordingly, it was concluded that he had not sustained any bodily injuries on 14 August 2014.

26. On 25 November 2015 the applicant was informed that the pre-trial investigation had been completed. The indictment was drawn up on 27 November 2015. R.V. was charged with attempted sexual assault of a minor under Article 22 § 1 and Article 150 § 3 of the Criminal Code and with causing him physical pain under Article 140 § 1 of the Criminal Code.

II. PROCEEDINGS BEFORE THE FIRST-INSTANCE COURT

27. On 30 November 2015 the case was transferred to the Kaunas District Court for examination.

28. Between January 2016 and January 2017 the court held eleven hearings, which were scheduled taking into account the availability of the judge, the prosecutor and the lawyers representing the applicant and R.V. Seven more scheduled hearings were adjourned or cancelled because either the applicant's or R.V.'s lawyer was unable to attend them, or because of illnesses of the applicant or his grandmother, who had also been recognised as a victim in the proceedings.

29. During the hearing of 1 March 2016, the court informed the parties that an amendment to the Code of Criminal Procedure (hereinafter “the CCP”) had entered into force, providing for additional guarantees to victims in criminal proceedings. In particular, the new Article 186¹ of the CCP established the need to carry out an assessment of the victim’s special protection needs; such needs had to be taken into account when organising the criminal proceedings (see paragraph 68 below). In view of the fact that the applicant had been a minor at the time of the alleged criminal activity and the fact that the case concerned an alleged sexual assault, the court instructed the prosecutor to carry out such an assessment in respect of him. The assessment was completed by the time of the following hearing, held on 6 April 2016, and it was determined that the applicant had a high level of special protection needs. As a result, the court decided to grant him certain procedural guarantees which were normally granted to minors, such as the right not to participate in hearings and not to be questioned in court.

30. On 3 October 2016 the applicant asked for the prosecutor to be removed from the case. He submitted that the pre-trial investigation had not been sufficiently thorough, that the evidence concerning the injuries which he had sustained had not been properly collected and that the prosecutor had not taken any action to rectify those shortcomings during the examination of the case before the court. In the applicant’s view, that showed that the prosecutor was biased in favour of the accused. On the same day the Kaunas District Court dismissed the request on the grounds that there was no indication of any bias on the prosecutor’s part and, moreover, the applicant had not requested the prosecutor’s removal during the pre-trial investigation.

31. On 6 January 2017 the applicant lodged two requests with the court. He asked that a new forensic examination be conducted, on the grounds that the conclusions of the previous examinations had been unclear and contradictory – in particular, two of the three examinations had found that he had not sustained any injuries, but several witnesses had testified that they had seen physical marks on his body after the incident. In addition, the applicant asked for a psychological and psychiatric assessment to be conducted, in order to determine whether the alleged criminal activity had affected his mental health.

32. On 8 February 2017 the Kaunas District Court allowed those requests and instructed the SFMS and the Department of Child and Adolescent Psychology of the State Forensic Psychiatry Service (hereinafter “the SFPS”) to carry out a medical, psychiatric and psychological assessment of the applicant. The case was adjourned until the results of the assessment were obtained.

33. The medical assessment by the SFMS was conducted from May to October 2017. It was carried out by two experts on the basis of the applicant’s medical documents and the documents of the case file. The report stated that the experts agreed with the two previous medical examinations, which had

found that the applicant had not sustained any bodily injuries on 14 August 2014 (see paragraphs 15 and 25 above).

34. The psychological and psychiatric assessment by the SFPS was conducted from February to May 2018 by four experts. The applicant was examined twice and the experts also analysed his medical documents and the case file. The report stated that, at the time of the events, the applicant had been able to understand the events in question and to give an accurate description of them; there were no indications that his account of the alleged sexual assault might have been influenced by someone else. The report concluded that, because of the alleged assault, the applicant had suffered from post-traumatic stress disorder, which had amounted to a minor health impairment and which had since passed.

35. The Kaunas District Court received the report of the SFPS on 15 May 2018 and resumed the examination of the case.

36. On 11 July 2018 the prosecutor asked the court to amend the charges against R.V. by additionally charging him with causing the applicant a minor health impairment under Article 138 § 1 of the Criminal Code (see paragraph 54 below).

37. The court held four hearings between July and December 2018. One other scheduled hearing was adjourned because the prosecutor was on holiday and another one was cancelled at the request of both the applicant's and R.V.'s lawyers.

38. On 28 January 2019 the Kaunas District Court found R.V. guilty of the attempted sexual assault of the applicant and of causing him a minor health impairment (see paragraphs 53, 54 and 56 below).

39. The court held that the applicant had provided an essentially consistent account of the events of 14 August 2014, and that according to the report of the psychological and psychiatric assessment, he had been able to understand the events in question and there were no indications that his account might have been influenced by someone else (see paragraph 34 above). Moreover, several witnesses who had seen the applicant immediately after the incident had testified that he had been in shock and that they had seen physical marks on his body, consistent with his statements regarding the blows which he had received. While there had been some minor inconsistencies in the applicant's statements, the court emphasised that certain inconsistencies or contradictions in the accounts of victims of sexual coercion could be explained by the shock, stress or shame resulting from the nature of such crimes and therefore did not constitute grounds to doubt the credibility of those accounts. By contrast, the court held that R.V.'s statements had been inconsistent and had not been corroborated by witness testimony. It also held that R.V. must have known that the applicant had been a minor because R.V. had been in a relationship with the applicant's aunt for many years, he had had a daughter with her who was close in age to the applicant, and R.V. had in the past congratulated him on his birthday. On the

basis of the report of the psychological and psychiatric assessment, the court concluded that the attempted sexual assault had caused the applicant post-traumatic stress disorder, which constituted a minor health impairment.

40. R.V. had asked to be conditionally released from criminal liability (*pagal laidavimą*) and placed in the charge of his mother (see paragraph 60 below), but the court dismissed that request. It firstly noted that the criminal offence provided for in Article 150 § 3 of the Criminal Code was serious (see paragraphs 52 and 56 below) and that conditional release from criminal liability could not therefore be applied. Moreover, the conditions under which such release could be ordered had not been met – in particular, R.V. had admitted his guilt only in part and had denied having attempted to sexually assault the applicant or having hit him (see paragraph 7 above), his statements during the criminal proceedings had been inconsistent, and he had not paid the applicant any compensation in respect of non-pecuniary damage.

41. When determining the sentence to be given to R.V., the court took into account the following circumstances: the criminal offences had been intentional and had caused negative consequences for the applicant; there had not been any mitigating or aggravating circumstances; and R.V. had previously been convicted of an offence in the United Kingdom (the court did not specify the offence in question), although the conviction had since expired. The court considered that, in the light of the case material and the information regarding R.V.'s character, the aims of the punishment listed in the Criminal Code (see paragraph 57 below) would be achieved by a sentence of imprisonment. It sentenced R.V. to three years' imprisonment for the attempted sexual assault of a minor (see paragraphs 53 and 56 below) and to eight months' imprisonment for causing the applicant a minor health impairment (see paragraph 54 below), ruling that they be served concurrently as a combined sentence of three years' imprisonment.

42. The applicant was awarded EUR 6,000 from R.V. in respect of non-pecuniary damage.

III. PROCEEDINGS BEFORE THE APPELLATE COURT

43. The applicant lodged an appeal against the decision of the Kaunas District Court. He submitted that the sentence given to R.V. had been too lenient: Article 150 § 3 of the Criminal Code provided for a sentence of imprisonment for a term between two and ten years, and Article 138 § 1 of the Criminal Code for a term of up to three years (see paragraphs 54 and 56 below). The sentences given to R.V. in respect of each of those criminal offences had been below the median provided for in those Articles. The applicant contended that the first-instance court had not adequately assessed the dangerousness of R.V.'s actions, in particular the fact that he had attempted to sexually assault a minor and that he had done so in the presence of a very young child (see paragraph 4 above). Moreover, the attempted

assault had lasted for a rather long time, and R.V. had acted aggressively and had been much stronger than the applicant, who in turn had not had any chance of escaping from his room – all of which combined had caused him extreme fear and terror. He submitted that, as had been established in the proceedings, R.V.'s actions had affected his mental health (see paragraph 34 above), and that psychological injuries sustained during adolescence had to be considered particularly serious with a lifelong impact. The applicant asked that R.V. be given a sentence of at least five years' imprisonment.

44. R.V. also lodged an appeal against the first-instance court's decision and asked to be acquitted. He further submitted that the criminal proceedings had lasted a very long time, which should have been taken into account when determining his sentence, but had not been.

45. On 11 December 2019 the Kaunas Regional Court upheld the first-instance court's findings regarding R.V.'s guilt but amended the decision in the part concerning the sentence.

46. It observed that R.V. had been convicted of a serious crime and that at the time when that crime had been committed Article 75 of the Criminal Code had not provided for the possibility of suspending the execution of the sentence in such cases (see paragraph 61 below). However, that provision had been amended in March 2015, and, under the version which had since entered into force, a suspended sentence could be given to persons convicted of serious crimes who had received sentences of no more than four years' imprisonment (see paragraph 62 below). In line with the case-law of the Supreme Court, the amended version of Article 75, which established regulations that were more favourable to convicted persons, could be applied in cases where the criminal offence had been committed prior to the date of its entry into force but where the criminal proceedings were still ongoing after that date.

47. The Kaunas Regional Court stated that it was necessary to have regard to the circumstances in which the impugned criminal offences had been committed, the convicted person's character, and the fact that the criminal proceedings had lasted for a very long time. It found that the lower court had correctly imposed a three-year prison sentence but considered that, in the circumstances of the case, the aims of the punishment could be achieved without R.V. actually serving that sentence (the Kaunas Regional Court referred to, among other authorities, the Supreme Court's decisions summarised in paragraphs 69 and 70 below). Accordingly, it suspended the execution of the sentence for three years and ordered R.V. to pay EUR 1,000 to a State fund for supporting victims of crime.

IV. PROCEEDINGS BEFORE THE SUPREME COURT

48. The applicant lodged an appeal on points of law against the decision of the appellate court, in which he argued that the sentence given to R.V. had

been too lenient and that the court's decision to suspend it had not been justified. He repeated the arguments which he had raised in his previous appeal (see paragraph 43 above). In addition, he submitted that the appellate court had not explained which circumstances of the case or which considerations relating to R.V.'s character had constituted grounds to suspend his sentence. The applicant noted that no mitigating circumstances had been identified in the case and that R.V. had been previously convicted of an offence in the United Kingdom (see paragraph 41 above); even though the conviction had expired, it had still been relevant when assessing his character. Lastly, he contended that the length of the proceedings could not justify suspending the sentence.

49. On 16 July 2020 the Supreme Court upheld the decision of the Kaunas Regional Court in its entirety. The Supreme Court emphasised that determining an appropriate sentence and deciding whether to suspend it was within the remit of the appellate court, and the role of the Supreme Court was limited to examining whether the relevant law had been applied correctly.

50. It observed that R.V. had been given a suspended sentence of three years' imprisonment after the appellate court had assessed the level of dangerousness of the criminal offences which he had committed (one serious crime and one crime of minor seriousness), the stage reached in the commission of those criminal offences (an attempt to commit a serious crime), the form and type of guilt (the crimes had been intentional), R.V.'s character (he had no valid criminal convictions in Lithuania, had not been held liable for any administrative offences, there was no official record of his having had any substance abuse disorders, he lived in the United Kingdom and there was information that in the past he had been convicted of an offence there), as well as other material in the case file and the aims of the punishment. The Supreme Court stated that the applicant had failed to indicate which of the requirements of Article 41 or Article 54 of the Criminal Code (see paragraphs 57 and 58 below) had been violated when determining the punishment.

51. The Supreme Court reiterated its case-law on suspending the execution of sentences (among others, the decisions summarised in paragraphs 71 and 73 below) and stated that the decision on whether to apply Article 75 of the Criminal Code was within the discretion of the court examining the case. It emphasised that suspending the sentence was one of the ways of ensuring criminal liability and that the sentence could be activated if the person failed to comply with the conditions laid down by the authorities supervising the person during the period of suspension. The Supreme Court concluded that the decision of the Kaunas Regional Court had been in accordance with the law and that there were no grounds to amend it.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code

1. Provisions relating to crimes

52. Under Article 11 § 3 of the Criminal Code, a crime of minor seriousness (*nesunkus nusikaltimas*) is an intentional crime for which the maximum penalty provided by law is not more than three years' imprisonment. Under Article 11 § 5, a serious crime (*sunkus nusikaltimas*) is an intentional crime for which the maximum penalty provided by law is more than six years' imprisonment but not more than ten years' imprisonment.

53. Article 22 § 1 defines an attempt to commit a criminal offence as an intentional action or omission whereby the commission of a criminal activity has started but where it has not been completed because of circumstances independent of the perpetrator's will.

54. Article 138 § 1 provides:

Article 138. Minor health impairment

"1. A person who has injured another person or caused him or her to be ill, as a result of which the victim has lost a small part of his or her professional or general working capacity, or has been ill for a long time but has not suffered the consequences referred to in Article 135 § 1 of this Code, shall be punished by restriction of liberty, detention or imprisonment for a term of up to three years."

55. Article 140 § 1 provides:

Article 140. Causing physical pain or a negligible health impairment

"1. A person who, by beating or other violent actions, has caused another person to suffer physical pain or negligible bodily harm or a short-term illness shall be punished by community service, restriction of liberty, detention or imprisonment for a term of up to one year."

56. Article 150 provides, in so far as relevant:

Article 150. Sexual assault

"1. A person who has satisfied his or her sexual desire with another person through anal or oral intercourse or other means of physical contact by using physical violence or by threatening the immediate use thereof or by otherwise depriving the victim of the possibility of resisting or by taking advantage of the victim's helpless state shall be punished by detention or imprisonment for a term of up to seven years.

...

3. A person who has carried out the actions listed in paragraph 1 of this Article in respect of a minor shall be punished by imprisonment for a term of between two and ten years."

2. *Provisions relating to punishments*

57. Article 41 § 2 provides that a punishment pursues the following aims: (1) to deter persons from committing criminal offences; (2) to punish a person who has committed a criminal offence; (3) to remove or limit the possibility for a person to commit further criminal offences; (4) to encourage persons who have served a punishment to abide by the law and not to commit further criminal offences; and (5) to ensure the implementation of the principle of justice.

58. At the material time, Article 54 § 2 provided that when determining a punishment, the court had to have regard to the following: (1) the level of dangerousness of the criminal offence; (2) the form and type of the person's guilt; (3) the motives for the criminal offence and its aims; (4) the stage reached in the commission of the criminal offence; (5) the perpetrator's character; (6) where the criminal liability of an accomplice was concerned, the form and type of the accomplice's participation in the commission of the criminal offence; and (7) mitigating and aggravating circumstances.

59. Article 57 § 1 provides that the punishment for an attempt to commit a crime or a misdemeanour should be determined in accordance with the general rules, taking into account the dangerousness of the perpetrator's actions, the extent to which the intention to commit a criminal offence had been realised and the reasons for which it had not been completed. Article 57 § 2 provides, *inter alia*, that the punishment for an attempted crime may be more lenient than that provided for a crime which has been completed.

60. Article 40 § 1 provides, *inter alia*, that a person who has committed a misdemeanour, a criminal offence involving negligence or a criminal offence which is of minor or medium seriousness may be conditionally released from criminal liability if another person, whom the court can trust, asks that the perpetrator be placed in his or her charge subject to a guarantee. Under Article 40 § 2, such conditional release from criminal liability is possible only where all the following conditions have been met: (1) the person has committed a criminal act for the first time; (2) he or she has fully admitted his or her guilt and regrets having carried out the criminal act; (3) where damage has been caused, he or she has at least partly remedied the damage or compensated or undertaken to compensate for it; and (4) there are grounds to believe that he or she will compensate for or remedy the damage in its entirety, will abide by the law and will not commit further criminal offences.

61. Prior to 24 March 2015, Article 75 § 1 provided that where a person had been given a sentence of imprisonment of no more than four years for one or several criminal offences of minor or medium seriousness or a sentence of imprisonment of no more than six years for criminal offences committed through negligence, the court could suspend the execution of the sentence for a term of between one and three years. The execution of the sentence could be suspended where the court found that there were sufficient

grounds to believe that the aims of the punishment would be achieved without the person actually serving the sentence.

62. From 24 March 2015 to 1 July 2020, Article 75 § 1 provided, *inter alia*, that the execution of the sentence could be suspended where a person was given a sentence of imprisonment of no more than six years for criminal offences committed through negligence or a sentence of imprisonment of no more than four years for one or several intentional crimes, except for very serious crimes.

63. At the material time, Article 75 § 2 provided that when suspending the sentence, the court could impose one or several obligations on the convicted person during the time of the suspension, including, *inter alia*, to apologise to the victim; to provide the victim with assistance while he or she was undergoing treatment; to participate in a behaviour correction programme; not to leave his or her home at certain hours, unless it was necessary for work or study purposes; not to leave his or her city of residence without the permission of the institution supervising the suspension of the sentence; or not to go to certain places or not to contact certain persons. Article 75 § 3 provided that it was within the discretion of the court to impose other obligations which, in the court's view, could have a positive impact on the convicted person's behaviour.

64. Article 75 was amended again on 27 June 2019 and the amendment entered into force on 1 July 2020. The amended Article 75 § 3 provides, *inter alia*, that where a person has been given a sentence of imprisonment of no more than five years for a serious crime, the court may suspend the execution of part of the sentence; however, that provision does not apply to certain categories of crimes, including those of a sexual nature.

B. Code of Criminal Procedure

1. Provisions relating to time-limits

65. Article 176 § 1 of the CCP provides, *inter alia*, that the pre-trial investigation must be carried out within six months in cases concerning criminal offences of minor or medium seriousness and within nine months in cases concerning serious and very serious crimes.

66. Article 176 § 2 provides that the above-mentioned time-limits may be extended at the prosecutor's request by the senior prosecutor because of the complexity or wide scope of the case or other important circumstances. In cases in which the suspect is detained or in which the victim or the suspect is a minor, the pre-trial investigation must be carried out as a matter of priority.

67. Article 242¹ states that the court examining the merits of the case must take measures to ensure that the case is examined within the shortest possible time and with as few breaks between court hearings as possible.

2. Provisions relating to victims' rights in criminal proceedings

68. An amendment to the CCP was enacted on 17 December 2015 and entered into force on 1 March 2016. The relevant provisions read as follows:

Article 36². Special protection needs

“Special protection needs are needs of the victim, determined by his or her personal characteristics, the nature of the criminal activity or the circumstances of its commission, that necessitate the use of the guarantees provided in this Code, in order to protect the victim from mental trauma, criminal influence or other negative effects.”

Article 186¹. Assessment of the victim's special protection needs

“1. The pre-trial investigation officer or the prosecutor shall conduct an assessment of the victim's special protection needs no later than the first interview with him or her. Where necessary, that can be done with the help of a psychologist or other specialists. The data collected during the assessment of the victim's special protection needs shall be taken into account when organising the criminal proceedings, and in the cases provided for by this Code, when determining whether the victim, because of his or her special protection needs, is entitled to one or more guarantees provided in this Code.

2. When it is necessary to carry out an additional or repeated assessment of the victim's special protection needs, such an assessment shall be organised or carried out by the prosecutor: on the prosecutor's initiative or on the instructions of the pre-trial investigation judge during the pre-trial investigation, and on the instructions of the court during the examination of the case in court.

3. Data collected during the assessment of the victim's special protection needs shall be stored separately from the case file. Neither the suspect, the accused or the convicted person, nor his or her lawyer shall be allowed to access such data. ...”

C. Case-law of the Supreme Court

69. In its decision of 30 March 2010, in case no. 2K-109/2010, the Supreme Court stated that when assessing whether the aims of a punishment would be achieved, the court had to have regard to all the criteria listed in Article 41 of the Criminal Code (see paragraph 57 above), namely: whether the person would be deterred from committing criminal offences; whether he or she would be adequately punished; whether the possibility for him or her to commit further criminal offences would be limited; whether he or she would abide by the law and not reoffend; and whether the principle of justice would be implemented. The court therefore had to provide reasons to justify not only its choice of punishment but also any decision to suspend the execution of the sentence, by referring to the conditions of the application of Article 75 of the Criminal Code and by explaining why the aims of the punishment would be achieved without the person actually serving the sentence.

70. In its decision of 18 February 2014, in case no. 2K-56/2014, the Supreme Court held that the suspension of the execution of a sentence always

had to be based on a reasoned conclusion by the court that there were sufficient grounds to believe that the aims of the punishment would be achieved without the convicted person actually serving his or her sentence. The court had to have regard to the level of dangerousness of the criminal activity in question, the perpetrator's character, mitigating circumstances and other relevant facts. It had to assess all the circumstances relating to the dangerousness of the criminal act (including the manner of its commission, the tools and means by which it had been committed, the time and place of its commission, the seriousness of the consequences, the form and type of guilt involved, and its aims and motives), the convicted person's character (including previous commission of criminal offences or other violations of the law, tendency to abuse alcohol, narcotic or other psychotropic substances, his or her values, attitude towards work and character references), his or her behaviour after having committed the crime (including whether there was an admission of guilt or regret, help in investigating the crime or identifying other accomplices, or compensation paid for the damage). All that information had to give grounds to conclude that the resocialisation of the convicted person was possible without him or her actually serving the prison sentence. The court also had to assess how the serving of the sentence might affect the perpetrator's positive social connections.

71. In its decision of 7 April 2016, in case no. 2K-132-942/2016, the Supreme Court reiterated the circumstances which had to be assessed when deciding whether to suspend the execution of a sentence, as established in its case-law (see paragraph 70 above). It further held that it was necessary to strike a balance between the principles of humanity and justice, whereby the punishment given to the perpetrator or the decision to release him or her from criminal liability could not deny the very essence and purpose of criminal law or create an impression of impunity or disrespect for the law or ignore the legitimate interests of the victims. Moreover, the criminal law required that each judgment convicting a defendant should ensure that the reaction of the State towards the perpetrator's conflict with the law – a punishment or another measure of criminal coercion – was effective in preventing further criminal activity, both in the individual case and in general. The Supreme Court further held that any decision to suspend the execution of the sentence had to meet the requirements of Articles 41 and 54 of the Criminal Code (see paragraphs 57 and 58 above), as well as other provisions of that Code regarding the appropriate punishments.

72. In its decision of 29 November 2016, in case no. 2K-396-746/2016, the Supreme Court stated that the execution of a sentence could be suspended only when, in addition to the formal conditions under Article 75 § 1 of the Criminal Code being met, the court had found that the aims of the punishment would be achieved without the person actually serving the sentence. Applying Article 75 of the Criminal Code was the court's right, not an obligation. The suspension of the sentence was an exceptional form of criminal liability and

it ought to be applied only when the entirety of the circumstances of a case left no doubt that a prison sentence did not need to be actually served; however, where there was a reasonable doubt in that regard, a suspension of the sentence should not be applied.

73. In its decision of 13 March 2018 in case no. 2K-7-8-788/2018, the Supreme Court rejected an argument raised by the prosecutor that suspension of a sentence created an impression of impunity and a lack of respect for the law. The Supreme Court emphasised that suspension of a sentence was one of the ways of implementing criminal liability and that it was one of the most effective instruments of a rational criminal policy, allowing the behaviour of offenders to be monitored without destroying their social and economic connections and protecting them from the negative influence of other prisoners, thereby reducing the likelihood of recidivism. Punishments without deprivation of liberty were also recommended by the Committee of Ministers of the Council of Europe in Recommendation No. R (92) 16 of 19 October 1992 on the European rules on community sanctions and measures, Recommendation Rec(2000)22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures and Recommendation no. CM/Rec(2010)1 of 20 January 2010 on the Council of Europe probation rules. In those recommendations it was stated that the application of such measures should be extended and that probation was a suitable measure for ensuring fair criminal proceedings and community safety, preventing crime and reducing the use of imprisonment. The Supreme Court further noted that persons on probation were supervised in accordance with the Law on Probation, which entailed certain responsibilities and restrictions on their personal freedom. If a person on probation failed to comply with the obligations imposed on him or her, the court could decide to revoke the suspension of the sentence at the request of the probation institutions. Thus, suspension of the execution of a sentence could not be equated with impunity and lack of respect for the law.

The Supreme Court also held that, according to the well-established domestic case-law, the excessive length of criminal proceedings could be a ground for imposing a more lenient punishment, either within the limits indicated in the relevant Article of the Criminal Code or below the minimum provided therein, or for suspending the execution of the sentence. Moreover, according to the case-law of the European Court of Human Rights, mitigation of the sentence was an appropriate means of redress for lengthy criminal proceedings (the Supreme Court referred to, among other authorities, *Einarsson v. Iceland*, no. 22596/93, Commission decision of 5 April 1995; *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; and *Sorvisto v. Finland*, no. 19348/04, § 66, 13 January 2009).

II. RELEVANT INTERNATIONAL MATERIAL

A. Council of Europe

74. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (“the Lanzarote Convention”), which was adopted by the Committee of Ministers on 12 July 2007 and entered into force in respect of Lithuania on 1 August 2013, provides, in so far as relevant:

Article 18 – Sexual abuse

“1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

...

b. engaging in sexual activities with a child where:

– use is made of coercion, force or threats; or

– abuse is made of a recognised position of trust, authority or influence over the child, including within the family; ...”

Article 24 – Aiding or abetting and attempt

“...

2. Each Party shall take the necessary legislative or other measures to establish as criminal offences, when committed intentionally, attempts to commit the offences established in accordance with this Convention. ...”

Article 27 – Sanctions and measures

“1. Each Party 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 penalties involving deprivation of liberty which can give rise to extradition. ...”

Article 28 – Aggravating circumstances

“Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far 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 sanctions in relation to the offences established in accordance with this Convention:

a. the offence seriously damaged the physical or mental health of the victim;

...

d. the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority; ...”

Article 30 – Principles

“1. Each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child.

2. Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.

3. Each Party shall ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay. ...”

Article 35 – Interviews with the child

“1. Each Party shall take the necessary legislative or other measures to ensure that:

a. interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;

...

e. the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings; ...”

75. The Explanatory Report to the Lanzarote Convention states the following, in so far as relevant:

“196. The first of the aggravating circumstances [under Article 28] is where the offence seriously damaged the physical or mental health of the victim. Some of the offences in this Convention may not involve any ‘physical’ harm to a child ... but the psychological impact may have profound and long-lasting consequences ...

...

199. The fourth aggravating circumstance [under Article 28] concerns where the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority. This would cover various situations where the offence has been committed by a parent or other member of the child’s family, including the extended family, or any person *in loco parentis*, such as a child-minder or other care provider. A person cohabiting with the child refers to partners of the child’s parent or other persons living within the same household as the child. A person having authority refers to anyone who is in a position of superiority over the child, including, for instance, a teacher, employer, an older sibling or other older child.

...

216. Paragraph 3 [of Article 30] recognises the principle according to which investigations and proceedings should be treated as priority and without unjustified delays, as the excessive length of proceedings may be understood by the child victim as a denial of his testimony or a refusal to be heard and could exacerbate the trauma which he or she has already suffered. The negotiators wished to emphasise that this provision reflects the principle established in Article 6 ECHR, which states that ‘everyone is entitled to a ... hearing within a reasonable time’ and that in proceedings involving children, this principle should be applied with particular care ...

...

236. [Article 35] concerns interviews with the child both during investigations and during trial proceedings. During investigations, it applies regardless of the type of authority (police or judicial authority) conducting the interview. The main purpose of the provision is the same as that described more generally in connection with Article 30: to safeguard the interests of the child and ensure that he or she is not further traumatised by the interviews ...

237. In order to achieve these objectives, Article 35 lays down a set of rules designed to limit the number of successive interviews with children, which force them to relive the events they have suffered ...”

B. European Union (EU)

76. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography provides, in so far as relevant:

“...

(12) Serious forms of sexual abuse and sexual exploitation of children should be subject to effective, proportionate and dissuasive penalties ...

...

(30) ... [P]articipation in criminal proceedings by child victims should not cause additional trauma to the extent possible, as a result of interviews or visual contact with offenders. A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures.”

Article 3

Offences concerning sexual abuse

“1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 6 is punishable.

...

5. Engaging in sexual activities with a child, where:

...

(iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age. ...”

Article 7

Incitement, aiding and abetting, and attempt

“...

2. Member States shall take the necessary measures to ensure that an attempt to commit any of the offences referred to in Article 3(4), (5) and (6) ... is punishable....”

Article 9

Aggravating circumstances

“In so far as the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 7, Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to 7:

...

(b) the offence was committed by a member of the child’s family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority; ...”

Article 20

Protection of child victims in criminal investigations and proceedings

“...

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations relating to any of the offences referred to in Articles 3 to 7:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

...

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings; ...”

77. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, provides in so far as relevant:

“...

(18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures ...

...

(53) The risk of secondary and repeat victimisation ... as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings ...”

Article 20

Right to protection of victims during criminal investigations

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

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

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

...

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

78. The applicant complained that the length of the criminal proceedings against R.V. had been excessive and that the sentence given to R.V. had been too lenient. He relied on Article 6 § 1 of the Convention.

79. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case and that it is not bound by the characterisation given by an applicant or a Government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018, and *S.M. v. Croatia* [GC], no. 60561/14, §§ 241-43, 25 June 2020). Having regard to the circumstances of the case and the manner in which the applicant’s complaints were formulated, it considers it more appropriate to examine the complaints under the procedural limb of Article 3 of the Convention (for a similar approach, see *S.Z. v. Bulgaria*, no. 29263/12, § 30, 3 March 2015, and *X and Others v. Bulgaria* [GC], no. 22457/16, § 149, 2 February 2021).

Article 3 of the Convention reads as follows:

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

A. Admissibility

80. 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. The parties' submissions

(a) The applicant

81. The applicant submitted that the criminal proceedings had been of an excessive length: the assault had taken place on 14 August 2014 and the final decision had not been given until 16 July 2020, nearly six years later. The length of the proceedings had not been justified because the case had not been complex – it had concerned a single incident and the events in issue had been described in detail by the applicant himself and by several witnesses.

82. In particular, the applicant submitted that repeated medical examinations had been ordered because the initial experts had failed to give proper reasons for their conclusions (see paragraphs 11 and 17 above). Moreover, during the pre-trial investigation the authorities had not assessed the psychological damage sustained by the applicant and that assessment had only been carried out at the trial stage, at the request of his representative (see paragraph 31 above).

83. The applicant disputed the Government's argument that he himself had contributed to the length of the proceedings (see paragraph 87 below). He submitted that it had not been established in the domestic proceedings that he had abused his procedural rights. Moreover, any delay attributable to him had been minor in the context of the overall length of those proceedings; the fact that they had lasted for a very long time had been acknowledged by the Kaunas Regional Court (see paragraph 47 above).

84. The applicant further contended that he had sustained psychological damage because of the assault (see paragraph 34 above) and that the lengthy criminal proceedings had also negatively affected his mental health.

85. He submitted that the excessive length of the proceedings had led to R.V. being given only a suspended sentence. The applicant argued that R.V.'s actions had deserved a severe punishment; Article 150 § 3 of the Criminal Code provided that sexual assault of a minor was punishable by a term of imprisonment of between two and ten years (see paragraph 56 above). He submitted that the suspended sentence had been manifestly disproportionate to the seriousness of R.V.'s actions and that the domestic courts had failed to properly justify their choice of punishment.

86. Lastly, the applicant pointed out that R.V. lived in the United Kingdom, whereas the suspension of the sentence had been supervised by officers in Lithuania, which, he contended, meant that the supervision had been of a purely formal character.

(b) The Government

87. The Government submitted that the pre-trial investigation had been opened on the same day as the applicant had lodged his complaint with the

police. The authorities had taken all the measures provided by law to thoroughly investigate the alleged criminal offences and to collect all available evidence. Moreover, they had sought to properly assess any injuries which the applicant might have sustained and to eliminate any contradictions in that regard, for which reason several medical examinations had been ordered. The Government submitted that the carrying out of the third medical examination had been delayed by the applicant himself, as he had failed to promptly provide the experts with the necessary documents (see paragraph 21 above), and that the authorities had taken action to speed up the proceedings, by urging him to provide those documents and by enquiring with the SFMS about the progress of the assessment (see paragraphs 21 and 23 above).

88. The Government further submitted that the examination of the case by the first-instance court, which had lasted three years and two months, had included an additional medical assessment of the applicant and a psychological and psychiatric assessment; those assessments had been ordered at the applicant's request (see paragraph 31 above) and the psychological and psychiatric assessment had led to the amendment of the charges against R.V., since it had found that the applicant had suffered from post-traumatic stress disorder as a result of the assault (see paragraphs 34 and 36 above). The Government also stated that the first-instance court had not been inactive. Court hearings had been held regularly, they had been scheduled with the agreement of all the parties and several hearings had been adjourned at the request of the applicant's lawyer (see paragraphs 28 and 37 above).

89. The Government contended that the total length of the criminal proceedings – five years and eleven months – could not be considered excessive in the circumstances. Moreover, the length of the proceedings had not precluded the authorities and the courts from collecting evidence, adopting a decision on the merits of the case and identifying and punishing the person responsible for the assault.

90. They further submitted that in cases concerning sexual violence against children, the Lithuanian courts emphasised the particular dangers of such crimes and followed the standards established in the relevant international documents, such as the Lanzarote Convention, and in the case-law of the Court. They provided examples of domestic cases concerning rape, sexual assault and sexual molestation of individuals under the age of sixteen in which the perpetrators had received punishments of similar length to that received by R.V. Accordingly, the Government contended that the sentence given to R.V. – three years' imprisonment, which amounted to half of the median sentence provided for by law (see paragraph 56 above) – had been proportionate to the criminal offence in question, which had consisted of a single act, had been terminated at the stage of attempt and had caused the victim a minor health impairment.

91. The Government also contended that, in line with the Court's case-law, it could not be said that sexual offences against minors always had to be punished by custodial sentences and that suspension of the execution of a sentence was in and of itself incompatible with the State's positive obligations under Article 3 of the Convention. Instead, in cases concerning violence by private individuals, the possibility of suspending the sentence had to be assessed in the light of all the relevant circumstances; the Court had previously acknowledged that a suspended sentence, although more lenient than actual deprivation of liberty, had advantages in terms of controlling the perpetrator's behaviour in the future (in that connection, the Government relied on *Irene Wilson v. the United Kingdom* (dec.), no. 10601/09, 23 October 2012). The Government also provided various examples of domestic case-law laying down the principles relating to the suspension of sentences (among others, the decisions summarised in paragraphs 71-73 above). They contended that, in the case at hand, the courts had taken the decision to give R.V. a suspended sentence after thoroughly assessing all the relevant circumstances of the case and that that decision had not been predetermined by the length of the proceedings or by any shortcomings on the part of the authorities.

92. The Government further submitted that the obligation imposed on R.V. to pay EUR 1,000 to a State fund for supporting victims of crime (see paragraph 47 above) had been chosen in view of the fact that he lived in the United Kingdom and that accordingly, the measure had been "logical in terms of the prospect of enforcement". Moreover, R.V. had been ordered to pay EUR 6,000 to the applicant as compensation in respect of non-pecuniary damage (see paragraph 42 above), so the present case had to be contrasted with those cases in which the Court had found that the length of the proceedings had precluded the applicants from obtaining redress (for example, *D.M.D. v. Romania*, no. 23022/13, §§ 47-48, 3 October 2017, and *Vasil Hristov v. Bulgaria*, no. 81260/12, § 47, 16 June 2015).

93. Lastly, in response to the applicant's argument that the supervision of R.V. during the suspension of the sentence had been of a purely formal character because he lived in the United Kingdom (see paragraph 86 above), the Government submitted that R.V. had been ordered to contact his probation officer by email once every two weeks and to meet the officer in person, in Lithuania, once every two months, except during the COVID-19 pandemic and a period when he had been hospitalised for surgery. Moreover, R.V. had provided the probation officer with documents issued by the Lithuanian Embassy in the United Kingdom regarding his criminal record in that country. The Government stated that if R.V. had committed a new criminal offence or had failed to comply with the conditions of the suspension of the sentence, the sentence would have been activated.

2. *The Court's assessment*

(a) General principles

94. The Court reiterates that in its examination of whether a person has been “subjected to ... treatment” that is “inhuman or degrading” within the meaning of Article 3 of the Convention, its general approach has been to emphasise that the treatment must attain a minimum level of severity if it is to fall within the scope of this provision. The assessment of that level is relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. In order to determine whether the threshold of severity has been reached, the Court may also take other factors into consideration, in particular: the purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3; the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions; and whether the victim was in a vulnerable situation (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 116-17, 25 June 2019, and the cases cited therein).

95. The general principles regarding the Contracting States’ procedural obligations under Article 3 of the Convention, particularly in cases concerning sexual abuse of children, have been summarised in *X and Others v. Bulgaria* (cited above, §§ 176-78 and 184-92, and the cases cited therein).

96. In particular, the Court reiterates that a requirement of promptness and reasonable expedition is implicit in the obligation to carry out an investigation. In that connection, the Court has considered it an essential requirement that investigations be promptly instituted and carried out. Regardless of the final outcome of the proceedings, the protection machinery provided for in domestic law must operate in practice within a reasonable time such as to conclude the examination on the merits of specific cases submitted to the authorities (*ibid.*, § 188).

97. Furthermore, 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 the positive obligation under Article 3 of the Convention. This includes the sanctions imposed at the end of those proceedings. 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 for serious offences to be punished by excessively light punishments. The Court’s task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 3 of the Convention, so that the deterrent effect of the

judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined (see *Myumyun v. Bulgaria*, no. 67258/13, §§ 66-67, 3 November 2015; *Sabalić v. Croatia*, no. 50231/13, § 97, 14 January 2021; and *Vardanyan and Khalafyan v. Armenia*, no. 2265/12, § 83, 8 November 2022).

98. Lastly, it is clear from the Court's case-law that, in cases where children may have been victims of sexual abuse, compliance with the positive obligations arising out of Article 3 requires, in the context of the domestic proceedings, the effective implementation of children's right to have their best interests as a primary consideration and to have the child's particular vulnerability and corresponding needs adequately addressed. These requirements are also set out in other international instruments of relevance to the present case, such as the Lanzarote Convention and the instruments adopted by the European Union (see paragraphs 74-77 above). More generally, the Court considers that in cases potentially involving child sexual abuse the procedural obligation under Article 3 of the Convention to conduct an effective investigation must be interpreted in the light of the obligations arising out of the other applicable international instruments, and more specifically the Lanzarote Convention (see *X and Others v. Bulgaria*, cited above, § 192, and the cases cited therein).

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

99. Turning to the circumstances of the present case, the Court must firstly determine whether the treatment suffered by the applicant attained the requisite threshold of severity so as to fall within the scope of Article 3 of the Convention (see the general principles cited in paragraph 94 above). It notes that the domestic courts established the following facts: when the applicant had been 17 years old, he had been assaulted at his own home by a member of his extended family (his aunt's partner); the perpetrator had entered the applicant's room by force, hit him several times in the head and torso, squeezed his neck and genitals, removed his underwear and threatened to rape him (see paragraph 4 above); those events had led to the applicant suffering from post-traumatic stress disorder (see paragraph 34 above). The Court has no grounds to question the assessment of the facts by the domestic courts. It considers that the applicant, as a minor subjected to a physical attack in the aforementioned circumstances, was in a state of vulnerability, and has no reason to doubt that the threat of rape must have been perceived by him as being sufficiently realistic, so as to cause him considerable fear, anguish and mental suffering. It further notes that the Government did not dispute that the facts of the present case fall within the scope of Article 3 of the Convention. In the light of the foregoing, the Court is satisfied that the assault was sufficiently serious to attain the threshold of severity under that provision. It therefore considers that the applicant had an arguable claim, triggering the

domestic authorities' obligation to carry out an effective investigation into the ill-treatment against him.

100. The Court observes that the pre-trial investigation was opened on the same day as the applicant lodged his complaint with the authorities (see paragraph 6 above). Moreover, it is satisfied that the authorities took reasonable measures to obtain evidence, such as questioning witnesses and obtaining forensic assessments, and that they established the relevant facts and identified the person responsible. Indeed, the applicant did not allege that any essential investigative steps had been omitted. Nor did he complain before the Court as regards the independence of the authorities which had carried out the investigation or his ability to participate in it.

101. The Court further notes that the domestic authorities took steps to address the applicant's vulnerability resulting from the fact that he had been the victim of an attempted sexual assault when he had been a minor. Specifically, the prosecutor ordered the investigating authorities to investigate the possibility that the assault could have caused the applicant physical pain, acknowledging that the applicant might not have been able to lodge such a complaint himself (see paragraph 16 above); during the examination of the case by the first-instance court, the applicant's needs for special protection were assessed and he was allowed not to participate in court hearings and not to be questioned in court (see paragraph 29 above); and furthermore, the courts acknowledged that the existence of some minor inconsistencies in the accounts of victims of sexual crimes did not constitute grounds to doubt their overall credibility, in view of the shock, stress or shame they might experience because of the nature of such crimes (see paragraph 39 above).

102. The Court emphasises that, in cases where children may have been victims of sexual abuse, compliance with the positive obligations arising out of Article 3 of the Convention requires, in the context of the domestic proceedings, the effective implementation of children's right to have their best interests as a primary consideration and to have the child's particular vulnerability and corresponding needs adequately addressed (see *X and Others v. Bulgaria*, cited above, § 192). It is satisfied that the domestic authorities followed the Court's approach in that regard.

103. At the same time, it reiterates that the obligation to carry out an effective investigation also contains a requirement of promptness and reasonable expedition (see the relevant general principles cited in paragraph 96 above).

104. In the present case, the criminal proceedings were lengthy – they lasted for a total of five years and eleven months. More than one year and three months were spent at the pre-trial investigation stage (see paragraphs 6 and 26 above) and three years and two months at the stage of the examination of the case by the first-instance court (see paragraphs 27 and 38 above).

105. The Court considers that the domestic authorities cannot be said to have remained inactive: the investigating authorities questioned witnesses and took other investigative measures (see paragraph 8 above) and the first-instance court scheduled hearings according to the availability of the parties and their lawyers; some hearings were adjourned or cancelled for reasons imputable to the applicant (see paragraphs 28 and 37 above).

106. However, it observes that the factor which contributed most to the overall length of the proceedings was the number of medical examinations, which were aimed at establishing the seriousness of the injuries sustained by the applicant, and the time taken to conduct them. In particular, three examinations by different experts were carried out during the pre-trial investigation because the report of the first examination had been insufficiently reasoned (see paragraph 11 above) and the report of the second examination had been prepared without taking into account the pre-trial investigation material (see paragraph 17 above). Therefore, repeated examinations were necessary because the previous ones contained serious shortcomings which undermined the ability of the investigation to establish the extent of the applicant's injuries (see, *mutatis mutandis*, *Kraulaidis v. Lithuania*, no. 76805/11, § 60, 8 November 2016, and contrast *V.D. v. Croatia (no. 2)*, no. 19421/15, § 73, 15 November 2018).

107. The third medical examination, which was requested in order to eliminate the shortcomings and the contradictions of the two previous ones, took eight months to complete, during which time no other investigative measures were taken (see paragraphs 17-25 above). While it appears that at least some of that delay could be attributed to the fact that the applicant had not provided certain documents to the experts (see paragraph 21 above), the Court has not been informed of when he was notified of the additional action required of him and of the duration of the resulting delay. Be that as it may, the applicant was not solely responsible for the time taken to carry out the third medical assessment – in that connection the Court refers to the fact that a meeting of experts was cancelled because some of the experts failed to turn up (see paragraph 24 above) – and he was not responsible for the fact that several such assessments had to be conducted.

108. Moreover, a further examination of the applicant's bodily injuries was carried out during the examination of the case by the Kaunas District Court. It is true that that examination was ordered at the applicant's request, which appeared to have been based on his disagreement with the results of the third expert report, rather than on any shortcomings therein (see paragraph 31 above). However, the Court emphasises that the domestic court was not obliged to satisfy that request if it did not consider an additional medical examination to be necessary (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 180, 14 April 2015).

109. The Court also emphasises that the carrying out of several medical examinations at different stages of the domestic proceedings not only

prolonged those proceedings but also diminished the ability of each subsequent examination to accurately determine the applicant's injuries, as physical signs of those injuries became less visible with the lapse of time.

110. The Court further notes that although the authorities ordered three medical examinations during the pre-trial investigation which were all aimed at determining the extent of the applicant's bodily injuries, they did not assess the impact of the assault on his mental health; such an examination was ordered by the first-instance court and only after the applicant himself had made a request to that effect (see paragraphs 31 and 32 above). In that connection, the Court emphasises the particular vulnerability of young persons and the special psychological factors involved in cases concerning sexual abuse of minors (see *M.C. v. Bulgaria*, no. 39272/98, § 183, ECHR 2003-XII, and *C.A.S. and C.S. v. Romania*, no. 26692/05, § 81, 20 March 2012). It also takes note of the Explanatory Report to the Lanzarote Convention, which provides that some sexual offences against children may not involve any physical harm but their psychological impact may have profound and long-lasting consequences (see paragraph 75 above), and the EU Directive establishing minimum standards on the rights, support and protection of victims of crime, which states that violence committed by a family member of the victim could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust (see paragraph 77 above). Accordingly, the Court considers that it was incumbent on the domestic authorities to carry out a psychological assessment without an undue delay and without waiting for the applicant to request such an assessment himself (see, *mutatis mutandis*, *X and Others v. Bulgaria*, cited above, § 213).

111. Furthermore, the Kaunas District Court gave the decision requesting the SFPS to conduct a psychological and psychiatric assessment of the applicant on 8 February 2017, but the SFPS did not start that assessment until a year later (in February 2018), and it was not completed until May 2018 (see paragraphs 32, 34 and 35 above). As a result, the proceedings before the court remained adjourned for one year and three months. While the Court is mindful of the workload of specialists and experts, it reiterates that it is for the State to organise its judicial system in such a way as to enable its institutions to comply with the requirements of the Convention (see *Mardosai v. Lithuania*, no. 42434/15, § 55, 11 July 2017, and the cases cited therein).

112. In this connection, the Court also refers to the Lanzarote Convention, which requires the States Parties to ensure that investigations and criminal proceedings in cases concerning sexual offences against children are treated as a priority and carried out without any unjustified delay (see paragraph 74 above). According to the Explanatory Report to that convention, the excessive length of proceedings may be understood by the child victim as a denial of his or her testimony or a refusal to be heard and could exacerbate the trauma which he or she has already suffered (see paragraph 75 above).

113. Accordingly, the Court finds that, overall, the length of the domestic proceedings was attributable to the authorities, and that, as a result, those proceedings did not comply with the requirement of promptness and reasonable expedition under Article 3 of the Convention.

114. Moreover, that was not the only shortcoming which undermined the quality of the investigation and, as a result, its overall effectiveness.

115. In particular, the Court cannot disregard the fact that the applicant had to undergo several examinations aimed at determining the injuries which he had sustained as a result of the assault: after his initial hospitalisation (see paragraph 5 above), he was examined in person on at least two further occasions by different doctors and experts (see paragraphs 10, 24 and 25 above), and more than three years after the assault he had to submit to a psychological and psychiatric assessment (see paragraph 34 above). The Court notes that the Lanzarote Convention and the relevant EU Directives contain a requirement to limit the number of interviews with child victims of sexual assault and to keep medical examinations to a minimum to avoid forcing them to relive the events they have suffered and thus causing additional trauma and secondary victimisation (see paragraphs 74-77 above). Accordingly, the Court considers that requiring the applicant to undergo several medical examinations because of the failure of previous experts to provide duly reasoned and comprehensive reports (see paragraph 106 above), as well as requiring him to undergo a psychological assessment several years after the impugned events because the authorities had omitted to order such an assessment at an earlier stage of the proceedings (see paragraph 110 above), risked causing him additional trauma and was therefore incompatible with the State's obligation to have the child's particular vulnerability and corresponding needs adequately addressed (see *X and Others v. Bulgaria*, cited above, § 192, and *N.Ç. v. Turkey*, no. 40591/11, § 111, 9 February 2021).

116. The Court next turns to the applicant's argument that the punishment given to R.V. was too lenient. It reiterates that matters of appropriate sentencing fall in principle outside the scope of the Convention; it is not the Court's role to decide, for example, what is the appropriate term of detention applicable to a particular offence (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 55, 24 January 2017, and the cases cited therein). However, it also reiterates that in order for the procedural obligation under Article 3 of the Convention to be fulfilled, the national courts should not under any circumstances be prepared to allow grave attacks on physical and mental integrity to go unpunished, or for serious offences to be punished by excessively light punishments (see the relevant general principles cited in paragraph 97 above; see also in paragraphs 74 and 76 above the requirement enshrined in the Lanzarote Convention and the EU Directive to ensure that sexual crimes against children are punishable by effective, proportionate and dissuasive sanctions). Accordingly, the Court must examine whether the

sentence given to R.V. could be considered manifestly disproportionate to a breach of one of the core rights of the Convention (see *Sabalić*, cited above, § 98 (iii), and the cases cited therein).

117. In the light of the aforementioned limits of its role (see paragraph 116 above), the Court considers that the main issue in the present case is not the length of the prison sentence issued to R.V. (three years) but the fact that the execution of that sentence was suspended. It observes that the decision to suspend the sentence was based, at least in part, on the length of the proceedings (see paragraph 47 above).

118. While the States' procedural obligation under Article 3 of the Convention cannot be interpreted as requiring that those who commit or attempt to commit sexual assault must, in every case, serve a custodial sentence (see, *mutatis mutandis*, *ibid.*, § 97, and the cases cited therein), the Court considers that, in order not to create a sensation of impunity and to ensure effective deterrence of sexual crimes, in particular those committed against minors, a decision to suspend a prison sentence issued in respect of such a crime must be duly reasoned.

119. In the present case, the Court observes that the obligation for the courts to give reasons for a decision to suspend the execution of a sentence is also laid down in the case-law of the Supreme Court (see paragraphs 69 and 70 above).

120. The applicant contended that the domestic courts had not provided adequate reasons justifying their finding that the aims of the punishment could be achieved without R.V. serving the three-year prison sentence which had been imposed on him (see paragraphs 48 and 85 above). The Court shares the applicant's view, for the reasons provided below.

121. It observes that while the Kaunas Regional Court stated that the decision to suspend the execution of a sentence had to have regard to the circumstances in which the criminal offences in question had been committed and the convicted person's character, it did not provide any explanation as to which circumstances of the commission of the crime or which aspects of R.V.'s character justified the decision to suspend the sentence (see paragraph 47 above). In his appeal to the Supreme Court, the applicant argued that R.V.'s actions deserved a severe punishment, in particular because the applicant had been a minor, the assault had taken place in the presence of his two-year-old brother, and R.V. had a previous criminal conviction (see paragraph 48 above). However, the Supreme Court did not address those arguments (see paragraph 50 above). Moreover, none of the courts appeared to take into account the fact that the attempted rape had taken place in the applicant's home, where he was supposed to feel safe, and that R.V. was a member of his extended family (see, *mutatis mutandis*, *Söderman v. Sweden* [GC], no. 5786/08, § 86, ECHR 2013). In that connection, the Court notes that, in accordance with the relevant international instruments, the fact that the offence was committed by a family member or a person cohabiting with

the child should constitute a circumstance aggravating the perpetrator's responsibility (see paragraphs 74-76 above).

122. The Court also takes note of the fact that R.V.'s request to be conditionally released from criminal liability was rejected by the courts on the grounds that he had admitted his guilt only in part, his statements during the criminal proceedings had been inconsistent and he had not paid the applicant any compensation in respect of non-pecuniary damage (see paragraph 40 above). However, the courts did not address the relevance of those same circumstances when reaching the conclusion that the aims of the punishment could be achieved without R.V. serving his sentence.

123. Accordingly, the Court is unable to find that the domestic courts provided adequate and convincing reasons to justify the suspension of R.V.'s sentence on account of the circumstances of the commission of the crime, his character or any other penological grounds. In such circumstances, the Court can only conclude that the length of the proceedings played a significant role in the courts' decision to suspend the sentence. It has already found that that length was mainly attributable to the domestic authorities (see paragraph 113 above).

124. The Court acknowledges that the mitigation of a sentence or its suspension on the grounds of the excessive length of proceedings may constitute appropriate means of redress of a violation of the right of an accused to have the criminal charges against him or her decided within "a reasonable time", guaranteed under Article 6 § 1 of the Convention (see also the case-law of the Supreme Court in paragraph 73 above). However, in the present case, it was not argued either in the course of the domestic proceedings or in the proceedings before the Court that a suspended sentence had been called for in order to secure R.V.'s rights under Article 6 § 1. While the Court emphasises that it is not its role to interfere with the domestic courts' choice of punitive measures, in the present case it is unable to find that the decision to suspend R.V.'s sentence was taken following a careful scrutiny of all the relevant considerations related to the case (see, *mutatis mutandis*, *Smiljanić v. Croatia*, no. 35983/14, § 90, 25 March 2021), such as the age and state of vulnerability of the victim (the applicant), the circumstances in which the attack had occurred (see paragraph 4 above), the family relationship between the applicant and R.V. and the latter's position of authority over the applicant (see the relevant international documents in paragraphs 74-77 above), and the consequences of the attack on the applicant's physical and mental health (see paragraphs 34 and 39 above).

125. The Court is mindful of the fact that the suspension of a custodial sentence and release on probation can be a useful means of altering the perpetrator's behaviour and ensuring more sustainable protection for the victim (see *Irene Wilson*, cited above, a case which was examined under Article 8 of the Convention; see also the case-law of the Lithuanian Supreme Court in paragraph 73 above). However, in the present case, the domestic

courts did not impose on R.V. any of the obligations provided for in the Criminal Code to that effect, such as, for example, to apologise to the applicant, to participate in behaviour correction programmes, not to contact the applicant or not to go to his home (see paragraph 63 above). Instead, R.V. was ordered to pay EUR 1,000 to a State fund for supporting victims of crime; it also appears from the Government's submissions that he had to contact his probation officer by email once every two weeks and to meet the officer in person once every two months (see paragraph 93 above). In the Court's view, such a sanction could not be considered proportionate to the breach of one of the applicant's core rights under the Convention: it could not be considered to have the necessary deterrent effect in order to prevent such violations in the future, or to be perceived as just by the victim (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 60-63, 20 December 2007, and *Zontul v. Greece*, no. 12294/07, § 107, 17 January 2012).

126. In that connection, the Court notes that the relevant Lithuanian law has since been amended to exclude the possibility of having a sentence suspended where crimes of a sexual nature have been committed (see paragraph 64 above).

127. Lastly, although the applicant was awarded EUR 6,000 from R.V. in respect of non-pecuniary damage (see paragraph 42 above), the Court reiterates that effective deterrence against serious acts such as intentional attacks on the physical integrity of a person, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Accordingly, an award of compensation cannot be regarded as sufficient for the fulfilment of a Contracting State's obligations under Article 3 of the Convention in cases such as the present one (see, *mutatis mutandis*, *Pulfer v. Albania*, no. 31959/13, § 71, 20 November 2018, and the cases cited therein).

128. In the light of the foregoing considerations, bearing in mind what was at stake for the applicant in the proceedings, the length of those proceedings and the punishment given to the perpetrator, the Court concludes that the domestic authorities failed to comply with their procedural obligations under Article 3 of the Convention.

129. There has accordingly been a violation of Article 3 of the Convention under its procedural head.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

131. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

132. The Government submitted that that claim was excessive and unsubstantiated.

133. The Court has no reason to doubt that the violation of the procedural limb of Article 3 of the Convention found in the present case caused the applicant distress and anxiety. However, it considers the amount claimed by the applicant to be excessive, particularly in view of the fact that he was awarded compensation in respect of non-pecuniary damage in the domestic proceedings (see paragraph 42 above and, *mutatis mutandis*, *Selami and Others v. the former Yugoslav Republic of Macedonia*, no. 78241/13, § 108, 1 March 2018). Having those considerations in mind and making its award on an equitable basis, the Court awards him EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

134. The applicant also claimed EUR 605 in respect of costs and expenses incurred before the Court. He provided an invoice issued by his lawyer and documents showing that he had paid that amount to the lawyer.

135. The Government submitted that the documents provided by the applicant did not indicate the number of hours of legal services provided or the hourly rate charged by the lawyer, and that it was therefore impossible to determine whether those expenses had been actually incurred. They asked the Court to reject this claim.

136. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court grants the claim in full and awards the applicant EUR 605 under this head, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural head;

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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 605 (six hundred and five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge F. Krenc joined by Judge P. Koskelo is annexed to this judgment.

A.B.
D.V.A.

CONCURRING OPINION OF JUDGE KRENC
JOINED BY JUDGE KOSKELO

1. I fully agree with the finding of a violation of Article 3 of the Convention in the present case because of the excessive length of the national proceedings.

2. However, this finding of a violation relies on a second ground, namely the decision of the Kaunas Regional Court to suspend the execution of the prison sentence imposed on R.V. (see paragraphs 116-127 of the judgment). The Court has taken the view that in ruling as they did, the national courts failed to comply with their procedural obligations under Article 3 of the Convention.

I wish to express some reservations about this approach.

3. At the outset, I would like to reiterate that it is of the utmost importance that the national authorities take effective measures in response to sexual assaults on minors (see *O’Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014 (extracts)). Article 3 is one of the most important provisions of the Convention and is closely linked to respect for human dignity. There cannot be any ambiguity on this point and it is something on which I wish to be absolutely clear.

4. That being stated, I am nevertheless quite reluctant to see the Court, as an international body, become deeply involved in a review of the severity of a criminal sentence imposed by domestic courts. Although such assessments by the Court are not new and can be found in previous judgments, I feel somewhat uncomfortable with this approach which, in my view, raises several questions that cannot be overlooked.

5. The first, and by no means the least, relates to the Court’s role and the scope of its review. As a matter of principle, it is not for the Court to decide on perpetrators’ criminal liability. Nor can it determine, from Strasbourg, the appropriate sentence an offender should receive. Sentencing is primarily the task of the national criminal courts, which are better placed than the Court to assess all the relevant evidence in the criminal file (in particular pertaining to the gravity of the offence, the vulnerability of the victim, the convicted offender’s character and criminal record, and the risk of reoffending).

6. In the present case, I am all the more reluctant to diverge from these principles as it seems difficult to argue that the national authorities intended to allow the offence committed against the applicant to go unpunished. This leads me to set the present case apart from the many others in which the national authorities failed to investigate, allowed the perpetrators of serious attacks against a person’s physical or psychological integrity to enjoy impunity, or refused to award any compensation to the victims (compare, for instance, *Valiulienė v. Lithuania*, no. 33234/07, 26 March 2013).

7. According to the Court’s case-law, the procedural obligation under Article 3 of the Convention requires instituting and conducting an

investigation capable of leading to the establishment of the facts of the case and of identifying and – if appropriate – punishing those responsible for an offence (see *S.M. v. Croatia* [GC], no. 60561/14, § 313, 25 June 2020, which summarises the converging principles of Articles 2, 3 and 4 of the Convention; see also *M. and C. v. Romania*, no. 29032/04, §§ 107-11, 27 September 2011). In *M.C. v. Bulgaria*, the Court held that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution (*M.C. v. Bulgaria*, no. 39272/98, § 153, ECHR 2003-XII).

In the present case, neither the opening of the investigation, nor the decision to prosecute, nor the conduct of the criminal trial, were in issue. Nor has the Court called into question the amount awarded to the applicant in compensation (compare *D.M.D. v. Romania*, no. 23022/13, 3 October 2017, where no compensation was awarded to the victim). Focused as it is on the sentence passed by the national courts, the Court’s review is of a higher order.

8. In this connection, we cannot overlook the fact that the suspension of the execution of the prison sentence was decided and justified on appeal in large part because of the excessive length of the proceedings (see paragraph 47 of the judgment). It hardly needs reminding that Article 6 of the Convention enshrines the right for an accused person to be tried within a reasonable time. On this point, the Court has previously found that the length of the proceedings could be taken into account to grant a significant reduction of the sentence (see *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 186, ECHR 2006-V; see also *Tempel v. the Czech Republic*, no. 44151/12, § 78, 25 June 2020).

The Court, like the domestic courts, must read the Convention “as a whole” (see, in another context, *Mihalache v. Romania* [GC], no. 54012/10, § 92, 8 July 2019). There is however a notable difference between the Court and the national courts as to the scope of the analysis. The case before the Court was brought solely by the applicant, who was the victim in the domestic proceedings (the perpetrator was not a party to the Strasbourg proceedings), whereas the national courts had tried the criminal case involving all the relevant parties (accused, prosecutor and victim) and had therefore been required to take into account all the competing rights and interests under the Convention. The national courts’ duty to take all the different perspectives into consideration is a point we would do well to keep in mind.

Despite its cardinal nature, Article 3 of the Convention cannot limit the effective protection of an accused person’s rights under Article 6. The same applies to the right to a reasoned court decision or the right to be tried by an independent and impartial tribunal, none of which are affected by the competing obligation to secure the rights guaranteed under Article 3.

While this certainly does not mean that the excessive length of criminal proceedings should lead to impunity for the accused, it is nonetheless

something to which national courts may – and indeed must – give due consideration when sentencing.

9. That being stated, the suspension of a custodial sentence may be justified not only on grounds relating to a breach of the reasonable time requirement, but also on penological grounds.

In the present case I note that Article 75 § 1 of the Criminal Code, as in force at the relevant time, provided that the execution of a sentence could be suspended where the court found that there were sufficient grounds to believe that the aims of the punishment would be achieved without the person actually serving the sentence (see paragraphs 61 and 72 of the judgment). According to the case-law of the Supreme Court (see paragraph 72 of the judgment), “the suspension of the sentence was an exceptional form of criminal liability and it ought to be applied only when the entirety of the circumstances of a case left no doubt that a prison sentence did not need to be actually served”.

In this connection, while the Court’s duty is to stress that sexual offences affect the victim’s human dignity, especially when minors, as vulnerable people, are involved, we should avoid creating the impression that a prison sentence is the only appropriate response in the light of the Convention, or even the best means of achieving its values and purposes (see for instance *Irene Wilson v. the United Kingdom* (dec.), no. 10601/09, 23 October 2012). In my opinion, effective protection under Article 3 of the Convention cannot be interpreted as requiring, as such, that the offender be put in gaol.

10. This brings us to the crucial question of the aims of a criminal sentence.

In this regard, I would like to emphasise that the choice of the sentence cannot be separated from the aim of deterring future crime, with a view to the protection of society. Contracting States are indeed bound by a positive obligation to take all the necessary measures to ensure that individuals within their jurisdiction are not subjected to acts contrary to Article 3, including ill-treatment administered by private individuals (see *M.C. v. Bulgaria*, cited above, § 149; *O’Keeffe v. Ireland*, cited above, § 144). This is not an option, but an obligation. Children and other vulnerable individuals, in particular, are entitled to specific protection (see *M. and C. v. Romania*, cited above, § 108). The suspension of a custodial sentence cannot undermine the duty of protection.

It is therefore incumbent on the national authorities to decide in each case on the most appropriate measure to comply with the competing requirements under the Convention, considered as a whole.

11. Lastly, the present judgment’s reasoning as to just satisfaction under Article 41 of the Convention could, in my view, serve to exacerbate confusion surrounding the proper role of the Court in such cases.

I fully agree with the compensation of EUR 8,000 awarded to the applicant in respect of the non-pecuniary damage he sustained.

However, to justify this amount, the Court takes into account “the fact that [the applicant] was awarded compensation in respect of non-pecuniary damage in the domestic proceedings” (see paragraph 133 of the judgment). I am afraid the Court is conflating two different kinds of compensation here. The compensation to which the judgment refers in this second instance is the sum of EUR 6,000 paid to the applicant by R.V. in reparation for the offence of which he was convicted (see paragraph 42 of the judgment). Just satisfaction under Article 41 of the Convention, however, concerns compensation of a wholly different nature, namely the amount that a Contracting State is required to pay the applicant in respect of a violation of the Convention.

Again, what is in issue before the Court is not R.V.’s individual (criminal or civil) liability – which is a matter for the domestic courts –, but the respondent State’s international responsibility under the Convention.