



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

SECOND SECTION

CASE OF N.Ö. v. TÜRKİYE

(Application no. 24733/15)

JUDGMENT

Art 8 • Positive obligations • Private life • Domestic courts' failure to respond adequately to applicant's allegations of having been sexually assaulted at her workplace by her supervisor and to subject the case to the careful scrutiny required • Failure to explore means available to establish case-circumstances and sufficiently assess the credibility of different versions of events • Reliance on applicant's delay in reporting the assault without giving reasons • Investigation of sexual offences might require a context sensitive assessment specific to the facts of a case and not stereotypical assumptions or thinking about how a sexual violence victim should behave • Domestic courts required to consider relevance of the complaint's timing within the context of other evidence

Prepared by the Registry. Does not bind the Court.

STRASBOURG

14 January 2025

FINAL

30/06/2025

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

In the case of N.Ö. v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Pauliine Koskelo,

Jovan Ilievski,

Davor Derenčinović,

Gediminas Sagatys,

Stéphane Pisani, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 24733/15) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Ms N.Ö. (“the applicant”), on 29 April 2015;

the decision to give notice to the Turkish Government (“the Government”) of the complaint concerning Articles 8 and 14 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 3 December 2024,

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

INTRODUCTION

1. The case concerns an alleged violation of Article 8, taken alone or in conjunction with Article 14 of the Convention, on account of the domestic courts’ taking into consideration (in arriving at their respective judgments) the applicant’s delay in reporting a sexual assault allegedly committed by her supervisor against her.

THE FACTS

2. The applicant, Ms N.Ö., is a Turkish national who was born in 1978 and lives in Ankara. The President granted the applicant’s request for her identity not to be disclosed to the public (Rule 47 § 4). She was represented before the Court by Ms H. Yılmaz Kayar, a lawyer practising in Istanbul.

3. The Government were represented by their then Agent, Mr Hacı Ali Açıkgül, the former head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

5. The applicant is a dentist. At the time of the events giving rise to the instant application, she was working at a hospital in Ankara (“the hospital”).

6. On 8 March 2012 she lodged a written complaint with a public prosecutor against Mr M.Y., the Chief Medical Officer of the hospital, alleging that he had sexually assaulted her. She submitted that she had started working at the hospital in 2009 and that M.Y. had developed an interest in her, frequently summoning her to private meetings. In those meetings he had mentioned that he knew that the applicant was a divorcee who had survived a difficult marriage and that he could help her with any problems she might have, hinting to her that she, being a single woman, would need a man in her life. Even though she had told him to cease his inappropriate behaviour and had not returned his persistent telephone calls, he had continued to make such advances. Having found her home address through employee records, he had also attempted to invite himself to her home by telephoning her late in the evening and mentioning that he was in her neighbourhood. On a date the applicant could not recall in July 2010, M.Y. had rung her doorbell. She had opened the door but had told him that she could not receive him. As she had been closing the door, M.Y. had put his foot in the door had forced himself into her home. He had said that he was upset that she was not answering his phone calls, and had threatened that things would not go well for her if she persisted in her attitude. He had then told her that he was unhappy in his marriage and that there were certain things that he could not do with his wife. With that, he had unbuttoned his trousers and had asked the applicant to perform oral sex on him. When she had refused, he had held her head tight and had forced his penis into her mouth. When she had resisted and tried to rise to her feet, he had held her tightly and had ejaculated onto her tracksuit top. He had then used the bathroom, and then left.

7. The applicant submitted in her complaint that she had felt unable to come forward with a complaint immediately after the attack because she had feared retaliation and had felt both helpless and conscious of the prevalent societal and cultural attitudes towards victims of sexual harassment. She went on to add that the psychological help she had sought, together with the positive developments regarding women’s rights in recent years, had given her the courage to finally come forward with her complaint. She attached to her complaint an expert report dated 6 February 2012 (issued by Istanbul University’s forensic medicine department), which she had commissioned herself. Lastly, she submitted that M.Y. was trying to influence witnesses who were willing to corroborate her version of the events in question. She asked that she be afforded protective measures both at work and outside of work.

8. The report of 6 February 2012 contained the following findings: the applicant had been seen on 28 and 29 December 2011 by a psychiatrist, who had diagnosed her with post-traumatic stress disorder, severe depression and dysthymic disorder (that is, depressive disorder). The mental trauma

diagnosed in the applicant corresponded to the type of verbal and psychological violence at the workplace and the sexual attack recounted by the applicant.

9. On 9 March 2012 the public prosecutor launched an investigation into the incident. In the course of her investigation, she took a statement from the applicant on 16 March 2012, and asked M.Y. to give a statement; he indicated that he would submit his statement in writing.

10. In the written statement that he submitted to the public prosecutor on 29 March 2012, M.Y. denied the allegations against him. According to his statement, he had developed a friendship with the applicant shortly after she had started working at the hospital. For instance, they would go to lunch together – sometimes alone and sometimes with other colleagues. It had been the applicant who had told him about her divorce and personal issues related to that. They had exchanged telephone numbers and had telephoned each other outside of work, as well as during working hours. On 3 April 2010, when he had been visiting his family in Samsun, the applicant had telephoned him. He had told her that he was sick and could not drive himself back to Ankara in that condition. That night, the applicant had texted him and had told him that she had come to Samsun and would stay overnight at a Teachers' Inn (*öğretmen evi* – a State-subsidised temporary accommodation for teachers and other civil servants) and that they could drive back together to Ankara the next day. He had accepted her offer and they had driven back with her car the following day. Upon their arrival in Ankara, the applicant had invited him to her apartment. Once they had entered her apartment, she had begun to make sexual advances towards him, telling him how much she admired him. They had begun to engage in sexual activity, which was entirely consensual. However, when she had indicated that she wanted to have full sexual intercourse, he had refused, telling her that it would be wrong for him to go further as he had a family and a wife. The applicant had become visibly upset after his rejection. The next day she had come to his office and threatened to publicly humiliate him. From that day on, she had been slandering him, telling colleagues that he had tried to force himself on her. She had written letters to government ministers complaining about him – all because he had rejected her.

11. In his statement M.Y. argued that the applicant's behaviour and allegations had been "against the ordinary course of life" (*hayatın olağan akışına aykırı* – that is, the normal course of events). To begin with, she had acted inconsistently by waiting two years before lodging a complaint with the public prosecutor – even though she had immediately made allegations against him to his superiors at work. Moreover, a woman with a university education and the status of a dentist would not have remained silent if the allegations were indeed true. Furthermore, although the applicant had alleged that the incident had taken place sometime in July 2010, she had continued to socialise with his wife after that date. For instance, in March 2011, together

with some of his colleagues from the hospital, she had gone to a brunch with his wife – not, in his view, behaviour normally associated with someone suffering from traumatic events inflicted on her by that person’s husband.

12. M.Y. further requested the public prosecutor to obtain the hotel records of the “Teachers’ Inn” in Samsun between 3 and 4 April 2010 and to examine the HTS (“historical traffic search”) records pertaining to his and the applicant’s respective mobile telephone numbers. He also requested that certain individuals working at the hospital be heard as witnesses. Lastly, he noted that as a result of the applicant’s complaint, he had been removed from his position as Chief Medical Officer of the hospital as of 16 March 2012.

13. The applicant submitted an additional statement to the public prosecutor in response to M.Y.’s statements. She stated that it was not true that she had gone to Samsun to see M.Y. In fact she had registered to attend a medical conference and had informed M.Y., as her supervisor, that she would be attending the event on 4 April 2010. M.Y. had gone to Samsun on the pretext of visiting his family and had called her on the morning of 4 April to tell her that he had fallen ill and to request her to drive him back to Ankara. Although the applicant had tried to refuse, M.Y. had insisted in his request, telling the applicant that her priority should be to help her superior and not to attend the conference. She therefore had to comply. When they had arrived in Ankara, M.Y. had wanted to talk a little bit in the car and had made her feel uncomfortable by telling her about problems in his marriage and even insinuating to the applicant that she needed a man in her life to satisfy her sexual needs. She had immediately got out of the car, making it clear to M.Y. that she was uncomfortable with that kind of talk. M.Y. had called the applicant on her mobile phone several times that day, but the applicant had not answered any of his calls. When she had returned to work the next day, M.Y. had tried to apologise, and a few days later had started to act as if nothing had happened.

The applicant also noted in her statement that she knew M.Y.’s wife and she had spent time with her on a few occasions. After the incident in July, she had not contacted M.Y.’s wife. Before that incident they had exchanged text messages concerning an event to be held in aid of an organisation that provided maths lessons to children – something they had discussed before the above-mentioned incident. She had also seen M.Y.’s wife in the context of a brunch organisation that met regularly, but she had not gone to any such meeting specifically accompanied by her, as it was an organisation arranged by the hospital and attended by around 200-300 people. In any event she had nothing against M.Y.’s wife and she did not blame her or her children for M.Y.’s actions.

14. The public prosecutor also took statements from witnesses, whose names had been provided to him by the applicant and M.Y., respectively. None of the witnesses testified to having witnessed any instance of abuse of

office or sexual assault (either physical or verbal) directed towards the applicant by M.Y.

15. On 17 July 2012 the public prosecutor issued a decision not to prosecute M.Y. She based that decision on the finding that there was no evidence to bring charges against M.Y. except for the applicant's allegations. In the prosecutor's view, the applicant, who was an educated adult with her own social circle, had been in a position to fend off unjust (*haksız*) attacks against her. Therefore, the fact that she had only come forward with her complaint two years after the alleged incident was not reasonable and "against the normal course of life".

16. The applicant lodged an objection with the Sincan Assize Court against the decision of the public prosecutor, arguing, *inter alia*, that the investigation carried out by the prosecutor had been incomplete and superficial, given that the conclusions of the public prosecutor had been based on the statement given by the suspect and on the subjective assumption that a woman of the applicant's stature would have been in a position to resist the assaults and would have come forward sooner than two years after the alleged incident. She also complained that the public prosecutor had failed to adduce evidence aimed at establishing the facts of the case, such as records of telephone calls between her and the suspect. Moreover, the investigator had also ignored a forensic report (commissioned by the applicant herself) dated 14 May 2012 issued by the Forensic Medicine Department of the Ankara University, according to which DNA analysis had confirmed that the stain on the applicant's clothing had borne traces of semen. The public prosecutor had failed to take a DNA sample from M.Y. and to order a DNA analysis comparing his DNA with that of the stain found on her tracksuit.

17. In a decision of 28 December 2012 the Sincan Assize Court set aside the decision of 17 July 2012 not to initiate criminal proceedings against M.Y., noting, *inter alia*, that the investigation carried out by the prosecutor had been incomplete in so far as the applicant's and M.Y.'s respective HTS records had not been examined and in view of the forensic expert report contained in the case file, which indicated that there was sufficient suspicion to justify bringing criminal charges against the suspect.

18. As a result of the Assize Court's ruling, on 3 April 2013 the public prosecutor filed a bill of indictment with the Ankara Assize Court against M.Y., charging him with sexual assault by penetration and abuse of his position under Article 102 of the Criminal Code. The applicant joined the proceedings in her capacity as a complainant.

19. The trial court held hearings from 8 May to 23 October 2013. As the applicant did not want to give oral evidence at the trial, the court accepted her request – despite M.Y.'s objections – that her original complaint and the previous statement that she had given to the public prosecutor be read out to the court.

20. As for M.Y., he testified before the court that the applicant had come to Samsun when he had been there to visit his family, and that they had returned to Ankara together. Upon his arrival, the applicant had invited him to her apartment and had prepared some drinks and snacks. They had started to talk and she had made sexual advances towards him, telling him that she liked him and that this was the reason she had come to Samsun. She had unzipped his trousers and had masturbated him with her hand, causing him to ejaculate. She had then brought him a pair of tracksuit bottoms that belonged to her former husband. They had continued to talk for a while, and then she had wanted to have full sexual intercourse, at which point he had refused, telling her that it would be wrong for him to go any further as he had a family and a wife. He added that the allegation that he had forced his penis into her mouth and ejaculated seconds later was irrational. No man would risk forcing his penis into someone's mouth without the support of a "threatening element" (*tehdit unsuru*), such as a weapon.

21. In the course of the proceedings the trial court heard a number of character witnesses and examined the medical reports submitted by the applicant.

22. None of the witnesses made any observations regarding the alleged sexual assault. Sixteen of the witnesses were called by the defence: one of them was the accused's wife and the remaining fifteen were individuals working at the hospital or friends of M.Y. from university. One of those witnesses, who worked in the IT department, stated that the applicant had asked her to testify for her in writing and to support her allegations of sexual assault against the accused; the witness added that the applicant had threatened to blacken her name if she did not do so. That witness told the court that she had no knowledge of the incident and would not therefore testify for or against either the applicant or the accused. Another witness who had worked for two years as a secretary to the accused told the court that the applicant and her lawyer had taken her to lunch one day and asked for her help. She had written certain things in anger on a piece of paper that day and even though she had asked the applicant not to use that information, she had used it against the accused. Another witness who was a doctor working at the hospital (as the doctor serving the healthcare needs of the workplace staff) noted that the applicant had been using antidepressants at the time in question and that she had been suffering from personal problems on account of her divorce. She noted that the applicant appeared to have a close relationship with the accused's wife. On one occasion, the witness recalled that the applicant had driven her, another female colleague and the accused to a colleague's wedding. That night, the applicant had reacted rather strangely when the accused had offered to lend his jacket to the female colleague, who had been feeling cold. The applicant had not been happy about it, and that unhappiness had been reflected in her behaviour. The witness added that she

remembered thinking at the time that one would normally only act in such a way with one's spouse.

23. Another witness, who worked as a dentist at the hospital, testified that sometime in February 2010 she, the applicant and M.Y. had gone to a social event together in the applicant's car. In May 2010, the applicant had taken her and the accused's wife and children to the "Turkish Olympic Games". The witness stated that she was no longer on speaking terms with the applicant due to a dispute that had occurred between them. Sometime in 2011 she had seen the applicant with the accused's wife at a brunch event. The accused had not been there.

24. The accused's wife testified before the court that she and the applicant had been close. The applicant had been warm towards her and the children. They had even gone on a trip together. They had also attended the 2010 "Turkish Olympic Games" together. In June 2011, she had suffered a heart attack, and the applicant had frequently visited her in hospital.

25. The remaining witnesses did not make any observations regarding the relationship between the applicant and M.Y.

26. Six witnesses were called by the applicant. One of those witnesses was a security guard who had worked at the hospital between 2008 and 2011. He submitted that the accused had punished another male security guard for standing with his hands in his pockets, whereas he had not taken any action when he had seen a female security guard who had fallen asleep while on duty. He also submitted that he had seen the accused in the parking lot teaching his secretary how to drive a car at a late hour of the evening. Another witness, who worked at the finance department at the hospital, told the court that sometime in April 2010, he had stopped by the applicant's office for a work-related reason and that while he had been there the accused had entered her office. The applicant had offered both of them a piece of fruit. The accused had replied to her that her offering a piece of fruit was a "turn on" – especially given that she was wearing a miniskirt. He had then added that he would break her legs if he ever saw her wearing a miniskirt again.

27. Another witness, who worked as a janitor at the hospital, told the court that, after the year 2009, there had been a dramatic change in the applicant's mood. She had previously been an outgoing and happy individual, but then in 2010 the witness had often seen the applicant crying or close to tears, and that most of the time she had looked depressed. Her nose would bleed quite often, and she had usually been upset and anxious. The witness also said that the applicant had told her about the above-mentioned incident in the applicant's flat.

28. Another witness called by the applicant (a friend from university) testified that the applicant had spoken to her on the phone about the above-mentioned alleged incident – specifically, that the accused had forcibly entered her apartment, forced himself on her and then ejaculated on her. She stated that the applicant had asked for her support and had told her that she

(the applicant) planned to report the incident to the authorities. Another witness called by the applicant (also a friend from university) testified that he had first heard about the alleged incident through the news media. When he had asked the applicant about it, she had told him that M.Y. had entered her apartment one night by force and had touched, groped and tried to hug her. She had told him that no other form of sexual activity had taken place. The witness added that the applicant had told him that after the incident M.Y. had told her that if she let the matter rest and did not talk about it, she could get any position she wanted within the Ministry of Health.

29. The applicant submitted for the court's examination the above-mentioned report dated 6 February 2012 which she had commissioned herself and the aforementioned forensic report dated 14 May 2012 issued by the Forensic Medicine Department of the Ankara University, which had concluded that the stain on the "black piece of fabric" given to them for analysis by the applicant was semen. However, the report further stated that it had not been possible to carry out a DNA analysis comparing the suspect's DNA profile and the material found on the fabric because a sample of the suspect's DNA had not been available. In an application lodged with the court on 27 May 2013, the applicant requested that the trial court (a) to order a DNA test to determine whether the accused's DNA matched the semen on the above-mentioned cloth, (b) to secure the HTS records of telephone calls between herself and the accused, (c) to obtain the CCTV footage taken by cameras around the hospital for the relevant period until the lodging of the criminal complaint and (d) to obtain medical reports and information concerning the applicant from the psychiatric clinic at which she was being treated.

30. During the hearing of 30 May 2013 the trial court refused the applicant's request for the carrying out of an analysis comparing M.Y.'s DNA and that left on the stained cloth, and her request that the court obtain the hospital's CCTV footage. On the other hand, the court decided to obtain from the relevant telecommunications office the applicant's and M.Y.'s mobile telephone HTS records.

31. The trial court obtained reports and information from the psychiatric clinic in which the applicant was being treated. According to a report held by that clinic, the applicant had first come for a consultation in December 2012 complaining of depression, a pessimistic outlook and a tendency towards intolerance. According to her, she had been the victim of psychological violence at work since 2009 and had been assaulted sexually in 2010. The clinic diagnosed the applicant with trauma-related stress disorder and prescribed her medication. She attended appointments with a physician every one or two months.

32. The trial court requested that the applicant be examined by the Department of Psychiatry at Hacettepe University with a view to determining the state of her physical and mental health. Accordingly, the applicant was

examined by a panel of doctors, who stated in a report dated 27 August 2013, that the applicant's physical health had not been affected by the alleged incident. She was in a mildly depressed state. She did not suffer from problems relating to her attention span or memory and she did not suffer from delusions or hallucinations. The report concluded that the applicant had developed post-traumatic stress disorder and depression after the alleged incident and that those conditions were not connected to any other factor than the sexual assault in question. Her mental health had been permanently impaired.

33. At the hearing of 23 October 2013, both the applicant and M.Y. raised objections alleging that the HTS records were incomplete because no data had been obtained concerning the period between July 2009 and August 2010; accordingly, they both requested the trial court to request again and obtain from the telecommunications departments the records pertaining to that period. The trial court refused that request.

34. In a decision of 13 November 2013, the trial court acquitted M.Y. for lack of sufficient evidence. In its reasoning it noted that the accused had denied the applicant's allegations, stating that the incident in question had taken place consensually in the applicant's own home, whereas the applicant had maintained that she had been forced to perform the above-mentioned actions. According to the trial court, it could be seen from the witness accounts that the applicant and the accused had interacted within the context of an employee-manager relationship and that they had also been present at the same social events held away from the workplace. It was therefore likely that they had cultivated some kind of relationship; however, it was not possible to determine the extent of that relationship from the witness accounts. The court further took note of the findings detailed in the forensic report of 6 February 2012 (see paragraph 8 above) and medical report of 27 August 2013 (see paragraph 32 above). That being so, the trial court concluded that the applicant alleged that the incident had taken place sometime in July 2010. However, she had obtained a forensic report (which she had commissioned herself) only on 6 February 2012, and she had filed a complaint with the public prosecutor only on 8 March 2013 (*sic*) – a considerable time after the alleged date of the incident in question; there was no firm and convincing evidence that M.Y. had committed the act in question by force.

35. Following an appeal lodged by the applicant on 7 July 2014 the Court of Cassation upheld the acquittal, endorsing the conclusions of the trial court.

36. On 18 August 2014 the applicant lodged an individual application with the Constitutional Court, complaining, *inter alia*, that the investigation into the sexual assault that she had suffered had been insufficient, as (i) the forensic examination and expert opinions in the case file had not been adequately taken into account, (ii) the courts had examined the case on the assumption that women who had been victims of sexual assault would report

the offence in question without delay, and (iii) the courts had completely ignored the social reality in this regard – in particular the fact that her attacker had been a manager at her workplace.

37. On 30 September 2014 the Constitutional Court delivered its decision, in which it examined the applicant's complaint from the perspective of Article 8 of the Convention and dismissed it for being manifestly ill-founded. It considered that the applicant's arguments concerned the assessment of evidence and the application of domestic law; it was thus of a fourth-instance nature and should therefore be declared inadmissible, given that the domestic courts' decisions were not arbitrary or contained any manifest error in assessment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CRIMINAL CODE

38. Article 102 of the Criminal Code (Law no. 5237), as in force at the time of the events in question and as referred to in the criminal proceedings at issue, provided that sexual assault was punishable by a term of imprisonment of between two and seven years in duration. If such an assault involved penetrating the victim an organ or another object, it was punishable by a term of imprisonment of between seven and twelve years. If the offender used his or her authority deriving from an employment relationship to commit the act, that would constitute an aggravating factor, and would result in the term of imprisonment being increased by half. Lastly, if the victim's physical or mental health had deteriorated as a result of the assault, the term of imprisonment imposed could not amount to less than ten years.

II. CASE-LAW OF THE COURT OF CASSATION

39. The Government explained that in sexual-offence cases, testimonial evidence in the absence of material evidence carried important weight and had to be assessed in a careful manner. The Government noted that the Court of Cassation had attached particular importance to victims' testimony in its rulings – to the point where a conviction had sometimes been secured on the sole basis of the victim's statement. The Government referred in this connection to a ruling of 18 June 2014 (E. 2012/11711; K. 2014/8291), where the Court of Cassation had quashed an acquittal (i) on the basis of the consistent and sincere testimony that the victim had given during the prosecution stage, and (ii) noting that there had not been any prior animosity between the victim and the accused. The Government went on to explain that the Court of Cassation had also developed criteria to assess the veracity of a victim's testimony. These included: any delay the victim took in lodging a complaint; the nature and the extent of the relationship between the suspect

and the victim up until the commission of the offence in question; the consistency (or lack thereof) of the victim's testimony and whether the victim's account of events was in line with the "normal course of life"; whether there was any animosity or hostility between the victim and the suspect; and whether the victim had had the possibility to resist the attack in question or to call for help. The Government referred in this connection to a ruling of 20 March 2017 (E. 2016/12325; K. 2017/1430), where the Court of Cassation had quashed the conviction by a first-instance court of the assistant headmaster of a school for the offence of sexual abuse of minors. It noted that the suspect had taken disciplinary action against the alleged victims in front of their classmates. According to witness testimony, the pupils concerned had stated more than once that they would make the suspect pay for taking disciplinary action against them. The Court of Cassation noted that: the suspect could not be convicted since there was reasonable doubt that he had not committed the offence in question in view of the fact that the statements given by the pupils concerned had been inconsistent throughout the proceedings; they had lodged a complaint only a long time after the alleged incident; and witness testimony had corroborated the suspect's account that the pupils had had a motive for falsely accusing him of sexual assault, given that they had expressed a desire to take revenge on him.

The Government also referred to a decision of 10 February 2022 (E.2019/14-270; K. 2022/82), where the plenary criminal divisions of the Court of Cassation had quashed a conviction on the basis of the principle of *in dubio pro reo*. That case had concerned a minor who, at the age of fourteen, had told her family that she had been raped by a neighbour when she had been ten years old. She had told her parents of the alleged incident immediately before they had planned to take her for a gynaecological examination because she had gone missing for a night. The victim had told her family that the suspect had, four years previously, invited her and her brothers to gather figs in a nearby garden. They had all followed him to the tree and had started collecting figs with him. After a while her brothers had left and she had been left alone with the suspect. When she had been unable to get down from the tree, the suspect had helped her to get down and had then pushed her against the tree, removed her underwear and inserted his penis into her vagina. She had tried to resist and to escape him, but he had been too strong. After the assault, she had run home crying. The suspect had followed her home and had told her parents that she had fallen off a branch. As she had been very scared, she had at that time been unable to tell anyone what had really happened. The gynaecological exam (to which her parents had taken her) had confirmed that her hymen had been ruptured and that the rupture was not of recent origin. In the criminal proceedings, the victim had been assessed by several psychiatric institutions, which had found that she was suffering from post-traumatic stress disorder and depression – symptoms that corresponded to those exhibited by victims of sexual assault. The suspect had denied the

accusations. The suspect's daughter had testified that the victim came often to the suspect's home with her sister and that she had a boyfriend and did not appear to suffer from any depression as she had a cheerful disposition. An on-site inspection report prepared by an expert had noted that the fig tree where the alleged assault taken place was surrounded by houses and was very close to a road, and that for that reason, if a person were to scream during an attack there, it would be heard very easily by someone close by. On the basis of the above-mentioned factors, the Court of Cassation had deemed that there was no evidence that the suspect had raped the victim and that accordingly – having regard to the principle of *in dubio pro* – the suspect had to be acquitted.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

40. The applicant complained under Articles 6 and 8 of the Convention about the reasoning of the domestic courts – in particular, about their reliance on the timing of her complaint and their failure to take into account the conclusions of above-mentioned medical experts.

41. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 7685/10 and 22768/12, §§ 114 and 126, 20 March 2018, and *Grosam v. the Czech Republic* [GC], no. 19750/13, § 90, 1 June 2023), will examine the complaint from the standpoint of Article 8 of the Convention (see, for a similar approach, *C. v. Romania*, no. 47358/20, § 49, 30 August 2022), which reads as follows:

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

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

A. Admissibility

42. The Government submitted that the applicant's complaint was manifestly ill-founded. However, the Court is of the opinion that the complaint raises complex issues of fact and law, and that it thus cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is further satisfied that it is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

43. The Government submitted that acts of sexual violence against an individual were punishable under the Turkish Criminal Code by a minimum term of imprisonment of five years. Heavier penalties were applicable in the event of aggravating circumstances – for example, if the violence in question had involved penetration or had been committed by means of abuse of authority. The Government therefore considered that the Turkish State had complied with its positive obligation to maintain an adequate legal framework affording protection against acts of sexual violence by private individuals. As regards the procedural obligation to effectively investigate the alleged sexual violence in question, the Government argued that the authorities had reacted to the applicant's allegations of a sexual attack against her by instituting criminal proceedings. During those proceedings, the trial courts had heard numerous witnesses, had obtained records of telephone calls between the applicant and M.Y., had asked the applicant to undergo psychological forensic evaluation, and had taken into account all the other evidence submitted by the parties (including the above-mentioned forensic reports obtained by the applicant on her own initiative). On the basis of all the evidence in the case file, the trial court had ultimately decided to acquit M.Y. because there had been no conclusive evidence with which to secure his conviction. The Government drew attention to the particular difficulties of examining sexual-offence cases and (on the one hand) the careful balance to be struck when there was no forensic evidence to corroborate the version of events given by a complainant and (on the other hand) the need to counterbalance statement-based evidence with the rights of the defence (and in particular that of *in dubio pro reo*). The Turkish courts had therefore developed a set of criteria in order to measure the credibility of complainants' statements against those of the defence. Those criteria were: whether a complainant had delayed in reporting the incident in question; whether he or she had had the possibility of resisting the attack or calling for help; the relationship between the accused and the complainant until the time of the offence; the absence or otherwise of previous hostility between the accused and the complainant; and the consistency of the victim's, perpetrator's and witnesses' accounts. Given the specificities involved in such criteria, a domestic court was in a better position than the Court to assess the evidence and to domestic law.

44. The applicant did not agree that the judicial authorities had complied with their procedural obligations in her case. She argued that the decisive element taken into account by the trial court in acquitting M.Y. had been the delay in her lodging a complaint, which had featured in the reasoning of that court's decision. The applicant also submitted that the trial court had made an error in the dates relating to the substance of the complaint that she had lodged

with the prosecutor; in her view, this demonstrated a lack of diligence and impartiality on the part of that court: specifically, the applicant had *lodged an official complaint with the public prosecutor on 8 March 2012* (that is to say, approximately thirty-two days after Istanbul University had issued the forensic report in respect of her psychological condition); however, *the court had recorded this date as 8 March 2013* and – on the basis of this very error – had considered her actions to have been “delayed”. In the applicant’s view, the courts’ assessment of the nature of the sexual act as consensual (owing to the length of the period that had elapsed between the act in question and the date of her lodging her complaint) had been unlawful, given that the law provided a statutory time-limit for lodging a complaint and that this had not expired in her case. Therefore, the fact that she had in fact availed herself of her rights within that time-limit should not have been used against her. Moreover, the applicant argued that the notion of a delayed complaint went against the realities of sexual offences against women: according to her, it was challenging for most victims of sexual assault to report such an incident to the judicial authorities. Lastly, the applicant maintained her complaint that the courts had failed to properly take into account the above-mentioned expert reports that had deemed her mental suffering to be consistent with the type of trauma experienced by sexual assault victims. Even though the courts had cited those reports in their reasoning, they had failed to draw the proper conclusions from them.

2. *The Court’s assessment*

45. The Court has already held, within various contexts, that the concept of private life within the meaning of Article 8 of the Convention includes a person’s physical and psychological integrity (see, for example, *A and B v. Croatia*, no. 7144/15, § 106, 20 June 2019). Even though the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in effective “respect” for private life, and these obligations may involve the adoption of measures within the sphere of the relations of individuals between themselves (see, for example, *Isaković Vidović v. Serbia*, no. 41694/07, § 58, 1 July 2014).

46. While the choice of the means to be employed to secure compliance with Article 8 within the sphere of protection against acts of individuals is in principle within the State’s margin of appreciation, effective deterrence against serious acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions (see *M.C. v. Bulgaria*, no. 39272/98, §§ 149-152, ECHR 2003-XII). That positive obligation further requires the criminalisation and effective prosecution of all non-consensual sexual acts (see *E.G. v. the Republic of Moldova*, no. 37882/13, § 39, 13 April 2021 with further references).

47. In order to be effective, the investigation must be sufficiently thorough and objective (see *Y. v. Bulgaria*, no. 41990/18, §§ 81-83, 20 February 2020 for a summary of the applicable principles in respect of the adequacy and thoroughness of an investigation). The authorities must take the reasonable measures available to them to obtain evidence relating to the offence in question, such as taking witness statements, obtaining expert reports and gathering forensic evidence (see, among other authorities, *M.N. v. Bulgaria*, no. 3832/06, § 39, 27 November 2012, and *W. v. Slovenia*, no. 24125/06, § 64, 23 January 2014). Any investigation should, in principle, be capable of leading to the establishment of the facts of the case in question and to the identification and – if appropriate – punishment of those responsible for an offence. This is not an obligation of result but of means. While this requirement does not impose an obligation for all prosecutions to result in conviction, or indeed in a particular sentence, the national courts must not, under any circumstances, be prepared to allow physical or psychological suffering to go unpunished (see *X v. Greece*, no. 38588/21, § 69, 13 February 2024).

The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, might be deemed to have submitted the case to careful scrutiny of all the relevant considerations related to the case (see *Vučković v. Croatia*, no. 15798/20, § 52, 12 December 2023). It reiterates, however, that it is not its task to make a new assessment of the available evidence, let alone of the guilt of the suspect.

48. In the present case, it is not disputed that the domestic legal framework prohibited non-consensual sexual acts and provided for the criminal prosecution of those responsible for such acts. The main question for the Court to address is therefore whether the authorities fulfilled their procedural obligation to conduct an effective investigation – in particular, whether the courts conducted a careful scrutiny of all the elements relating to the case.

49. The Court would begin by noting that the domestic authorities faced a difficult task, as they were confronted with two conflicting versions of the events (which had taken place in the past) and little “direct” evidence, such as traces of violence or direct witnesses. As the Court has already held in similar cases, the presence of two irreconcilable versions of the facts calls for a context-sensitive assessment of the credibility of the statements made and for the verification of all the surrounding circumstances (see the above-cited *M.C. v. Bulgaria*, § 181, and *X v. Greece*, § 79). In this connection, where the question of lack of consent is a key issue for the investigation, it follows that the authorities must, *inter alia*, direct their attention to each party’s credibility and the reliability of their statements (see *M.C. v. Bulgaria*, cited above, § 181), and the investigating authorities must form an opinion concerning each party’s credibility and the trustworthiness of their statements (see *I.G. v. Moldova*, no. 53519/07, § 43, 15 May 2012).

50. The Court notes that in the present case the trial court heard a large number of character witnesses, who were called to the court by the accused and the applicant. However, it appears that the court did not subject the testimony of those witnesses to close scrutiny (for example, it did not assess the credibility of their respective accounts and the weight to be given to them) and did not, in any event, draw any meaningful conclusions from them. In this respect the Court observes that in its reasoning the trial court merely noted that the witness testimony demonstrated that the applicant and M.Y. had had some kind a relationship outside of work but that the extent of that relationship could not be determined.

51. The Court further notes that the findings of both the medical reports submitted by the applicant to the court (see paragraphs 8 and 31 above) and the separate expert report ordered by the trial court itself regarding the applicant's psychological assessment (see paragraph 32 above) were likewise summarised in the reasoning of the first-instance court. However, the court did not discuss the findings of the medical experts, and failed to reach a conclusion as to whether and to what extent those findings could be taken as a basis on which to corroborate the applicant's version of the events.

52. Moreover, the trial court placed emphasis on the fact that the applicant had waited a considerable time before reporting the incident even though the Criminal Code in force at the relevant time did not contain a requirement that a sexual assault victim had to lodge a complaint without delay (see, *mutatis mutandis*, *G.U. v. Turkey*, no. 16143/10, § 76, 18 October 2016). While the trial court did not state explicitly that it considered that the applicant's delay constituted an element affecting the credibility of her account, the court's emphasis on the aspect of delay (without linking it to any particular conclusion), when viewed in the light of the approach developed by the Court of Cassation in similar cases, nevertheless implied that the applicant's account of events might not have been reliable (see paragraphs 39 and 43 above). The Court notes in this context that assumptions or stereotypical thinking about how a victim of sexual violence should behave are not appropriate and that the investigation of acts of sexual violence may require a context-sensitive assessment that is specific to the facts of the case. In the present case, the Court notes that the alleged sexual assault was related to the workplace, and that the accused was the applicant's superior. As with domestic violence, cases of sexual violence or harassment do not always come to light, as they continue to be significantly underreported: such cases often take place in the context of personal relationships and behind closed doors, which makes it even more difficult for victims to prove their case (see *C. v. Romania*, cited above, § 79). Fears of losing one's job, reprisals and other psychological factors related to the trauma may play a role in a victim's decision to proceed with voicing a complaint. Accordingly, a context-sensitive assessment would have required the domestic courts to consider the relevance of the timing of the complaint within the context of other evidence

in the case file. Thus, the failure to undertake this nuanced analysis reflects inadequate reasoning by the trial court and an approach inconsistent with the protection envisaged under Article 8.

53. The Court also cannot help but note that the applicant submitted in her testimony that the alleged incident had taken place in her home sometime in July 2010 and that M.Y. had ejaculated on her “tracksuit top” (see paragraph 6 above). M.Y., on the other hand, disputed the date of the events, insisting that they had had sexual contact on 4 April 2010 after travelling together from Samsun to Ankara and that the applicant had brought him a pair of “tracksuit bottoms” after he had ejaculated (see paragraph 20 above). The Court notes that there is no indication that the investigation attempted to resolve the contradiction as to whether the “piece of clothing” submitted to the trial court – one on which the forensic laboratory had identified traces of semen – was the top or bottom part of a tracksuit, and whether the semen belonged to M.Y. (and if so, whether the date of its ejaculation could be determined – see paragraph 30 above). Likewise, although both the applicant and the accused requested during the proceedings that the court examine the telephone records in respect of the period between July 2009 to August 2010 (see paragraph 33 above), the court refused their requests without giving any reason – even though those records might have enabled an assessment of some of the key arguments of the parties in the case, such as the applicant’s allegation that M.Y. had often and persistently called the applicant late in the evening or M.Y.’s allegation that the applicant had called him on 3 April 2010.

54. The Court thus considers that the judicial authorities failed to explore the means available to them to establish all the circumstances surrounding the instant case and did not sufficiently assess the credibility of the different versions of events.

55. In view of the above, the Court, without expressing any opinion on the guilt or innocence of the accused, finds that the failure of the authorities to respond adequately to the allegations of sexual assault demonstrates that they did not subject the case to the careful scrutiny required for them to properly discharge their positive obligations under the Convention.

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

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

57. The applicant complained that she suffered discrimination, contrary to Article 14 of the Convention, which reads as follows:

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

58. Having regard to its finding that a violation of Article 8 of the Convention occurred (see paragraph 56 above), the Court finds that it is not necessary to examine separately the admissibility and merits of this complaint.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 1,315 euros (EUR) in respect of pecuniary damage. This sum reflected a deduction from the applicant’s salary for the period 24 July 2012 until 23 August 2012, when she took absence of leave for medical reasons relating to the trauma from which she was suffering.

61. The applicant further requested the Court to award her the amount of EUR 50,000 in respect of non-pecuniary damage she had suffered.

62. The Government were of the view that there was no causal link between the violation alleged and the pecuniary damage claimed. As regards the applicant’s claim in respect of non-pecuniary damage, the Government submitted that it was excessive and should therefore be rejected.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

64. The applicant also claimed EUR 6,696 for the costs and expenses incurred before the domestic courts and EUR 1,295 for those incurred before the Court.

65. The Government considered that the amount claimed was excessive.

66. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, for example, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022).

67. In the present case, regard being had to the documents in its possession and the above-noted criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 8 of the Convention admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 8 taken together with Article 14 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President