



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

FIFTH SECTION

CASE OF E.A. AND EUROPEAN ASSOCIATION FOR COMBATING VIOLENCE AGAINST WOMEN AT WORK v. FRANCE

(Application no. 30556/22)

JUDGMENT

Art 3 and Art 8 • Positive obligations • Respondent State's obligation to introduce provisions criminalising and penalising non-consensual sexual acts and to apply those provisions effectively • Omissions in legal framework applicable at material time • Shortcomings in implementation due to: exclusion from investigation of acts of sexual violence complained of by applicant, fragmented nature of investigations, excessive length of proceedings, and conditions of assessment by trial courts of consent issue.

Prepared by the Registry, not binding on the Court

STRASBOURG

4 September 2025

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

**In the case of E.A. and European Association for Combating Violence
Against Women at Work v. France,**

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

Kateřina Šimáčková, *President*,

María Elósegui,

Mattias Guyomar,

Georgios A. Serghides,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 30556/22) against the French Republic lodged with
the Court under Article 34 of the Convention for the Protection of Human
Rights and Fundamental Freedoms (“the Convention”) by the applicants (“the
applicant(s)”), on 16 June 2022;

the decision to give notice to the French Government (“the Government”)
of the complaints regarding violations of Articles 3 and 8 of the Convention,
and to declare the remainder of the application inadmissible;

the decision not to disclose the name of the first applicant;

the observations of the respondent Government and those in reply from
the applicants;

the written comments received from the Commission nationale
consultative des droits de l’homme (CNCDH) and seven non-governmental
organisations (NGOs), to which the Section President had given leave to
intervene as third parties;

Having deliberated in private on 1 July 2025,

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

INTRODUCTION

1. The application concerns the respondent State’s compliance with its
positive obligations, under the substantive and procedural limbs of Articles 3
and 8 of the Convention, to adopt a legal framework for the punishment of
non-consensual sexual acts and to implement it through effective
investigation and prosecution, in conditions that would avoid secondary
victimisation.

THE FACTS

2. Ms E.A. is a French national who was born in 1985 and lives in Metz.
The Association européenne contre les violences faites aux femmes au travail
(European Association for Combating Violence against Women at Work –

“the AVFT”) is a non-governmental organisation established in 1985 and based in Paris. Its registered purpose includes defending victims of gender-based and sexual violence committed in the workplace. The applicants were represented by M. Vignola, L. Questiaux and C. Pettiti, of the Paris Bar.

3. The Government were represented by their Agent, Mr D. Colas, Director of Legal Affairs, Ministry for Europe and Foreign Affairs.

I. ESTABLISHMENT OF THE FACTS

4. At the material time Dr K.B., who was born in 1967, was the director of the pharmacy department at Briey Hospital (*centre hospitalier*). He had been working there since 2002 and was vice-chair of the hospital’s medical board.

5. E.A. had joined his department in March 2010 as a pharmacy assistant, working as a health manager. She had been recruited on a temporary contract, with a view to management training and worked under the direct supervision of a senior health officer Ms A.K. At the time she was cohabiting with her partner D.N.

6. On 12 June 2013 E.A. was placed on sick-leave. The measure was prolonged for some time. She was hospitalised in the psychiatry department from 18 June to 5 July 2013 and from 15 July 2013 to 12 October 2013.

7. In the course of exchanges concerning her sick-leave, E.A. revealed to A.K. that she had been in an intimate relationship with K.B. and that K.B. was harassing her, both professionally and privately. At an interview on 15 July 2013 from 8 a.m., she explained the sado-masochistic nature of their relationship and brought to A.K.’s attention extracts from their correspondence. In a report of 18 July 2023, A.K. described its content as follows:

“[E.A.] then opened several documents (emails and text messages written by [K.B]) which she had kept for several months. As I looked over them very quickly, I realised that they were sometimes complimentary, and sometimes degrading or humiliating towards her, but that they also concerned more personal, degrading, inhumane acts ...

I have assessed the significance and seriousness of the situation and have encouraged her to make an appointment with [G.S.] ...”

8. At 1.30 p.m. on the same day E.A. was seen by Ms G.S., a senior health officer in charge of treatment coordination. E.A. confirmed that she had been the victim of harassment at work. She described scenes of humiliation and bullying in front of her colleagues and complained about the emails sent to her by K.B. She was also concerned about the influence that he might have on her future career, as she was about to undergo a qualification-based promotion procedure to obtain managerial status.

9. On 22 July 2013 E.A. was examined by a doctor, who declared her unfit to return to work.

10. She was then interviewed by the Director of Human Resources (DHR) and by V.R., another senior health officer in the care department. The record of the interview reads as follows:

“[E.A.] explained that, little by little, Dr [K.B.] had managed to make her dependent on him and stated that the first deviant conduct had dated back to the end of 2010.

A relationship of seduction and flattery had developed between them. ...

[E.A.], although obviously very distressed by the situation, went on to say:

‘Then he wanted to control my life by alternately seducing and rejecting me. He would take me and then throw me away. He wanted me to tell him that [I was] his crap. To please him, I was saying that stuff.’

‘We had sex in the workplace, in the basement.’

During the training year at IFCS¹, there were contacts, messages.

‘When I got back from IFCS, I accepted everything. Perverse practices and threats, I couldn’t see the harm. I didn’t know what was normal anymore. Then he asked me for forgiveness, pretended to be the victim. I took pity on him, he was also unhappy. It was even more hellish when I told him to stop.’

‘I was forcibly sodomised twice, he spanked me on the chain [sic].’

[E.A.] acknowledged that the best solution would have been to run away but, bound by a 30-month contract of employment with Briey Hospital, she had given up. She was also afraid that she would miss out on her promotion if she disclosed the situation.

She explained:

‘I was afraid of other people’s judgment, already I wasn’t very sure of myself at first, I wasn’t very sure of the quality of my work. I’m still happy with the projects I’ve done, but he couldn’t stand me working with another pharmacist.’

While acknowledging that the relationship had not been that of a couple, as there had been no life or activities in common, she stated that Dr [K.B.] wished to control her life. He had thus contacted her boyfriend, with whom she had been for more than six years and with whom she had marriage plans, to tell him things about her, thus getting him to leave her.

She said: *‘I was completely alone and isolated. When I went home, I stayed in the dark, I couldn’t eat. Then I ended up contacting SOS Amitiés and the person said to me: “you are being psychologically abused”. ...’*

... To the questions [about how she] saw her future, [E.A.] replied: *‘I don’t know what I want anymore ... I feel weak for having fallen into this, especially as a manager, what credibility can I still have?’*

...”

11. During that interview, E.A. produced documents and copies of emails and text messages illustrating her relationship with K.B. These included a

¹ Institute for the Training of Health Executives.

document headed “master/bitch contract, dated 14/03/2013”, which reads as follows²:

“Part 1: On the part of the master, he shall

- choose his bitch’s clothes and underwear
- choose her makeup
- make (according to the master’s desire) his bitch eat from a bowl at the master’s feet
- ask his bitch to pee with the door open, and she will let her master hear her pee at least once a day if he is not present
- ask his bitch to send a photo of her with her panties down every day if he is not there, or each time she changes clothes (+ to send the programme for the day)
- not let his bitch use dildos alone
- defend, protect and support his bitch
- not break / insult / show malice towards his bitch
- not belittle his bitch
- not abandon his bitch and must manage her life
- learn to communicate without getting angry
- not change behaviour after ejaculation / intercourse
- let his bitch touch herself
- give his bitch something to eat
- give massages to his bitch
- spank his bitch in case of non-compliance with the contract.

Part 2: On the part of the bitch, she shall

- regularly suck her master
- wear the leash, with the inner and outer collar
- keep him informed of outings and wear the chastity belt in case of going out alone (except with family)
- look after / massage / touch her master’s dick (including in the car)
- agree to be fucked by others **in the presence of the master**, including when pregnant
- make sure the pharmacy shutter is opened every morning
- take the pill until the master decides she should stop
- always have soft and well-styled hair (except weekends and holidays) + choice of haircut by master
- never cut her body hair
- handle her master’s accounts
- behave with respect, obedience and devotion towards her master.

Common Part

- ensure **fidelity** on both sides (do not flirt, do not try to make the other jealous, do not frequent prostitutes)

²Formatting is that used in the document produced.

- have a **cohesive** relationship
- be **honest and transparent**
- accept each other's activities subject to prior authorisation
- **do not mix work with private life in any circumstances**

That document was co-signed by E.A. and K.B., the latter having affixed a professional stamp to it, showing his status as head of department.

12. E.A. was encouraged to file a criminal complaint and was informed of the possibility of receiving legal assistance for occupational protection.

13. On 24 July 2013 K.B. was interviewed by the director of Briey Hospital, the deputy director in charge of medical affairs and the head of human resources. E.A.'s complaints were brought to his attention. K.B. admitted having had sexual intercourse with E.A. at the hospital, but asserted that it had been consensual.

14. On 30 July 2013 the deputy director of Briey Hospital reported the facts to the Briey public prosecutor, specifically stating that E.A. had complained of a situation of "control" and "forced sexual relations".

15. On 1 August 2013 a series of interviews were carried out with members of the pharmacy department as part of an administrative investigation. Several of them stated that they had observed the intimate relationship between K.B. and E.A., but that K.B. had changed his behaviour towards E.A. in recent months. They stated that K.B. had on several occasions made things difficult for her in a professional context or at meetings, publicly criticising her work and denigrating her professional capacities in meetings ("incompetent, too young, incapable"). He had also tried to distance her from one of the female pharmacists on duty (Dr A.E.). Several of the professionals interviewed said that K.B. could be aggressive and enter into bouts of extreme rage. In addition, according to several members of the team E.A. had lost weight, had become tremulous and was less committed to her work than usual.

16. The documents submitted by E.A., the various reports and accounts referred to above (see paragraphs 7, 10 and 11 above) and the administrative enquiry report (see paragraph 15 above) were forwarded to the public prosecutor's office.

17. Furthermore, K.B. was suspended from duty on 5 August 2013. He challenged that measure before the Nancy Administrative Court, which dismissed his application in a judgment of 25 June 2015. K.B. was subsequently dismissed from the profession of hospital practitioners. The Administrative Court dismissed the applications for the setting-aside and review of that sanction in judgments of 29 September 2017 and 15 June 2023.

II. INVESTIGATIONS BY DOMESTIC AUTHORITIES

A. The preliminary police investigation

1. *Appointment of investigators and framework of investigations*

18. On 5 August 2013 the Briey public prosecutor, represented by a member of his office, sent a transmittal order to the head of the Longwy public-security district, requesting that he “receive [the victim’s] criminal complaint and carry out an investigation”, without giving any further details as to its purpose or the legal classification of the offences concerned.

19. In a letter to the public prosecutor’s office of 13 August 2013, E.A.’s lawyer lodged a criminal complaint against K.B. on charges of aggravated rape, aggravated sexual assault, intentional acts of violence, psychological harassment, sexual harassment and undue influence.

20. The criminal complaint stated that E.A. had been placed in a relationship of control and dependence *vis-à-vis* K.B. She argued that K.B. had used his charisma and professional status to seduce her and set up a game of sexual domination. According to the complaint, this relationship had drifted towards “a relationship of quasi-sectarian total domination, based on humiliation and denigration”. E.A. had gradually become isolated from her relatives and colleagues, in front of whom she had been denigrated.

21. A series of specific facts were identified. In her complaint E.A. related, first, offences of a serious criminal nature (*crimes*), namely acts of anal penetration carried out under coercion. She also reported various other criminal offences (*délits*), namely aggravated sexual assault, psychological harassment, sexual harassment, intentional acts of violence and undue influence. She stated, *inter alia*, that K.B. had forced her to use the email address “chiennkb@laposte.net”, that he had urinated on her in order to “mark his territory”, that he had kept her on a leash and that he had wanted to make her eat from a dog’s bowl. She also claimed that she had been subjected to repeated acts of violence by K.B. during sexual intercourse (slapping, beating, choking, spanking, whipping, pulling of hair ...). Some of these violent sexual practices had continued after she had asked K.B. to stop.

22. The complaint stated that these events had had a significant impact on her state of health, as E.A. had been hospitalised for severe depression, combined with significant weight loss. Witness statements and medical certificates were appended.

23. On 20 August 2013 the complaint was forwarded to the department concerned with a view to being joined to the ongoing investigation. No specific instructions were given as to how the investigations should be conducted.

2. Conduct of preliminary police investigation

24. The case was assigned to an investigator on 27 August 2013. He carried out on his own all the investigative measures that have been brought to the Court's attention.

(a) Statements by E.A.

25. E.A. was interviewed on 5 and 13 September 2013. She had been in an extramarital relationship with K.B. from 2011 onwards and their sexual intercourse had initially been consensual. K.B. had quickly become ambivalent towards her, alternating between phases of romantic conquest, where he flattered or pitied her, and phases of rejection, where he denigrated her at work or threatened to harm her professionally. He had been increasingly brutal and controlling in their sex life. He had also exercised more control over her personal life during her training at the IFCS, imposing her clothing choices, making her send photographs of herself every day with her panties down and phone him whenever she went to the toilet. He had also knocked her over by pushing her back violently during an argument.

26. E.A. stated that K.B. had gradually imposed certain sado-masochistic sexual practices on her, which she had accepted for fear of abandonment and professional reprisals. She further explained that she feared that she would have to reimburse her training costs in the event of an early termination of her contract with Briey Hospital, which K.B. had been aware of. She confirmed all the above matters in her criminal complaint (see paragraphs 19-21 above). According to her, the rape had taken place in September 2012 and K.B. had continued to penetrate her even though she had told him to stop, as the intercourse had become painful. She further stated that there had been many instances of intercourse which she had "not managed to refuse". On three occasions K.B. had beaten her violently, with his bare hand or a whip, for not "complying with [his] instructions" and he had continued even though she was begging him to stop.

27. Lastly, E.A. explained that K.B.'s behaviour had worsened at the end of 2012. He had caused her to break up with D.N. and had been increasingly aggressive and insulting towards her in the workplace. She had tried several times to put an end to their relationship, but had not succeeded. After a final break-up email sent in April 2013, K.B. had stopped inviting her to certain meetings, given her contradictory instructions and made numerous humiliating remarks about her in front of her colleagues. She had finally confided in her sister, who, in view of the deterioration in her health, had referred her to a doctor who had triggered her admission to hospital.

28. E.A. pointed out that the events had had a major impact, both psychologically and physically (bruising, inflammation, bleeding, pain in walking, etc.). She reiterated her criminal complaint of aggravated rape, aggravated sexual assault, sexual harassment by a person taking advantage of

a position of authority, psychological harassment, undue influence and aggravated intentional acts of violence. At the end of her first interview, she gave the investigator copies of emails and SMS messages exchanged with K.B. and various documents on a USB stick.

29. With regard to the accusation of harassment, E.A. stated that K.B. had assigned her tasks that did not correspond to her duties, that he had driven her to make mistakes by giving her imprecise instructions or setting unrealistic deadlines, that he had isolated her from her colleagues and that he had publicly belittled her professional skills on numerous occasions. She also stated that K.B. had made sexualised gestures or comments in the workplace on several occasions.

(b) Witness statements

(i) Interviews with colleagues of E.A. and K.B.

30. Fourteen colleagues of E.A. (the entire pharmacy department and a few other members of hospital staff) gave evidence in the autumn of 2013. They all stated that they had observed that her health had deteriorated from the time she had returned from training at the end of 2012: she had lost her appetite, appeared tired, thin and worried, and cried regularly. The staff of her department confirmed almost unanimously that K.B.'s behaviour towards E.A. had been mercurial and that he had intensified his harsh criticism of her in the workplace.

31. Three of K.B.'s colleagues or former colleagues (M.P., A.D. and A.P.) stated that they had also been harassed by him and described similar acts (ambivalence, denigration, exclusion). Two of them stated that they had changed department for that reason. The third stated that this behaviour had caused her to have suicidal thoughts.

32. E.A. had discussed the nature of her relationship with K.B. with several of her colleagues. To three of them (M.P., J.R. and A.A.), she had revealed that she had been subjected to forced sexual intercourse and to acts of sexual violence.

(ii) Interviews with friends and relatives of E.A. and K.B.

33. In addition, statements were taken from several individuals in the entourage of E.A. and K.B.

34. First, E.A.'s friends and relatives confirmed that her state of health had sharply deteriorated at the end of 2012. They explained that she had been staring at the screens and had received constant messages from K.B., to which she had felt obliged to reply immediately. In March 2013 E.A. had initially told her sister and mother that she was being harassed by her head of department. They had advised her to see her general practitioner. In July 2013 she had told them about the violence of her sexual intercourse with K.B. and the sexual acts into which she had been coerced. Having discovered a copy

of the “master/bitch contract” in her daughter’s affairs, E.A.’s father had also informed her line manager of the situation by a telephone call of 17 July 2013 and then by a letter to the hospital management. In addition, D.N., E.A.’s former partner, stated that he had noted bruises on her thighs at the relevant time and mentioned that she had complained of haemorrhoid-related pain at that time.

35. Secondly, N.W., one of K.B.’s former companions, stated that K.B. had forced her into a similar kind of relationship. She explained that their sex life had been violent and that K.B. had established a particularly intrusive and degrading relationship of domination between them, which had placed her in a situation of total dependence. She commented on K.B.’s emotional ambivalence and stated that he had harassed her by telephone. Like E.A., her relationship with K.B. had led to her being hospitalised in a psychiatric department.

(c) Psychiatric examination of complainant

36. A psychiatric examination of the complainant was ordered. The expert was instructed to analyse the circumstances in which the events had come to light in order to determine whether certain factors could have influenced E.A.’s statements, to describe any impact of the events on her, indicating whether it was suggestive of sexual trauma, to assess her degree of vulnerability, to determine whether she was temporarily unfit for work and to indicate whether therapeutic follow-up was appropriate.

37. In a report of 18 December 2013, the expert psychiatrist noted that E.A.’s remarks had been accompanied by negative emotions that were usually observed among victims of sexual violence and that they appeared sincere and authentic. He described her as “a young woman who is broken in terms of her psychological equilibrium”, explaining that her responses and mental suffering were typical of “hostage syndrome”. He emphasised that “her assailant could not have been unaware or ignorant of her emotional and sentimental fragility ...”. In a supplementary report of 17 February 2014 the expert specified that E.A. was temporarily unfit for work for at least one year, given the intensity of her psychopathological condition and the severity of her post-traumatic stress disorder.

(d) K.B.’s police custody

38. On 26 February 2014 K.B. arrived at Longwy police station after being summoned by post. In accordance with the instructions of the public prosecutor’s office, he was taken into police custody solely on charges of aggravated sexual harassment and intentional acts of violence resulting in total unfitness for work for more than eight days.

39. He was questioned three times on 26 and 27 February 2014. He claimed to be the victim of slander and stated that E.A. had harassed him to

the point of causing him to fall into depression. He admitted that he had had a domineering relationship with E.A., explaining that it was the result of a joint fantasy. He stated that the “master/bitch contract” had been drawn up on a proposal by E.A. In his view, their sexual relations had always been consensual and had been free of any coercion. He denied the rape and harassment accusations, adding that he had never mixed private and professional life.

40. On 27 February 2014 a confrontation was held between K.B. and E.A., who confirmed the entirety of her complaints. She stated, *inter alia*, as follows:

“I told him that I would always refuse to be beaten. He replied, ‘That’s only what you’re saying now’. He uses the word ‘spanking’ to minimise his actions. In reality, he was whipping me very hard with his hand and I was begging him to stop, because I was in pain. I was screaming. He had understood ... but acted as if he couldn’t hear me.

When he says that he never forced sex on me, that’s not true. As for sodomy, I told him clearly that I did not want it. He told me to stop being a cry-baby and that when I said ‘no’, it meant ‘yes’, that what I said didn’t matter. I gave in so as not to annoy him. When he saw that I was in pain, he should have stopped.”

K.B. stated as follows:

“Violent spanking is not true. As for sodomy, it’s just about consistent ...”

(e) Use of messages and emails between E.A. and K.B.

41. The information spontaneously submitted by E.A. in her criminal complaint (see paragraph 28 above) was examined from 6 September 2013 onwards. It was printed out and placed under seal. Furthermore, the digital media produced by K.B. when he was summoned were analysed on 27 February 2014. The usable files (extracts from correspondence and photographs) were printed and placed under seal.

42. The department responsible for the investigation did not carry out any further enquiries into telephone data during the preliminary police investigation. No searches were carried out in the hospital or at the homes of those concerned by the investigation. The telephones and computers used by E.A. and K.B. were neither seized nor examined.

B. The judicial investigation

43. At the end of his police custody K.B. was brought before the Briey public prosecutor.

44. On 28 February 2014 the public prosecutor opened a judicial investigation on charges of intentional acts of violence resulting in total unfitness for work for more than eight days and sexual harassment aggravated by abuse of authority.

1. Conduct of judicial investigation

(a) The placing of K.B. under formal investigation with judicial supervision order

45. K.B. was placed under formal investigation for the above-mentioned offences and a measure of judicial supervision was imposed. In particular, the investigating judge prohibited him from visiting Briey Hospital and from making contact with E.A.

(b) Enquiries under judicial warrants

46. In a judicial warrant of 4 March 2014, the investigating judge instructed the police of the Longwy public security district to continue the enquiries. He requested, in particular, that K.B.'s work computer be placed under seal, that the telephone data of communications between E.A. and K.B. be analysed and that several other witnesses be interviewed.

47. The execution of the judicial warrants was entrusted to the same lead investigator. He obtained the hard disk from K.B.'s work computer and its content was subjected to forensic analysis. It turned out that his data had been erased. However, the forensic examination established that several versions of the "master/bitch contract" had been opened on that machine and that it had been used to contact the user of the e-mail address "chiennkb@laposte.net" (see paragraph 21 above) as well as to access pornographic websites.

48. Furthermore, the telephone data from the line used by E.A. were ordered for the period after 10 March 2013 and were transmitted to the investigating judge without being analysed.

49. Lastly, the requested interviews were conducted between 12 March and 15 May 2014. Several former staff members of the hospital who had left the region were subsequently interviewed under separate warrants.

(c) Investigations concerning E.A.

50. E.A. joined the proceedings as a civil party. The investigating judge questioned her on 15 April 2014. She confirmed to him her previous statements.

51. A psychological assessment of E.A. was ordered. In a report of 30 June 2014 the expert noted that in 2013 she had been suffering from sleep disorders, anxiety, mood swings and phobic behaviour. Her relations with K.B., as described by her in the interview, corresponded to "a controlling relationship of a patent sado-masochistic nature" which had "gradually ... left her unbalanced" and plunged her into "significant mental distress". The expert considered the applicant's account to be coherent, as her emotional reactions lent a certain consistency to it. She recommended that the psychotherapeutic monitoring be continued.

(d) Investigations concerning K.B.

52. On 6 August 2014 K.B. was questioned. He maintained his previous statements.

53. He underwent a psychiatric examination. The measure was initially entrusted to the expert who had examined E.A. However, despite the investigating judge's reminders, he did not carry out his task. The expert finally appointed submitted his report on 12 November 2015. He took the view that the facts, if proven, were unrelated to any particular psychiatric abnormality, but to ill-controlled sexual and aggressive impulses.

54. On 22 January 2016 the closing of the judicial investigation was notified to the parties.

2. Criminal proceedings against K.B.

55. In a decision of 25 November 2016 the investigating judge committed K.B. for trial in the Criminal Court on charges of intentional acts of violence resulting in total unfitness for work for more than eight days and aggravated sexual harassment on the following grounds:

“(1) With regard to intentional acts of violence ...

... It will be observed, however, that ... [E.A.] gave a precise and consistent account of the various forms of violence, physical and psychological, which she had suffered at the hands of [K.B.] from October 2010 until the end of their relationship in June 2013.

With regard to physical violence, she mentioned blows inflicted on her by the accused during their sexual activity (spanking, use of a whip on her buttocks ...), but also to sexual intercourse which was in itself violent and had caused her physical pain and injuries (bruising, vaginal haemorrhage, haemorrhoids ...). The fact that some of these injuries were actually sustained was corroborated ... by her former partner [D.N.], who said that he had noticed bruises on her thighs, and also mentioned urinary tract infections and haemorrhoids, whereas she had not suffered from those conditions before. ...

Again with regard to the physical violence complained of by [E.A.] and more specifically the injuries sustained following violent sexual intercourse with the accused, she specifically mentioned an act of sodomy in September 2012 when he had carried on even though she had asked him to stop. In that regard, the medical certificate drawn up by [Dr B.] following a consultation on 24 September 2012 mentions haemorrhoidal thrombosis ... which is compatible, in view of the period ... in question, with the statements of the civil party. ...

... while [K.B.] argues that violent acts committed in the context of sexual activity constitute non-reprehensible games when taking place between consenting adults, it should be observed that, as the European Court of Human Rights held in a judgment [*K.A. and A.D. v. Belgium* (nos. 42758/98 and 45558/99, 17 February 2005)], indeed cited by the defence, non-reprehensibility presupposes that the victim has not withdrawn her consent in the course of such practices. In the present case, however, [E.A.] has precisely expressed her disagreement with them, referring to the ensuing pain and injuries.

In addition to the physical violence, [E.A.] also complained of psychological violence, describing the accused's aggressive and humiliating behaviour towards her, as

expressed orally, by emails or by SMS. The screenshots produced in the case file, but also the testimony of her entourage and colleagues, some of whom (such as her mother and sister) had seen some of the messages addressed to her by [K.B.], corroborate the allegation of such behaviour. It appears in this connection that the accused alternated between aggressive rejection and seduction of [E.B.], thus ensuring complete control over her.

[E.A.'s] entourage and colleagues have also testified about the consequences of that conduct for her personally, namely a gradual deterioration in her state of health, both physically and psychologically, in particular from September 2012 onwards. The experts in psychology and psychiatry ... confirmed in this connection that the violence she suffered had had a significant impact on her ...

... Furthermore, the forensic psychiatric report drawn up on 4 December 2013 reveals that the distress expressed by [E.A.] is commonly observed in the mental profile of victims, particularly victims of sexual violence.

In conclusion, these elements show that acts of violence, both physical and psychological, were indeed committed by [K.B.] against [E.A.] ... Committal for trial ... must therefore be ordered under this head.

(2) Concerning the sexual harassment ...

... [It] has been shown that the accused has exerted extremely significant psychological control over [E.A.], to a degree which makes it possible to understand her behaviour and the fact that she chose to go back to him, even though she was a victim, such behaviour not being in any way exceptional among victims of violence. As to the argument that harassment would be impossible to establish on account of the victim's consent to the sexual acts committed, it will be observed that although [E.A.] may have consented to certain acts, in particular at the beginning of her relationship with [K.B.], she subsequently became subservient to his demands (sexual fondling, oral sex, including in the workplace), even the most degrading ones (such as the fact that he urinated on her or demanded that she record herself urinating) to avoid being bothered at work or denigrated by him in front of her colleagues. The signing of the 'master/bitch contract', to which she added certain clauses for the sake of preservation, is also consistent with that logic and cannot amount to acceptance on her part of the acts referred to therein.

It should also be pointed out that several employees of the pharmacy department reported that [K.B.] alternated between aggressive and supportive phases in his attitude towards her, the aggressive phases being characterised in particular by denigration [of E.A.] during team meetings, where the accused would highlight her incompetence and question her suitability for a managerial post. The accused's criticism of her had intensified at the beginning of 2013, with a corresponding deterioration in [E.A.'s] physical and psychological state ...

..., it appears that, by submitting to the acts demanded of her, [E.A.] was seeking to avoid any adverse effect on her professional career; she believed [K.B.] to be capable of such influence in the light of his position. ..."

56. In the absence of any challenge, the committal decision became final.

III. THE JUDGMENT AGAINST K.B.

A. Disputes concerning the jurisdiction of the Criminal Court and the first-instance judgment

57. The association AVFT and E.A.'s entourage joined the proceedings in the Criminal Court as civil parties.

58. E.A. argued that the Criminal Court lacked jurisdiction, claiming that some of the acts prosecuted in fact amounted to rape and were therefore more serious offences (*crimes*) falling within the remit of the Assize Court.

59. In an interlocutory judgment of 23 May 2017, the Val de Briey³ Criminal Court observed that on the date of the committal decision E.A. had joined the proceedings as a civil party and had been assisted by a lawyer. Accordingly, it dismissed the objection of lack of jurisdiction as being out of time, pursuant to Article 469 of the Code of Criminal Procedure.

60. E.A., the AVFT and the public prosecutor's office appealed against that judgment.

61. In a judgment of 19 April 2018, the Nancy Court of Appeal declared those appeals inadmissible, as no application to have them declared admissible with immediate effect had been lodged by the appellants.

62. In written submissions of 23 July 2018, E.A. asked the President of the Criminal Court, before the hearings resumed, to analyse the data on the flash drive that she had provided when she had lodged her complaint (see paragraph 28 above).

63. On 23 August 2018 the President of the Criminal Court sent E.A. a copy of the sealed evidence in question.

64. Before the Criminal Court, E.A. and the AVFT requested that the charges against K.B. (see paragraph 55 above) be reclassified as aggravated sexual assault (see paragraph 77 below). E.A. further argued that Articles 222-11 and 222-14-3 of the Criminal Code provided for punishment of intentional acts of violence of any kind, even psychological, without distinguishing between cases depending on whether the victim consented (see paragraph 78 below). The civil parties requested that K.B. be found guilty of the offences with which he had been charged and sought payment of various sums in compensation for the damage they had sustained.

65. In a judgment of 25 September 2018 the Val de Briey Criminal Court dismissed their request for a reclassification of the offences on the following grounds:

"It appears from the exchanges of e-mails and text messages in the file that [K.B. and E.A.] were expressing their love for each other; they were sending nude photos of themselves to each other; they were also talking about types of sexual intercourse and

³ The seat of the Briey court (*tribunal de grande instance*) changed on 1 January 2017, following the creation of the new municipality of Val de Briey.

fantasies. It is also apparent that they both tried to put an end to the relationship, but failed to do so.

[E.A.] has claimed that a non-consensual act of sodomy was performed on her in September 2012 ... [K.B.] has denied that she asked him to stop. Furthermore, [K.B.] and [E.A.] acknowledge that further acts of sodomy were performed subsequently, as is corroborated by an exchange of text messages. Consequently, with regard to the act of sodomy of September 2012, the appearance of haemorrhoidal thrombosis and [E.A.'s] statements are neither sufficient to establish that [E.A.] did not consent to the act nor sufficient to make out the charge of violence under Article 222-22 of the Criminal Code.

Similarly, the fact that [E.A.]'s partner found bruises on her body and that she complained of violent sexual intercourse are not sufficient to establish the existence of physical coercion.

... While the victim's submission may be taken into account in order to establish psychological coercion, it is not sufficient. ... The existence of [K.B.'s] professional authority over [E.A.] ... is beyond doubt: [E.A.] has completed a training course as a health manager which should be validated at Briey Hospital. It appears from the various interviews that [K.B.] knew all the members of the panel and that he had already threatened [E.A.] with denying her the promotion, thus indicating that he could influence the panel's decision. Lastly, it should be noted that the 'master/bitch contract' drawn up on 14 March 2013 bears a stamp 'Dr [K.B.] – Chief Pharmacist'. Furthermore, [K.B.] himself acknowledged that he had 'threatened to do something professionally'; that he was going to 'talk to the management about it so that there would be sanctions against her'; and that he had also threatened to contact her parents. At the hearing he explained his behaviour by the fact that he had not succeeded in putting an end to their relationship. If the threats are established, it does not appear from the file that those threats were made with a view to forcing [E.A.] to have sexual intercourse.

Consequently, no coercion within the meaning of Article 222-22 of the Criminal Code can be established.

Consent obtained by surprise is not enlightened consent; obtaining the victim's consent by surprise consists in performing an act on the victim without the latter having been able to give informed consent because he or she does not realise what is being done to him or her.

It is established from the messages and testimony of [E.A.]'s colleagues and family that she was shy, reserved and lacking in self-confidence; that [K.B.] had indicated that she had been recruited thanks to him.

It is also apparent from [E.A.'s] psychiatric assessment and supplementary psychiatric assessment that the complaints and grievances made by [E.A.] have arisen against the background of a personality whose construction lacks consistency and substance, hers being a situation and position of psychological fragility which may have contributed to exposing her even more to being a victim or hostage; this emotional fragility of her personality and character could not have been unknown to her assailant, quite the contrary.

[E.A.] was 26 years old at the beginning of their sexual relations; moreover, the tactics she has claimed were used to obtain her consent, consisting in isolating her from the rest of the work team, and from her partner, and manipulating her by placing her on a pedestal in order to achieve his goals, are not sufficient to establish that her consent was obtained by surprise.

Accordingly, it has not been established that the acts can be characterised as aggravated sexual assault in the absence of any finding of violence, coercion, threat or surprise.”

66. Secondly, the Criminal Court found K.B. guilty of intentional acts of violence and aggravated sexual harassment. As regards the acts of violence, it noted that K.B. had displayed aggressive and humiliating behaviour towards E.A. and this had caused a gradual decline in her physical and mental health of which the defendant must have been aware. As regards the harassment, it noted that K.B. had been involved in drawing up several versions of the “master/bitch contract” and that he could not maintain that all his actions fell within that contractual framework. By contrast, it observed as follows:

“[E.A.] has submitted to all his sexual practices, which are in particular of a degrading and humiliating nature: for instance [K.B.] has urinated on her, has sent her photographs of him urinating, has asked her to send him a photograph of her with her panties down every morning.

It is established that she agreed to submit to his demands in view of his behaviour at work. It will be recalled that [K.B.] alternated between making denigrating and aggressive remarks about [E.A.] and being supportive towards her. Two of their colleagues noted that [K.B.] was more friendly when they came up from the basement where they admitted having had sexual intercourse.

Lastly, as has been shown above, [K.B.] abused the authority conferred on him by his position: he had professional authority in respect of [E.A.] and constantly threatened her with the following phrases: ‘just be careful of what you say’, ‘I have the department and the hospital behind me’, ‘I hope you will change your way of working once you come back or I will say STOP’. ... The aggravating circumstance of abuse of authority conferred by his position is therefore established.’

67. By way of sanction, the Criminal Court gave K.B. a suspended ten-month prison sentence. It also ordered him to pay various sums to the AVFT. At E.A.’s request, it adjourned the examination of her claims for compensation to a later hearing.

B. Examination of appeals

68. K.B. appealed against that judgment. The public prosecutor and the civil parties lodged cross-appeals.

69. E.A. sent several reminders to the Principal Public Prosecutor’s Office and the President of the Criminal Appeals Division (letters of 13 November 2019 and 6 March 2020) to obtain a date for the hearing.

70. Before the Court of Appeal, E.A. and the AVFT reiterated their request for the charge to be reclassified as aggravated sexual assault.

71. In a judgment of 27 May 2021, the Nancy Court of Appeal dismissed the request for reclassification on the following grounds:

“In view of the ambiguity of the submissions [filed by counsel for E.A.], their lack of precision and the contradiction between their reasoning and their conclusions, the Court must confine itself to the offences before it.

Pursuant to the provisions of Article 388 of the [Code of Criminal Procedure], the Criminal Court deals with the facts as contained in the indictment – in this case the decision on committal for trial made by the investigating judge – may not deal with other facts of its own motion and must remain strictly within the framework of the prosecution.”

It then quashed the first-instance judgment in its entirety, acquitted K.B. on all charges and accordingly dismissed the civil parties’ claims for compensation.

72. As regards the intentional acts of violence with which K.B. was charged, the Court of Appeal noted as follows:

“[E.A.] referred to a particularly violent act of sodomy in September 2012 and produced a certificate from her general practitioner ... dated 5 August 2013, who noted on 24 September 2012 a haemorrhoidal thrombosis requiring medical treatment.

This certificate, drawn up almost a year after the act of sodomy complained of by the civil party, cannot provide proof of violence on the part of the defendant on that occasion and does not show that this practice was the cause of the haemorrhoidal thrombosis ...

As regards the other acts of physical violence complained of by [E.A.], her statements in that regard have not been corroborated by any objective evidence gathered during the investigation.

...

It should also be noted that [E.A.] acknowledged that she had drafted and signed the ‘master/bitch contract’ of 14 March 2013 and that she herself had prompted the addition of certain terms, such as ‘make his bitch eat at the master’s feet’, ‘ask his bitch to send a photo of her with her panties down every day’, ‘learn to communicate without getting angry’, ‘must not belittle his bitch’, and it has not been established that she was forced by [K.B.], who allegedly initiated it, to sign that contract, the terms of which demonstrate an acceptance by the civil party of the sexual practices envisaged therein.

That acceptance is also apparent from the content of the unambiguous text messages exchanged, according to which [E.A.] fully consented to those practices, which she currently describes as violence.

As regards acts of psychological violence, ... [this] has not been substantiated by any objective evidence.”

73. As regards the allegations of harassment, the reasons given for overturning the first-instance judgment were as follows:

“... [E.A.] was actively involved in drawing up the ‘master/bitch contract’ on 14 March 2013 ... thereby expressing her agreement to continue her relations with [K.B.].

...

This consent can also be seen from her exchanges with the defendant's sister, *via* Facebook, in April and May 2012, according to which she strongly wished to continue her relationship with [K.B.] ...

This evidence shows that the civil party was not repeatedly subjected to sexual practices by the defendant, but that, on the contrary, she consented to them, as no coercion was exerted against her."

C. Examination of applicants' appeals on points of law

74. E.A. and the AVFT appealed to the Court of Cassation against that judgment. They argued, firstly, that the Court of Appeal had failed in its judicial duty by refusing to reclassify the offence as aggravated sexual assault and, secondly, that the Court of Appeal's assessment of the victim's consent had been incompatible with the requirements of Article 3 of the Convention, in that it had not taken into account her vulnerability, the professional context of the offence, the controlling relationship that her head of department had established and the duress to which she had been subjected.

75. On 25 October 2021 the reporting judge issued an opinion finding that the appeal should be declared inadmissible. She pointed out that, according to settled case-law, criminal courts were not bound by the classification of the charge and could not hand down an acquittal unless they were satisfied that no other offence was made out. She considered, however, that the grounds of appeal put forward by the appellants sought to call into question the unfettered discretion of the trial courts.

76. On 16 February 2022 the Court of Cassation declared the appeals of E.A. and AVFT inadmissible.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. Criminal Code and related case-law

77. At the material time the Criminal Code provided for the offences of rape and aggravated sexual assault as follows:

Article 222-22, first paragraph

"An aggravated sexual assault (*agression sexuelle*) is any sexual assault committed with violence, coercion, threats or surprise."

Article 222-22-1

"The coercion contemplated in the first paragraph of Article 222-22 may be physical or psychological. Psychological coercion may result from a difference in age between a minor victim and the perpetrator and from the latter's authority in law or in fact over such victim."

Article 222-23

“Any act of sexual penetration, whatever its nature, committed against another person by violence, coercion, threats or surprise shall constitute rape.

Rape shall be punishable by fifteen years’ imprisonment.”

Article 222-24

“Rape shall be punishable by twenty years’ imprisonment:

...

4° Where it is committed ... by any other person having authority in law or in fact over the victim;

...”

Article 222-27

“Aggravated sexual assaults other than rape shall be punishable by five years’ imprisonment and a fine of 75,000 euros.”

Article 222-28

“An aggravated sexual assault other than rape shall be punishable by seven years’ imprisonment and a fine of 100,000 euros where imposed in the following conditions:

1° Where it has resulted in injury or wounding;

2° Where it is committed ... by any other person having authority in law or in fact over the victim;

3° Where it is committed by a person who abuses the authority conferred on him or her by his or her position;

...”

Article 222-29

“An aggravated sexual assault other than rape shall be punishable by seven years’ imprisonment and a fine of 100,000 euros where imposed in the following conditions:

...

2° On a person whose particular vulnerability due to age, illness, infirmity, physical or mental deficiency or pregnancy is apparent or is known to the perpetrator.”

Article 222-30

“The offence defined in Article 222-29 shall be punishable by ten years’ imprisonment and a fine of 150,000 euros:

1° Where it has resulted in injury or wounding;

2° Where it is committed by an ascendant or by any other person having authority in law or in fact over the victim;

3° Where it is committed by a person who abuses the authority conferred on him or her by his or her position;

...”

78. The offences of intentional acts of violence and sexual harassment were defined as follows:

Article 222-11

“Acts of violence resulting in total unfitness for work for more than eight days shall be punishable by three years’ imprisonment and a fine of 45,000 euros.”

Article 222-14-3

“Acts of violence provided for under this Section shall be punishable irrespective of their nature, including psychological violence.”

Article 222-33

I. – Sexual harassment is the repeated imposition on a person of speech or conduct with a sexual connotation which either offends against his or her dignity on account of their degrading or humiliating nature or creates an intimidating, hostile or offensive situation for him or her.

II. – Sexual harassment includes the use, even if not repeated, of any form of serious pressure with the real or apparent aim of obtaining an act of a sexual nature, whether for the benefit of the perpetrator or for that of a third party.

III. – The offences mentioned in I and II shall be punishable by two years’ imprisonment and a fine of €30,000.

These penalties shall be increased to three years’ imprisonment and a fine of 45,000 euros where the offence is committed:

1° By a person who abuses the authority conferred by his or her position;

...

4° Against a person whose particular vulnerability or dependence resulting from the instability of his or her economic or social situation is apparent or known to the perpetrator;

...”

79. Although the question of consent is not expressly mentioned in the definition of rape in Article 222-23 of the Criminal Code, this notion permeates the case-law of the Court of Cassation. In an oft-cited judgment of 25 June 1857 (*Bull. crim.*, no. 240, and also, more recently, Court of Cassation, Criminal Division, 10 July 1973, no. 73-90.104, *Bull. crim.*, no. 322), rape was defined as follows in the context of a sexual act obtained by a man who had slipped into the victim’s bed pretending to be her husband:

“the serious offence (*crime*) of rape ... consists in the act of taking advantage of a person against his or her will, whether the lack of consent results from the physical or psychological violence against him or her, or from any other means of coercion or surprise in order to achieve, contrary to the will of the victim, the aim sought by the perpetrator of the action.”

80. The concept of “coercion” – which is one of the material elements of the offences of rape and aggravated sexual assault – is defined as physical or mental pressure exerted on a person and involving exploitation of the victim’s weakness or vulnerability to force the latter to engage in sexual activity⁴. The concept is to be assessed in a concrete manner, having regard to the victim’s capacity to resist (Court of Cassation, Criminal Division, 8 June 1994, no. 94-81.376, *Bull. crim.* no. 226, p. 550). The Court of Cassation has thus acknowledged that mental coercion could result from the fear felt by a young woman, aged only eighteen and a half, who was shy and reserved, in relation to a manager who behaved in a despotic and tyrannical manner (Court of Cassation, Criminal Division, 8 February 1995, no. 94-85.202). Mental coercion must, however, be based on objective factors and not on the victim’s subjective assessment alone (see, for example, Court of Cassation, Criminal Division, 21 February 2007, no. 06-88.735, *Bull. crim.* no. 55, p. 304).

81. Various bills were put before Parliament between 2023 and 2025 with the aim of inserting lack of consent into the definitions of rape and serious sexual assault. Among these legislative initiatives was Bill no. 842, which was registered in the Presidency of the National Assembly on 21 January 2025. It gave rise to an opinion of the *Conseil d’État*, delivered on 6 March 2025, which recommended that consent be defined in the law, specifying that consent “must be free and informed, specific, prior and revocable” (*Conseil d’État, ass.*, Opinion no. 409241 of 6 March 2025). The bill was passed at first reading in the National Assembly on 1 April 2025 and in the Senate on 18 June 2025, following the convening of a joint parliamentary committee.

B. Code of Criminal Procedure

82. At the material time the relevant Articles of the Code of Criminal Procedure provided as follows:

Article 52-1

“In certain regional courts (*tribunaux de grande instance*) investigating judges are grouped together in one investigation unit.

Only investigating judges forming an investigation unit have jurisdiction to conduct judicial investigations concerning serious offences (*crimes*). ...”

Article 179, first paragraph

“If the judge considers that the charges correspond to a lesser offence (*délit*), he or she shall refer the case for trial in a lower criminal court (*tribunal correctionnel*). ...”

⁴ Darsonville, Audrey, “Viol”, *Répertoire de droit pénal et de procédure pénale*, Dalloz, February 2020 (updated: December 2024), pt. 27.

Article 186-3, first paragraph

“The person under investigation and the civil party may appeal against the decisions provided for in the first paragraph of Article 179 if they consider that the charges referred to the lower criminal court constitute a serious offence (*crime*) which should have been referred by indictment to the Assize Court.”

Article 469, paragraphs 1 and 4

“If the offence referred to the lower criminal court as a *délit* is such as to attract a sanction corresponding to a *crime*, the court shall direct the public prosecutor to lodge an appeal in the appropriate manner.

...

When it receives a case by referral from the investigating judge ..., the lower criminal court may not apply, of its own motion or at the request of the parties, the provisions of the first paragraph hereof if the victim had become a civil party and was assisted by a lawyer at the time when the case was referred. ...”

83. The list of courts which have a judicial investigation unit is set out in Article D15-4-4 of the Code of Criminal Procedure. At the material time, the judges in the Nancy judicial investigation unit had the territorial jurisdiction to investigate serious offences (*crimes*) committed in the judicial district of Briey.

II. INTERNATIONAL LAW

84. The Court would refer to its judgment in *L. and Others v. France* (no. 46949/21, §§ 119-121, 124-134 and 136, 24 April 2025) for a detailed overview of the international instruments relating to the combat against sexual violence.

85. The relevant provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (opened for signature on 11 May 2011, CETS 201 – “the Istanbul Convention”), which entered into force in respect of France on 1 November 2014, read as follows:

Article 3 – Definitions

“For the purposes of this Convention:

(a) ‘violence against women’ ... shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

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

...”

Article 33 – Psychological violence

“Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalised.”

Article 36 – Sexual violence including rape

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

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

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

...

2. Consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.

3 Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law ...”

86. The Explanatory Report in respect of the Istanbul Convention comments as follows on Article 33:

“181. This provision refers to a course of conduct rather than a single event. It is intended to capture the criminal nature of an abusive pattern of behaviour occurring over time – within or outside the family. Psychological violence often precedes or accompanies physical and sexual violence in intimate relationships (domestic violence). However, it may also occur in any other type of setting, for example in the work place or school environment. ...”

87. With regard to Article 36 of the Istanbul Convention, it comments as follows:

“192. Prosecution of this offence will require a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. ...

193. In implementing this provision, Parties to the Convention are required to provide for criminal legislation which encompasses the notion of lack of freely given consent to any of the sexual acts listed in lit.a to lit.c. It is, however, left to the Parties to decide on the specific wording of the legislation and the factors that they consider to preclude freely given consent. Paragraph 2 only specifies that consent must be given voluntarily as the result of the person’s free will, as assessed in the context of the surrounding circumstances.”

88. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first Baseline Evaluation Report on France on 19 November 2019 (GREVIO/Inf(2019)16). While welcoming the important legislative developments since 1980, it made the following observations on compliance with Article 36 of the Istanbul Convention:

“192. ... [T]he wording adopted by the French legislator places the emphasis on the elements of proof evidencing the lack of consent, to the detriment of the centrality of the absence of consent. In line with the approach taken by the convention, a definition of sexual violence based on the absence of freely given consent would, in GREVIO’s opinion, make it possible to overcome the shortcomings that emerge from the current situation: on the one hand, legal uncertainty generated by fluctuating interpretations of the constituent elements of violence, coercion, threat and surprise; on the other hand, the inability of such elements of proof to cover the situation of all non-consenting victims, particularly when they are in a state of shock. Above all, such a definition would make it possible to operate the necessary paradigm shift to recognise the centrality of the victim’s will, and would enable France to side with those countries that have already taken this important step. GREVIO’s position on this matter is consistent, in line with the case law of other international human rights bodies such as the CEDAW Committee. The authorities should therefore launch a thorough discussion on the issue, taking into account the concerns that currently stand in the way of such a debate, namely the fear expressed by some of placing an even greater burden of proof on the victim, and the need to uphold firmly the presumption of innocence.”

89. GREVIO has also considered, in evaluation reports concerning other Contracting States, that it is not sufficient, in order to comply with the requirements of Article 33, to “criminalise” only serious forms of psychological violence, as criminal conduct might consist of a series of less serious acts, which would often be part of the violent context in situations of domestic violence and which that provision was precisely intended to take into account (GREVIO/Inf(2019)9, § 157). Emphasising that Article 33 sought to apprehend the criminal nature of violent behaviour over time, it noted that serious psychological harm might be caused by different means or methods, such as isolation, control, coercion and intimidation (see, for example, GREVIO/Inf(2021)6, § 147, and GREVIO/Inf(2021)5, §§ 87-88). In this regard, the Committee has specifically encouraged some States to criminalise persistent and harmful coercive control behaviour (GREVIO/Inf(2018)6, § 215), finding that such behaviour is typical of relationships between partners characterised by domination and violence (GREVIO/Inf(2020)14, § 152; see also GREVIO/Inf(2021)7, § 245 and GREVIO/Inf(2022)32, § 163). In order to be able to provide an appropriate response to violence between intimate partners, GREVIO considers it essential to understand that it is a cycle of abuse of which psychological violence is an integral part, and that perpetrators often ask victims to forgive them before engaging anew in violence and coercive control (GREVIO/Inf(2021)5).

III. COMPARATIVE-LAW MATERIAL

90. The Court would refer back to its judgments in *M.C. v. Bulgaria* (no. 39272/98, §§ 88-100, ECHR 2003-XII) and *L. and Others v. France* (cited above, §§ 142-147) for a comparative analysis of the various forms of criminalisation of rape and sexual violence in the member States of the Council of Europe.

THE LAW

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

91. The applicants submitted that the criminal-law provisions in force in France did not provide sufficient protection against non-consensual sexual acts. They further submitted that the domestic authorities had failed to comply with their obligation to investigate effectively the facts complained of by E.A. and to punish the perpetrator, and had exposed E.A. to secondary victimisation. They submitted that the domestic authorities had failed to comply with their positive obligations under Articles 3 and 8 of the Convention, which provide as follows:

Article 3

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

Article 8

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

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

A. Admissibility

1. *The parties' submissions*

92. The Government raised a preliminary objection arguing that the applicants had failed to exhaust domestic remedies.

93. In the first place, they submitted that the applicants could have challenged the legal classification of the charges, requesting that K.B. be charged with acts of aggravated rape, by appealing against the investigating judge's decision to refer the case for trial, as permitted by Article 186-3 of the Code of Criminal Procedure (see paragraphs 56 and 82 above).

94. The Government added that the allegation as to the Criminal Court's lack of jurisdiction had not been raised in the manner or within the time-limit prescribed by domestic law, as the Val de Briey Criminal Court had indeed found in its judgment of 23 May 2017 (see paragraph 59 above). In that connection, they pointed out that the provisions of the fourth paragraph of Article 469 of the Code of Criminal Procedure precluded the making of such a submission for the first time before the Criminal Court where the case had

been referred to it by a decision of the investigating judge and where the direct victim had been a civil party and assisted by a lawyer on the date of that decision (see paragraph 82 above; see also Court of Cassation, Criminal Division, 20 November 2013, no. 12-85.185, *Bull. crim.* no. 236).

95. Secondly, they stated that the applicants could have submitted requests for acts to remedy any shortcomings in the judicial investigation.

96. Thirdly, they submitted that the applicants had refrained from seeking to engage the State's responsibility under Article L. 141-1 of the Code of Judicial Organisation – a compensatory remedy through which they could have complained about any shortcomings in the police and judicial investigations.

97. The Government further argued that part of the complaint concerning the breach of the procedural obligation under Articles 3 and 8 of the Convention had been lodged out of time. The applicants had failed to complain of delays in the investigation before filing their observations on the merits on 15 November 2023.

98. The applicants replied that before the trial courts they had requested that the charge be reclassified as one of aggravated sexual assault (see paragraphs 64 and 69 above) and that they had subsequently referred the matter to the Court of Cassation in their appeals on points of law against the Nancy Court of Appeal's judgment of 27 May 2021 (see paragraph 74 above). In their view, they had thus sought the application of the provisions criminalising non-consensual sexual acts.

99. They further submitted that the issue of whether they had exhausted remedies by complaining of a violation of the positive procedural obligation under Articles 3 and 8 of the Convention had to be assessed as a whole, and not by looking at each of the alleged procedural shortcomings in isolation.

100. Lastly, they argued that a compensatory remedy would not have been capable of remedying the matter complained of. In so far as they were not merely seeking compensation but above all effective punishment for the sexual violence sustained by E.A., it was sufficient for them to intervene in support of the prosecution as civil parties in order to satisfy the requirement to exhaust domestic remedies.

2. The Court's assessment

(a) Victim status of the AVFT

101. Although the Government did not raise the objection that the second applicant lacked victim status, there is nothing to prevent the Court from examining this issue, which goes to its jurisdiction, of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016).

102. The Court reiterates that Article 34 of the Convention does not allow complaints *in abstracto* alleging a violation of the Convention. Nor does it provide for the institution of an *actio popularis* (see *Centre for Legal*

Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 101, ECHR 2014, and the references cited therein). In order to be able to lodge an individual application, a natural person, non-governmental organisation or group of individuals must be able to claim to be a victim of a violation of the rights set forth in the Convention (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, §§ 50-51, ECHR 2012). Although in the absence of a measure directly affecting them the Court does not normally grant victim status to associations, even if the interests of their members could be at stake, there may be “special considerations” where an association represents individuals, even in the absence of such a measure (see *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, §§ 475-476, 9 April 2024; see also *Association Innocence en Danger and Association Enfance et Partage v. France*, nos. 15343/15 and 16806/15, §§ 119-122, 4 June 2020).

103. The Court is of the view that the association AVFT does not have the status of “victim” within the meaning of Article 34, as it was not directly affected by the alleged violation. It further notes that E.A. personally lodged an individual application and that she was represented effectively before the Court. It follows that the AVFT does not have standing before the Court, either in its own name or as E.A.’s *de facto* representative. The application lodged by this association is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

(b) Admissibility of application lodged by E.A.

(i) Exhaustion of domestic remedies

104. The Court reiterates that the purpose of the exhaustion rule under Article 35 § 1 of the Convention is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it (see *Hanan v. Germany* [GC], no. 4871/16, § 148, 16 February 2021). The machinery of protection established by the Convention is subsidiary in nature (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

105. The obligation to exhaust domestic remedies requires applicants to make normal use of remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014).

106. Article 35 § 1 also requires that the complaints intended to be made subsequently before the Court should have been made to the appropriate

domestic body, at least in substance (see, for example, *Castells v. Spain*, 23 April 1992, § 32, Series A no. 236, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I), and in compliance with the formal requirements and time-limits laid down in domestic law; it also requires that any procedural means that might prevent a breach of the Convention should have been used (see *Akdivar and Others*, cited above, § 66). That being so, the exhaustion requirement must be applied with some degree of flexibility and without excessive formalism (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 87, 9 July 2015).

107. In the present case, the Court notes that E.A. lodged a criminal complaint and joined the proceedings as a civil party in the context of the judicial investigation opened against K.B. (see paragraphs 19, 28 and 50 above). The applicant supported the prosecution throughout the proceedings, requesting that the charges against K.B. be reclassified as aggravated sexual assault and that he be convicted of that offence (see paragraphs 64 and 69 above). In addition, she argued before the Court of Cassation that the assessment of consent made by the Nancy Court of Appeal in its judgment of 27 May 2021 was incompatible with the requirements of Article 3 of the Convention (see paragraph 74 above). The Court notes that the above-mentioned requests and arguments, which were duly submitted to the competent courts, were aimed at ensuring the effective application of the provisions criminalising non-consensual sexual acts in domestic law and were capable of remedying the alleged violation. In these circumstances, and having regard to the nature of the complaint before it, the Court considers that the remedies used by the applicant were appropriate and that they sufficiently put the domestic authorities in a position to address and prevent or put right the alleged violation.

108. The Court further reiterates that a compensatory remedy such as that relied on by the Government is incapable of providing direct and adequate redress for such a complaint (see *Pulfer v. Albania*, no. 31959/13, § 71, 20 November 2018, and *R.B. v. Estonia*, no. 22597/16, § 65, 22 June 2021).

109. It follows that the Government's objection alleging non-exhaustion of domestic remedies must be dismissed.

(ii) Compliance with four-month period

110. The Court reiterates that compliance with the procedural requirement under Articles 3 and 8 must be assessed on the basis of several essential parameters, such as the prompt opening and diligent conduct of an investigation, and the appropriateness of the investigative measures (see, under Article 3, *N.Ç. v. Turkey*, no. 40591/11, § 97, 9 February 2021, and, under Article 8, *J.L. v. Italy*, no. 5671/16, § 124, 27 May 2021). These elements are interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (see *R.R. and R.D. v.*

Slovakia, no. 20649/18, § 178, 1 September 2020; see also, under Article 2, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015). Accordingly, the question of compliance with the requirement of promptness of both the investigation and the criminal proceedings is merely an argument put forward by the applicant in support of the complaint that she raised in her application from the outset, and not a separate complaint.

111. Noting, moreover, that the final domestic decision was taken on 16 February 2022 and that the complaint of a breach of the procedural obligation under Articles 3 and 8 was submitted on 16 June 2022, within the time-limit laid down in Article 35 § 1 of the Convention, the Court dismisses the objection that it was out of time.

112. Since the complaint raised by E.A. is not inadmissible on any other grounds, the Court declares it admissible.

B. The merits

1. The parties' submissions

(a) The applicant

113. E.A. submitted, first, that the domestic legal framework concerning the punishment of sexual violence was insufficiently protective, in that it did not provide for cases where the victim's consent had been obtained in a coercive environment. Noting that domestic case-law already interpreted the concept of "moral coercion" by taking into account the phenomenon of a victim's state of shock (see, for example, Court of Cassation, Criminal Division, 25 October 1994, no. 94-83.726, and 8 February 1995, no. 94-85.202), she took the view that legislative reform was not imperative, but that the domestic courts should interpret more broadly the concepts of "coercion, threat, violence or surprise", as used in Articles 222-22 and 222-23 of the Criminal Code to define aggravated sexual assault and rape.

114. She further complained that she had not had the benefit of the effective application of the domestic law provisions punishing sexual and domestic violence in their various forms. In that connection, she complained of a series of shortcomings in the conduct of the investigations and in the criminal proceedings against K.B.

115. First, certain investigative measures had not been carried out or had been delayed. She emphasised that K.B. had not been taken into police custody until February 2014, after he had been informed of E.A.'s complaints by the management of Briey Hospital. The delay in seizing K.B.'s work computer had prevented it from being analysed, while the telephone and digital investigations had been inadequate. Furthermore, K.B.'s home had not been searched. K.B.'s DNA and fingerprints had not been taken for the purposes of comparing them with those on file in other contexts and the investigating judge had not obtained either the report of the administrative

investigation carried out in Briey Hospital or the Administrative Court's judgment of 25 June 2015. Lastly, she pointed out that K.B.'s current wife had not been questioned while he was in police custody and that no psychological or psychiatric assessment of his sexuality had been sought.

116. Secondly, she argued that the domestic authorities had never followed up her complaints of rape under their proper classification, as the acts had been considered only under the head of intentional acts of violence at the preliminary investigation and prosecution stages. She also criticised the dismissal of her objection as to lack of jurisdiction that she had raised in the Val de Briey Criminal Court and her requests for the reclassification of the charges against K.B. as aggravated sexual assault.

117. Thirdly, she submitted that the judicial authorities had failed to carry out a context-sensitive or objective assessment of her consent to the sexual acts and acts of violence inflicted by K.B., by refusing to take into consideration the relationship of authority between them, their age difference or any empirical knowledge about the reactions of victims of sexual violence. She argued in particular that the Nancy Court of Appeal had drawn unreasonable conclusions from the fact that she had signed the "contract" governing her sex life with K.B., by finding that this had entailed full acceptance of all the sexual acts and violence that had ensued. She submitted that the violent and sadistic nature of the acts inflicted on her called for particular caution when it came to assessing consent and for consideration of the coercive environment created by K.B.

118. Fourthly, she criticised the domestic courts' assessment of the evidence, complaining that it was fragmented and biased. The fact that the domestic courts had given credence to K.B.'s statements and disregarded her own position was also a form of secondary victimisation.

119. Fifthly, she argued that the investigation and trial proceedings had not been expeditious.

120. In her view, the present case demonstrated the existence of systemic shortcomings in the treatment of sexual violence in France and showed that criminal justice stakeholders were permeated by a rape culture.

(b) The Government

121. The Government submitted that the domestic legal framework in force at the material time adequately addressed non-consensual sexual acts and that it had been implemented effectively.

122. With regard to the French criminal legislation, they argued that the offences of rape and sexual assault had long been interpreted in the light of the concept of consent (Court of Cassation, Criminal Division, 25 June 1857, *Bull. crim.* no. 240). In their view, that consideration underpinned the criminalisation of sexual abuse committed "by violence, coercion, threat or surprise", as still provided for under domestic law. They added in that connection that Article 222-22-1 of the Criminal Code had expressly

provided, since Law no. 2010-121 of 8 February 2010, that such coercion could be of a psychological nature.

123. With regard to the application of that legislative framework to the present case, they argued that the investigators had carried out detailed investigations speedily (numerous interviews, technical examinations and expert assessments) under the supervision of the public prosecutor and then the investigating judge. Those investigations had sufficed for the facts to be established and for the impact of the impugned events on the victim to be assessed, and had enabled the domestic courts to carry out a context-sensitive assessment of whether she had consented to the sexual acts in question. In response to the applicant, they stated that the digital media provided by her and K.B. had been analysed in a timely manner.

124. The Government observed that K.B. had indeed been prosecuted in the lower criminal court. Pointing out that the procedural obligation under Article 3 did not require that anyone charged with sexual violence had to be found guilty, they submitted that the Criminal Court and the Court of Appeal had carefully examined E.A.'s requests for reclassification of the charges and had considered, after assessing the evidence before them, that the alleged offence of aggravated sexual assault had not been made out and that E.A. had consented to the sexual acts of which she complained. Taking the view that the applicant was merely calling into question the domestic courts' findings of fact, they emphasised that this matter fell outside the scope of the Court's supervision.

125. Lastly, they argued that E.A.'s allegations of secondary victimisation were unsubstantiated.

(c) The third-party interveners

(i) The CNCDH

126. The CNCDH's observations, which were common to four individual applications⁵, were set out in *L. and Others v. France*, to which reference is made (cited above, §§ 190-191).

127. The CNCDH submitted that rape was criminalised in an insufficiently protective manner in French law. In its view, the current definition of rape did not provide for the punishment of certain non-consensual relationships, particularly in cases where the victim had not resisted or reacted. The concept of consent should be central to the law criminalising rape and specific reference should be made to it.

128. The intervener added that the law-enforcement authorities did not take sufficient account of the circumstances which might characterise the lack of free consent to sexual intercourse, as nevertheless required by Article 36 § 2 of the Istanbul Convention (see paragraph 85 above).

⁵ Applications nos. 30556/22, 36690/22, 39759/22 and 8229/23.

(ii) *The NGO “Osez le féminisme!” and six other jointly intervening NGOs*

129. The NGO “Osez le féminisme!” and the jointly intervening organisations expressed the view that sado-masochism was based on a patriarchal and violent ideology. In their view, sado-masochistic relationships were overwhelmingly coercive and criminogenic. The interveners submitted that it was not uncommon in practice for male perpetrators of sexual violence to seek to absolve themselves of criminal liability by claiming that the victim had deliberately engaged in violent sexual practices. Moreover, they argued that consent had derisory evidential value when expressed by a woman who was a victim of violence. Consent to violent sexual practices could be part of a dynamic of domestic violence or result from coercive strategies to exploit the trauma of a vulnerable victim. For these reasons, they argued that the notion of consent should not be the decisive element in the criminalisation of sexual violence.

2. *The Court’s assessment*

(a) **General principles**

130. The principles relating to the protection of individuals within the jurisdiction of the Contracting States against non-consensual sexual acts were set out in *L. and Others v. France* (cited above, §§ 192-202), to which reference is made.

131. The Court reiterates, in particular, that rape and serious sexual assault amount to treatment falling within the ambit of Article 3 of the Convention and which also implicate fundamental values and essential aspects of “private life” within the meaning of Article 8 (see, among other authorities, *Y v. Bulgaria*, no. 41990/18, §§ 63-65, 20 February 2020 and the references cited therein, and *E.G. v. the Republic of Moldova*, no. 37882/13, § 39, 13 April 2021).

132. The States’ positive obligations under Articles 3 and 8 of the Convention include the obligation to enact criminal-law provisions for the criminalisation and effective punishment of any non-consensual sexual act (see *M.G.C. v. Romania*, no. 61495/11, § 59, 15 March 2016; *Z v. Bulgaria*, no. 39257/17, § 67, 28 May 2020; and *J.L. v. Italy*, cited above, § 117), and to apply those provisions through effective investigation and prosecution (see *M.C. v. Bulgaria*, cited above, §§ 153 and 166, and *B.V. v. Belgium*, no. 61030/08, § 55, 2 May 2017). These positive obligations must be interpreted in the light of the relevant international instruments and in particular the Istanbul Convention, which provides a comprehensive framework for preventing, prosecuting and eliminating violence against women and protecting victims (see *J.L. v. Italy*, cited above, § 120, and *Vučković v. Croatia*, no. 15798/20, § 57, 12 December 2023).

(i) *Obligation to establish a legal framework guaranteeing adequate protection against non-consensual sexual acts*

133. The positive obligations inherent in Articles 3 and 8 require, in the first place, the introduction of a legislative and regulatory framework that affords individuals adequate protection against physical and psychological harm, including acts as serious as rape (see *M.C. v. Bulgaria*, cited above, § 150).

134. With regard to this substantive obligation, the Court has held that the Contracting States enjoy a wide margin of appreciation in the choice of means to guarantee such protection (*ibid.*, § 154). However, this is not without limits. Effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions (*ibid.*, §§ 150 and 185). In view of the consensus among the Contracting States, the Court rejects any rigid approach to the prosecution of sexual offences and considers that they have an obligation to criminalise and punish effectively any non-consensual sexual act, including in the absence of physical resistance by the victim (*ibid.*, §§ 155-166). This case-law is consistent (see, among other authorities, *M.G.C. v. Romania*, no. 61495/11, § 59, 15 March 2016; *J.L. v. Italy*, cited above, § 118; *X v. Greece*, no. 38588/21, § 68, 13 February 2024; *Z v. the Czech Republic*, no. 37782/21, § 52; and *Daugaard Sorensen v. Denmark*, no. 25650/22, § 51, 15 October 224).

(ii) *Obligation to effectively implement this punitive legal framework*

135. Secondly, the Court reiterates that Articles 3 and 8 of the Convention also impose a positive procedural obligation on States. Thus, where an individual has an arguable claim that he or she has been the victim of acts contrary to those provisions, the national authorities must conduct an effective official investigation to establish the facts of the case and to identify and, if appropriate, punish those responsible (see *B.V. v. Belgium*, cited above, § 56; *X and Others v. Bulgaria* [GC], no. 22457/16, § 184, 2 February 2021; and *Z v. the Czech Republic*, cited above, § 53). This obligation is not one of result, but one 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, for the sake of maintaining public confidence in their adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *J.L. v. Italy*, cited above, § 118; *N.Ç. v. Turkey*, cited above, § 96; and *Z v. the Czech Republic*, cited above, § 53).

136. In order to be effective, the investigation must be sufficiently thorough and objective. The authorities must take the reasonable measures available to them to obtain evidence relating to the offence in question such

as by 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; *W. v. Slovenia*, no. 24125/06, § 64, 23 January 2014; and *X v. Greece*, cited above, § 69).

137. A requirement of promptness and reasonable expedition is also implicit in the guarantee of effectiveness in this context (see *M.N. v. Bulgaria*, cited above, § 46; *Y v. Bulgaria*, cited above, § 81; and *X v. Greece*, cited above, § 69). The domestic authorities are required to act promptly as soon as such allegations are clearly brought to their attention, even if no formal criminal complaint has been lodged (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, §§ 97 and 112-114, 3 May 2007). The Court also reiterates that compliance with the procedural requirements of Article 3 is assessed on the basis of several essential parameters. These elements are inter-related and each of them, taken separately, does not amount to an end in itself but, taken jointly, they enable the degree of effectiveness of the investigation to be assessed (see, for example, *M.B. and Others v. Slovakia (no. 2)*, no. 63962/19, § 55, 7 February 2023, and *Panayotopoulos and Others v. Greece*, no. 44758/20, § 104, 21 January 2025). The Court examines the issue from the standpoint of the domestic proceedings as a whole (see *Z v. Bulgaria*, cited above, §§ 71 and 81).

138. In assessing the State's compliance with its positive obligations, the Court takes into account the importance of protecting the rights of victims. Criminal proceedings concerning sexual offences are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant (see *Y. v. Slovenia*, no. 41107/10, § 103, 28 May 2015, and *X v. Greece*, cited above, § 70). In the conduct of the proceedings, in parallel with effective respect for defence rights, the judicial authorities also have a duty to protect the image, dignity and private life of victims of sexual violence, including through the non-disclosure of personal data and information that are unrelated to the facts. In the Court's view, it is therefore essential that judicial authorities do not reproduce sexist stereotypes in court decisions, do not play down gender-based violence and do not expose women to secondary victimisation by making guilt-inducing and judgmental comments that are capable of undermining victims' trust in the justice system. (see *Y. v. Slovenia*, cited above, § 97 and 101-104, and *J.L. v. Italy*, cited above, §§ 137-141).

139. In so far as the investigation leads to charges being brought before the national courts, the positive obligations under Article 3 of the Convention extend to the trial stage of the proceedings (see *Z v. Bulgaria*, cited above, § 66, and references cited therein).

(α) Assessment of consent and establishment of surrounding circumstances

140. The investigation and its findings must focus on the issue of lack of consent (see *M.C. v. Bulgaria*, cited above, § 181; *M.G.C. v. Romania*, cited above, § 72; *Z v. Bulgaria*, cited above, § 75; and *N.Ç. v. Turkey*, cited above, § 115). Consent must reflect a person's free will to engage in the sexual intercourse in question, at the material time and as assessed in the context of the surrounding circumstances (see *H.W. v. France*, no. 13805/21, § 91, 23 January 2025).

141. Although in practice it may sometimes be difficult to prove lack of consent without "direct" evidence of rape, such as traces of violence or direct witnesses, the authorities are nevertheless under an obligation to examine all the relevant facts and to give a ruling after making an assessment of all the circumstances of the case (see *M.C. v. Bulgaria*, cited above, § 181; *Z v. Bulgaria*, cited above, § 74; *M.G.C. v. Romania*, cited above, § 72; and *X v. Cyprus*, no. 40733/22, § 116, 27 February 2025).

142. Where criminal proceedings have been instituted, it is for the trial courts to assess consent by making a context-sensitive assessment of the surrounding circumstances of the case (see *L. and Others v. France*, cited above, §§ 221, 238 and 249).

143. Circumstances which the Court has found relevant for the assessment of consent include, in particular, the existence of an unbalanced relationship between the accused and the victim (see *Z v. the Czech Republic*, cited above, §§ 55-61, and *L. and Others v. France*, cited above, § 221), the young age of a female complainant and her age difference with the accused (see *M.C. v. Bulgaria*, cited above, §§ 164 and 183; *M.G.C. v. Romania*, cited above, § 69; and *L. and Others v. France*, cited above, §§ 217, 221, 236 and 242), the victim's psychological fragility and particular vulnerability (see *Z v. the Czech Republic*, cited above, § 57; *Y v. the Czech Republic*, no. 10145/22, § 69, 12 December 2024; and *L. and Others v. France*, cited above, §§ 220 and 221), the victim's capacity for discernment (*L. and Others v. France*, §§ 216, 222 and 249), the victim's lack of sexual experience (*ibid.*, §§ 236 and 242), the victim's state of drunkenness and intoxication (see *X v. Greece*, cited above, § 82; *L. and Others v. France*, cited above, § 221; and *X v. Cyprus*, cited above, § 117), factors explaining the victim's state of shock at the material time (see *M.C. v. Bulgaria*, cited above, §§ 156-166 and 183; *Z v. Bulgaria*, cited above, § 76; and *L. and Others v. France*, §§ 242-244), and the psychological impact of the events on the victim (see *X v. Greece*, cited above, §§ 79 and 82, and *Z v. the Czech Republic*, cited above, § 57). The Court also takes account of whether any of these elements of vulnerability were known to the perpetrator (*L. and Others v. France*, §§ 221 and 242) or whether the perpetrator used a relationship of trust or status for sexual advantage (see *Z v. the Czech Republic*, cited above, § 57, and *L. and Others v. France*, cited above, § 221). It also takes into account any circumstances that may create a coercive framework, such as the fact that the

victim was taken to a deserted place or faced more than one assailant (see *M.C. v. Bulgaria*, cited above, § 180; *M.G.C. v. Romania*, cited above, § 68; *L. and Others v. France*, cited above, § 236; and *X v. Cyprus*, cited above, § 117).

(β) Sexual violence in the workplace

144. The obligation to adequately protect individuals against acts of violence by private individuals extends to the workplace (see *Špadijer v. Montenegro*, no. 31549/18, § 87, 9 November 2021).

145. With particular regard to sexual violence committed in the workplace, a relationship of power and subordination between the perpetrator and the female complainant constitutes an important contextual element for the assessment of the evidence and of the victim's conduct (see *C. v. Romania*, no. 47358/20, § 80, 30 August 2022, with regard to the effectiveness of an investigation into acts of sexual harassment in the workplace; see also, under Article 10, with regard to consideration of the professional context in assessing the necessity of a conviction for defamation of an employee who had reported acts of sexual harassment, *Allée v. France*, no. 20725/20, §§ 47-55, 18 January 2024).

(b) Application of those principles to the present case

146. The Court notes that the applicant criticised both the French criminal-law framework and the manner in which it had been implemented in the present case.

147. The Court reiterates in this connection that it is not called upon to rule on allegations of errors or isolated omissions in an investigation; it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on the alleged perpetrators' criminal responsibility. The Court's task is solely to examine whether or not the impugned legislation and practice and their application in the case at hand, combined with the alleged shortcomings in the investigation, had such significant flaws as to amount to a breach of the respondent State's positive obligations under Articles 3 and 8 of the Convention (see *M.C. v. Bulgaria*, cited above, §§ 167-168). It will examine these two issues together.

(i) Domestic legal framework criminalising sexual violence

148. The Court notes that the legal provisions criminalising rape and aggravated sexual assault, respectively to be found in Articles 222-23 and 222-22 of the Criminal Code (see paragraph 77 above), do not include any express reference to the notion of "consent". However, lack of consent has long been taken into consideration by the Court of Cassation in its case-law (see paragraphs 79-80 above). The domestic courts have thus endeavoured to establish the existence or lack of consent, while respecting the defence rights

of the accused and in a context where the court sometimes has scant information other than conflicting statements from each party.

149. The Court notes that, according to GREVIO's Baseline Evaluation Report on France of 19 November 2019, the definition of rape in French law creates "legal uncertainty generated by fluctuating interpretations of the constituent elements" of the offence (violence, coercion, threat and surprise) and does not allow "such elements of proof to cover the situation of all non-consenting victims, particularly when they are in a state of shock", whereas "such a definition would make it possible to operate the necessary paradigm shift to recognise the centrality of the victim's will, and would enable France to side with those countries that have already taken this important step" (see paragraph 88 above).

150. The Court notes, in this connection, that there is now a growing consensus among the States Parties to expressly include, in the definition of rape or equivalent offences, the concept of informed consent and to enshrine the lack of such consent as a constituent element of the offence (paragraph 90 above). Moreover, France's international commitments, in particular the ratification of the Istanbul Convention, call for such a development, even if the respondent State retains a certain latitude to define, in its legislation, the criteria of free consent (see paragraphs 85 and 87 above). In this connection, the Court, after noting the existing lacunae in the legal framework protecting the rights of sexual victims, takes note of the significant changes that have taken place in French legislation in this area since 1980 (see paragraph 88 above), with the passing at first reading in the National Assembly and the Senate of a bill amending the criminal-law definition of rape and aggravated sexual assault (see paragraph 81 above).

151. The foregoing considerations will be taken into account by the Court in its analysis of the implementation by the national authorities of the legal framework applicable to the punishment of sexual violence.

(ii) Implementation of domestic legal framework criminalising sexual violence

152. The Court notes, as a preliminary matter, that the domestic authorities reacted promptly to E.A.'s disclosures. The Briey Hospital management thus promptly launched an administrative investigation, suspended K.B. from his duties and reported the facts to the public prosecutor. A preliminary police investigation was opened on 5 August 2013, followed up by a judicial investigation. Enquiries were made in order to assess the credibility of the complainant and the alleged perpetrator and to assess the impact of the events in question, in particular by means of medical examinations and psychiatric and psychological reports (compare *M.C. v. Bulgaria*, cited above, §§ 177-178). Lastly, criminal proceedings were brought against K.B. While the latter was ultimately acquitted, the Court would observe that this fact alone does not suffice to conclude that there has been a breach of the obligation to carry out an effective investigation. It must

determine, however, whether the proceedings, taken as a whole, afforded E.A. effective protection against non-consensual sexual acts committed by another.

(α) Effectiveness of investigation and prosecution

153. As regards, in the first place, the context of the investigation and the nature of the prosecution, the Court notes that the information brought to the attention of the public prosecutor's office and the criminal complaint filed by E.A. indisputably included arguable allegations of rape and aggravated sexual assault (see paragraphs 14 and 21 above). Although a preliminary police investigation was indeed opened, the Court notes in the first place that the public prosecutor's office failed to specify its purpose (see paragraphs 18 and 23 above); secondly, that the scope of the enquiries was expressly restricted, as the prosecutor monitoring that investigation requested that K.B. be taken into police custody solely on charges of intentional acts of violence and aggravated sexual harassment (see paragraph 38 above); and lastly that the referral of the case to the investigating judge was limited to those charges alone, and in fact the Briey investigating judge did not have jurisdiction to investigate rape allegations (see paragraphs 44 and 83 above). The Court thus notes that E.A.'s allegations of rape and serious sexual assault were mentioned only incidentally during the investigations on charges of intentional acts of violence and harassment, despite the sexual nature of the acts sustained and their particularly serious nature.

154. Similarly, the offences for which K.B. was ultimately prosecuted were classified as intentional acts of violence and sexual harassment, even though they corresponded to a large extent, as described in the investigating judge's committal decision (see paragraph 55 above), to sexual violence, including anal penetration without consent. The Court infers from the foregoing that the criminal-law provisions penalising non-consensual sexual acts were not implemented effectively at the investigation and prosecution stages.

155. Secondly, with regard to the conduct of the investigations, the Court reiterates that while it is not its task, in theory, to call into question the lines of inquiry pursued by investigators or their findings of fact, any failure to pursue an obvious line of enquiry can decisively undermine the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *S.Z. v. Bulgaria*, no. 29263/12, § 50, 3 March 2015; *M.N. v. Bulgaria*, cited above, § 48; and *X and Others v. Bulgaria*, cited above, § 186).

156. In the present case, the Court notes that it was alleged, from the time when the offences were reported to the public prosecutor, that the acts of sexual violence disclosed by E.A. had taken place in a context of controlling conduct on the part of K.B. (see paragraphs 14 and 20 above) and that they had had a major impact on the applicant, to the point of causing her significant

weight loss and justifying her admission to the psychiatric department of a hospital for several months (see paragraphs 6 and 22 above). The Court is of the view that it was therefore crucial for the investigation to focus on whether E.A. was capable of freely consenting to the impugned sexual acts in such circumstances.

157. In that connection, the Court notes, firstly, that an examination of the correspondence between E.A. and K.B. would have been decisive for a proper understanding of their relationship in the light of the information brought to the attention of the public prosecutor's office and the initial findings of the police investigation (see paragraphs 7, 11, 21, 28 and 34 above). The Court thus considers that the investigations were deficient on this point. In the course of the preliminary investigation, the chief investigator confined himself to making use of the scant items provided by the parties and did not seek to gather any other evidence (see paragraphs 41 and 42 above). The judicial investigation did not usefully complement the enquiries in this respect, as the delay in seizing K.B.'s work computer led to a loss of digital evidence (see paragraphs 47 and 48 above).

158. Secondly, although it was observed, through a psychiatric examination, that E.A. displayed a psychological trauma of a rare intensity and clinical signs of "hostage syndrome" (see paragraph 37 above), the Court regrets that no further investigation was carried out in order to determine whether those conclusions were such as to call into question the complainant's ability to freely consent to sexual relations at the material time.

159. In the light of the foregoing, the Court considers that the investigations into the circumstances surrounding the events were not sufficiently thorough.

160. Thirdly and lastly, as regards the speediness of the investigations and trial proceedings, the Court notes that they lasted eight years and six months overall, the case having been examined by courts at three levels of jurisdiction. It observes in particular that the closure of the judicial investigation was delayed by more than a year owing to the difficulties encountered in obtaining a psychiatric report on K.B. and that a period of nearly two years and nine months elapsed between the lodging of the appeals against the Criminal Court's judgment of 25 September 2018 and their examination by the Court of Appeal. In these circumstances, the Court considers that the proceedings were not conducted with the requisite expedition.

(β) Assessment by trial courts of applicant's consent

161. With regard to the assessment of the applicant's consent by the trial courts, the Court notes that the Val de Briey Criminal Court dismissed her request for the offences with which K.B. was charged to be reclassified as aggravated sexual assault, in a judgment of 25 September 2018, on the ground that it had not been established that they had been committed with violence,

coercion, threats or surprise (see paragraph 65 above). In spite of finding that K.B. knew her to be psychologically and emotionally vulnerable, that he exercised a functional authority over her which he had abused, that he had threatened her with professional reprisals, that he had behaved aggressively and humiliatingly towards her, causing a gradual deterioration in her physical and mental health, and that E.A. had agreed to submit to his demands in view of his behaviour in the workplace (see paragraphs 65-66 above), the Criminal Court nevertheless drew no inferences from these factors in assessing the question of consent or in establishing whether there had been physical or mental coercion.

162. The Court further notes that the Nancy Court of Appeal acquitted K.B. of all the charges in a judgment of 27 May 2021, finding that E.A. had consented to all the violent sexual practices and humiliations that she had subsequently complained of (see paragraphs 71 to 73 above). In reaching that conclusion, it considered that E.A. had entered into a “contract” with K.B. aimed at regulating their relationship and sado-masochistic practices and that, in the light of certain exchanges she had had with the accused’s sister on social media, she was to be regarded as having intended to continue her relationship with K.B. in those circumstances.

163. The Court notes that this conclusion was not called into question by the Court of Cassation, as the applicant’s appeal on points of law was declared inadmissible in accordance with the proposal of the reporting judge.

164. The applicant submitted that the domestic courts had assessed her consent to the impugned sexual acts without engaging in a context-sensitive assessment of the surrounding circumstances.

165. In that connection, the Court observes, in the first place, that the facts must be seen in their workplace context. K.B. exercised functional authority over E.A. and his duties as head of department and his role on the hospital medical board gave him a certain power within the Briey Hospital (see paragraphs 4 and 65 above), whereas E.A. was a young professional, whose tenure as a manager depended on her success in a qualification-based competition (see paragraph 8 above). It appears from the criminal case file that K.B. had threatened to interfere in this process, deliberately mixing up the private sphere and the professional environment (see paragraphs 8, 10 and 66 above). Furthermore, it can be seen from the statements of both E.A. and her colleagues that K.B. had shown vindictive and harassing conduct towards her in the workplace in the months preceding her sick-leave from 12 June 2013, as he had used his status and the authority conferred on him by his duties to discredit her professionally and isolate her from some of her colleagues (see paragraphs 8, 27, 29 and 30 above). The Court notes that the investigating judge and the Criminal Court found these acts of harassment to be established (see paragraphs 55 and 66 above). It further observes that E.A. feared that she would have to reimburse her training costs in the event of an early termination of her contract (see paragraphs 10 and 26 above).

166. The Court notes, secondly, that E.A. and K.B. had developed, at their workplace, an intimate relationship which had been ongoing. It appears from the statements of E.A. and those around her, as well as from the investigations, that the events took place in a context of repeated psychological violence, committed in a private setting. E.A. had revealed that K.B. had made numerous statements and gestures to denigrate and humiliate her, together with sudden outbursts of aggression. She had also stated that he had increasingly controlled and monitored her daily life and that he had shown deliberate emotional ambivalence towards her (see paragraphs 25 and 55 above). Such conduct amounts, in the Court's view, to coercive control, that is to say, a pattern of behaviour typical of relationships characterised by domination, whereby an individual seeks to exert lasting control over his or her partner and living conditions, thereby causing harm to the partner's psychological well-being and personal autonomy (see, in this connection, *Volodina v. Russia*, no. 41261/17, § 81, 9 July 2019, and *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, §§ 94 and 153, 14 December 2021; see also the GREVIO reports cited in paragraph 89 above). Such conduct is likely to place the person on the receiving end in a particularly vulnerable state and to impair his or her capacity for discernment. Moreover, K.B.'s conduct led the investigating judge to take the view, in his committal decision of 25 November 2016, that K.B. had, in the present case, exerted "extremely significant psychological control over [E.A.]" (see paragraph 55 above).

167. Thirdly, the Court notes that the events led to a gradual deterioration in the applicant's physical and mental health, to the point of requiring her to be hospitalised in a specialised unit for several months (see paragraphs 6 and 22 above). Her relatives and colleagues unanimously noted this (see paragraphs 30 and 34 above) and it was confirmed by the psychologist who examined E.A. during the judicial investigation (see paragraph 51 above). In a psychiatric assessment report of 18 December 2013, E.A. was described as "a young woman who is broken in terms of her psychological equilibrium", whose responses and mental suffering were characteristic of "hostage syndrome". The expert was also of the opinion that K.B. had been aware of this fragility. In the Court's view, these factors establish a major psychological fragility which rendered E.A. increasingly vulnerable over time.

168. However, the Court notes that in their assessment of the applicant's conduct and consent, the trial courts failed to carry out a context-sensitive assessment taking account of all the above-mentioned surrounding circumstances: they did not take into consideration E.A.'s situation of professional vulnerability, the coercive control to which she was subjected in her private life, or the gradual and significant deterioration of her mental health.

169. The Court reiterates that consent must reflect a person's free will to engage in the sexual intercourse in question, at the material time and as

assessed in the context of the surrounding circumstances (see *H.W. v. France*, cited above, § 91). Accordingly, no kind of previous commitment – including in the form of a written contract – can be regarded as establishing ongoing consent to a particular sexual practice, consent being revocable by its nature. The Nancy Court of Appeal should not therefore have relied on the signing of the “contract” between K.B. and E.A. as a basis for considering that she was deemed to have consented to all the violent sexual practices subsequently imposed on her (see also, *mutatis mutandis*, *X v. Cyprus*, cited above, § 119). On the contrary, it was incumbent on that court, without taking any account of that document, to examine E.A.’s allegations that certain sexual acts had been committed against her will or had continued despite her pleas for K.B. to stop them.

170. In the Court’s view, the “master/bitch contract” that K.B. had persuaded E.A. to sign, and which had been repeatedly “renegotiated” (see paragraph 11 above), is clearly one of the instruments of the coercive control that he put in place. In those circumstances, the Court considers that the fact that K.B. had involved E.A. in its drafting is irrelevant. It follows that, by invoking against E.A. the fact that she had signed that document, the Nancy Court of Appeal exposed her to a form of secondary victimisation, such reasoning being guilt-inducing and stigmatising and capable of deterring victims of sexual violence from asserting their rights in the courts. The Court therefore concludes that the national authorities failed in their obligation to protect the dignity of E.A. (see *L. and Others v. France*, cited above, § 226).

(γ) Conclusion

171. Having regard, on the one hand, to the deficiencies in the legal framework in force at the material time and, on the other, to the shortcomings in its implementation – owing to the exclusion of the sexual assaults complained of by E.A. from the investigation framework, the fragmented nature of the investigations, the excessive length of the proceedings, and the conditions in which the trial courts assessed the question of E.A.’s consent – the Court considers that the respondent State has failed to fulfil its positive obligations, which required it to introduce provisions criminalising and penalising non-consensual sexual acts and to apply them effectively. There has accordingly been a violation of Articles 3 and 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

172. 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

173. E.A. claimed 96,000 euros (EUR) in respect of pecuniary damage, corresponding to the total of the claims she had submitted to the domestic courts for compensation for the acts committed by K.B., and EUR 20,000 in respect of non-pecuniary damage.

174. The Government argued that the domestic proceedings were still pending in respect of the civil claims and therefore opposed E.A.'s requests. They further submitted that the amounts sought by E.A. were excessive and insufficiently justified, as a finding of a violation could, in their view, constitute sufficient just satisfaction.

175. The Court does not discern any clear causal link between the violation found and the alleged pecuniary damage and accordingly dismisses the claim under this head.

176. It further considers that the applicant undoubtedly sustained non-pecuniary damage on account of the breach of the positive obligations under Articles 3 and 8 of the Convention. That damage is distinct from that for which E.A. is still seeking compensation before the domestic courts. Ruling on an equitable basis, having regard to the circumstances of the case and the quantified claim submitted to it, the Court awards EUR 20,000 to E.A. in respect of her non-pecuniary damage.

B. Costs and expenses

177. The applicant claimed EUR 1,503.77 in respect of the costs and expenses incurred in the proceedings before the domestic courts.

178. The Government invited the Court to reduce the amount of the sum claimed, arguing that it was partly unjustified.

179. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award E.A. the sum of EUR 1,503.77 in respect of the costs she incurred in the domestic proceedings.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application lodged by the association AVFT inadmissible and the remainder of the application lodged by E.A. admissible;
2. *Holds* that there has been a violation of Articles 3 and 8 of the Convention;
3. *Holds*

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- (a) that the respondent State is to pay E.A., within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,503.77 (one thousand five hundred and three euros and seventy-seven centimes), plus any tax that may be chargeable to the applicants [*sic*], 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 claim for just satisfaction.

Done in French, and notified in writing on 4 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveyitchik
Registrar

Kateřina Šimáčková
President