

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

FOURTH SECTION

CASE OF X v. GEORGIA

(Application no. 35640/22)

JUDGMENT

Art 3 and Art 8 • Positive obligations • Ineffective criminal investigation into allegations of sexual abuse of a minor by her stepfather • Adequate legislative and regulatory framework in place to combat sexual offences against children • Investigative delays and inactivity • Investigation inconclusive • Authorities' persistent failure – or possible unwillingness – to properly investigate serious allegations and lack of meaningful involvement of the applicant in the proceedings as a recognised victim • Criminal investigation liable to cause the applicant additional and unwarranted distress, amounting to secondary victimisation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

31 March 2026

FINAL

30/06/2026

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



In the case of X v. Georgia,

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

Faris Vehabović*, Acting President*,
Lado Chanturia,
Lorraine Schembri Orland,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 35640/22) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, X ("the applicant"), on 19 July 2022;

the decision to give notice of the application to the Georgian Government ("the Government");

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

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Centre for Advice on Individual Rights in Europe (the AIRE Centre), which was granted leave to intervene by the President of the Section;

Having deliberated in private on 27 May 2025 and 10 March 2026,

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

INTRODUCTION

1. The application raises complaints under Articles 3, 8, and 14 of the Convention relating to the adequacy of the domestic legislative framework for combating sexual violence against children, the respondent State's alleged failure to conduct an effective criminal investigation into allegations of child sexual abuse, as well as issues of secondary victimisation resulting from the manner in which certain investigative measures were taken.

THE FACTS

2. The applicant was born in August 2005 and lives in Georgia. She was represented by Ms E. Lomtatidze, Ms T. Lukava and Ms B. Pataraia, lawyers practising in Tbilisi.

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

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

I. DOMESTIC PROCEEDINGS

5. The applicant was less than 2 years old when her parents divorced in 2007. Shortly thereafter, T.K., the applicant's mother, began to live with another man, K.E. (hereinafter "K.E." or "the stepfather"), who moved in with them in an apartment in Tbilisi. In 2013 T.K. and K.E. had a child together, a daughter and half-sister to the applicant.

6. In the winter of 2019 T.K. travelled to the United States of America (USA) with the applicant and her half-sister for work reasons. Upon their return to Georgia in the spring of 2021 the applicant asked her mother for permission to visit her biological father and other paternal relatives in Poti and Khobi, located in the Samegrelo-Zemo Svaneti region of western Georgia. T.K. eventually agreed.

7. In early May 2021, while visiting her paternal relatives in Khobi, the applicant confided in F.A., a young woman and her father's cousin, about incidents of physical and sexual abuse that K.E. had allegedly subjected her to in their Tbilisi apartment in 2019. She also told F.A. that her mother had been unwilling to protect her from him.

8. F.A. immediately informed a relative, T.Q., who was a police officer. On 7 May 2021 T.Q. formally reported the alleged abuse to the police by calling the national emergency number. The case was then assigned to the Khobi District criminal police ("the Khobi police") in the Samegrelo-Zemo Svaneti region, where the applicant was living at the time. On the same day an investigator from the Khobi police ("the Khobi investigator"), who had been trained in juvenile justice, launched a criminal investigation under Article 141 of the Criminal Code (indecent conduct towards a minor).

9. Later the same day the Khobi investigator interviewed both F.A. and T.Q., who relayed the information they had learned about the instances of physical and sexual abuse allegedly committed by the applicant's stepfather between May and October 2019 (for further details, see paragraphs 12-15 and 18-20 below). According to the applicant, she was also interviewed by the Khobi investigator on the same day. However, the Government contested this claim, referring to the complete criminal case file, which indicated that the applicant's first interview concerning her allegations occurred on 13 May 2021 (see paragraphs 12, 106 and 109 below).

10. On 9 May 2021 T.K. travelled to Khobi to speak to the applicant, after being formally informed by the Khobi investigator of the allegations she had made against K.E. The meeting was attended by F.A. and the investigator at the applicant's request. During the conversation, as the applicant began describing the instances of sexual abuse by K.E., her mother started yelling at her, accusing her of lying and attempting to "destroy her relationship." After witnessing T.K.'s verbal aggression, the Khobi investigator reprimanded her for refusing to listen to her daughter and issued a restraining order prohibiting her from approaching the applicant for thirty days. The

investigator issued a second restraining order that day, forbidding K.E. from having any contact with the applicant for the same length of time.

11. Subsequently, since the events constituting the alleged criminal offence had taken place in Tbilisi, the criminal investigation was transferred from the Khobi police to the Tbilisi criminal police ("the Tbilisi police").

12. On 13 May 2021 a female investigator from Tbilisi ("the Tbilisi investigator"), who had been trained in juvenile justice, took over the criminal investigation. Her first step was to invite the applicant for an interview. As the applicant's mother was forbidden by law from contacting her daughter (see paragraph 10 above) and her biological father had left Georgia and could not be located, the new investigator assigned an independent female social worker to act as the applicant's legal guardian, in accordance with Article 50 § 1 (f) of the Juvenile Code (see paragraph 47 below). The investigator's interview with the applicant, which was attended by her legal guardian and a female child psychologist, took place on 13 May 2021 in a secluded interview room specifically designed for that purpose at the Tbilisi police's Juvenile Affairs Division. The investigator also suggested that a State-appointed lawyer attend the interview, but both the applicant and her legal guardian declined. The applicant's interview transcript includes the following account.

13. She submitted that her stepfather had treated her rather well until 2018, when he had learnt that she, then 12 years old, had been having a romantic relationship with Sh.T., a 14-year-old boy. She had even lent the boy money once or twice without telling her parents. On learning of their relationship, K.E. had physically assaulted her, slapping her in the face and hitting her on various parts of her body, threatening her with further physical abuse if she did not stop seeing the boy and giving him money. Her mother, who had witnessed the assault on her (hereinafter "the 2018 incident"), had condoned her partner's behaviour, believing that she needed to be disciplined. Subsequently, K.E. had started controlling her social life by regularly monitoring her mobile phone, emails and social media activity. He had also installed software on her mobile phone allowing him to track her movements using GPS.

14. The applicant further stated that the first time her stepfather had touched her inappropriately had been in May 2019, when she had been 13 years old. It had happened at night while she had been asleep in bed with her mother and little sister. K.E. had positioned himself between her and her mother. She had suddenly felt him slip his hand under her nightdress and start touching her stomach. She had felt startled and intimidated but had decided to pretend to be asleep. The next morning K.E. had acted as if nothing had happened. She had decided not to tell anyone about the incident, feeling unsure and ashamed.

15. The second time that K.E. had sexually abused her had been in early June 2019. It had happened in the early hours of the morning when only she and her stepfather had been at home. He had asked her to come into his

bedroom and sit on his bed, and had then slid his hand under her T-shirt and started fondling her breasts. She had felt startled, defenceless and unable to move. K.E. had not gone any further with his inappropriate behaviour on that occasion. However, two weeks later, towards the end of June 2019, when her mother had again been out, he had made her watch him masturbate and ejaculate in the bathroom, telling her "this is what masturbation looks like". He had then forced her to hold his penis in her hands, kissing her on her mouth and neck.

16. The interview transcript confirms that the applicant, in response to an unknown question (the questions were not recorded in accordance with standard investigative interview practices), stated that she had felt disgusted and immediately wanted to run away from the bathroom. However, she had felt petrified by her stepfather's actions. She added that one reason she had felt so intimidated had been the 2018 incident, which had made her afraid that K.E. would beat her again if she dared to speak up.

17. It also appears from the interview transcript that she was apparently asked, by either the investigator or the psychologist, whether K.E.'s penis had been erect or soft when she had been holding it in her hands, and that she answered that it had been erect.

18. The applicant further stated that three further incidents of sexual abuse had occurred in July 2019. In the first incident, K.E. had briefly shown his penis to her at home while her mother had been in the next room. In the second incident, K.E. had asked her to get on her knees so that her forehead was level with his genitals. Lastly, towards the end of July, K.E. had offered to return the applicant's mobile phone – which he had confiscated months earlier as part of his efforts to monitor her social life (see the circumstances surrounding the 2018 incident in paragraph 13 above) – if she agreed to show her genitalia to him. Additionally, in July 2019, K.E. had explicitly asked her not to tell anyone about "the things that [were] happening between them", as it could "ruin their family life".

19. The applicant further stated that it had only been during her stay in the USA that she had been able to fully process her painful experiences, and that she had become determined to do everything possible to put an end to them. She had made initial attempts to talk to her mother, hinting at K.E.'s inappropriate behaviour, but her mother had refused to listen and always found excuses to avoid such difficult conversations. Consequently, unable to continue living under the same roof as K.E., the applicant had insisted on visiting her paternal relatives in Poti after their return to Georgia from the USA (see paragraph 6 above).

20. The applicant also stated that she had initially intended to tell her biological father about all the abuse she had endured at the hands of K.E. However, in the end, she had only confided in him about the 2018 incident in early May 2021, omitting any mention of the sexual abuse as she had felt ashamed. It had only been to F.A., her father's cousin, a young woman with

whom she had felt sufficiently comfortable, that she had confided her most intimate and painful experiences. She described in detail how she had confided in F.A., recalling all the emotions she had experienced throughout the process. She also remembered that, after speaking to F.A., she had called her maternal aunt in the USA and told her – albeit in less detail – about the sexual abuse she had suffered at the hands of K.E.

21. It appears from the interview transcript that the Tbilisi investigator asked her a number of questions – the exact wording of which is unknown due to the standard investigative interview practice of not recording them – which she answered as follows:

> "In reply to your respective question[s], I would like to repeat/clarify that:
>
> (i) K.E. subjected me to multiple acts of sexual abuse between early June and late July 2019;
>
> (ii) I have not informed anyone of this abuse until now for fear of retaliation by K.E., and also because I always knew that my mother loved him a lot and that she would never believe me ...
>
> (iii) I have never had sexual intercourse with K.E. or any other man;
>
> (iv) K.E. did not touch my genital organs but only fondled my breasts, nor did he ever ask me get naked or have sex with him;
>
> (v) when K.E. was fondling me, I did not want it to happen, no, but I could not resist because I remembered [the 2018 incident] and was therefore afraid of him;
>
> (vi) when I was living in the USA, I once confided in two of my classmates via Facebook Messenger ... about [the 2018 incident], and I even recall one of them commenting in reply that she remembered all too well having seen me with bruises at school."

22. On 13 and 18 May 2021 the Tbilisi investigator requested a psychological evaluation and medical examination of the applicant, after informing both her and her legal guardian of the necessity of such examinations for a comprehensive investigation and obtaining their written consent. The questions put to the forensic medical experts suggest that the investigator sought to determine: (i) whether the applicant's hymen was intact; (ii) if her hymen had been ruptured, the cause and timing of the rupture; (iii) any signs of ill-treatment on her body; and (iv) her psychological profile, including personality traits.

23. Before proceeding with several examinations, including gynaecological and other assessments, the medical experts, who were all women, briefed the applicant and her legal guardian of the nature of the medical procedures in question. They asked whether the applicant was truly comfortable with the proposed procedure and obtained additional consent from them. On the basis of those examinations, the experts concluded on 27 May 2021 that the applicant's hymen was intact and that there were no visible signs of injuries on her body, including in the anal area. The psychologists' detailed report on her personality, issued on 19 November

2021, indicated, among other things, that she did not generally exhibit a tendency to exaggerate when discussing painful experiences or other difficult subjects. In addition, she generally seemed to exhibit a maturity commensurate with her age and was able to assess various events adequately.

24. On 20 May 2021 T.K. was interviewed by the investigator as a witness. She stated that she did not believe her daughter's accusations against K.E. at all and that if something like that had really occurred between her partner and daughter, she would have definitely noticed it. T.K. felt that her daughter had simply wanted to destroy their relationship because K.E. had been a strict but fair father to her, while she had become a very difficult person in her teenage years and had probably grown tired of K.E.'s discipline and wanted to hurt him. T.K. also suggested that her ex-husband's relatives, particularly F.A., might have contributed to provoking the applicant to make such false accusations. She acknowledged that the 2018 incident had indeed taken place (see paragraph 13 above), but said that K.E. had never hit the applicant and had limited his reaction to scolding her for mixing with the wrong boys. T.K. also acknowledged that her partner had indeed monitored the applicant's time spent on her mobile phone and social media. Lastly, in response to a question from the investigator, she stated that while there had been occasions when she and her two daughters had slept in the same bed in the children's bedroom, she could not recall K.E. ever joining them.

25. On 25 May 2021 K.E. was questioned by the investigator as a witness and denied the applicant's accusations. He stated that he considered her to be his own daughter and had raised her as such since she had been a baby. Like T.K., he suggested that the reason behind the applicant's false accusations might have been provocation by F.A. and her other paternal relatives. He further acknowledged, using similar language to that used by T.K. (see paragraph 24 above), that in 2018 he had scolded the applicant for having a relationship with a boy who had extorted money from her, but he denied having ever using physical force against her. K.E. also admitted that he had confiscated the applicant's mobile phone for limited periods of time because she had been "literally addicted to screens". He also stated, in response to a question from the investigator, that he had never slept in the same bed as either of his two daughters (see paragraph 14 above).

26. On 27 May 2021 the applicant, represented by F.A., who had by that time been appointed her legal guardian in place of the social worker (see paragraph 12 above) and continued to serve in that capacity throughout the remainder of the criminal proceedings, filed a complaint with the Prosecutor General's Office ("the prosecution authority"), the authority overseeing the investigation conducted by the Tbilisi police, alleging that it was progressing at an unacceptably slow pace. She also requested to be formally declared a victim and for the prosecution authority to press criminal charges against K.E. for abuse without further delay.

27. By a decision of 28 May 2021, the prosecution authority rejected the applicant's request for victim status, explaining that the investigation was still in its early stages and that further investigative measures needed to be taken. That decision was subsequently upheld by a senior prosecutor on 18 June 2021.

28. On 28 May 2021 the applicant, who was then represented for the first time by a lawyer of her choice (one of the lawyers representing her in the proceedings before the Court, see paragraph 2 above), submitted another request to the prosecution authority, asking for the addition of new and important evidence to the criminal case file. She explained that, after she had travelled to the USA in late 2019 (see paragraph 6 above), she had maintained communication with her closest friends and former classmates in Georgia through a closed Facebook Messenger group. It was in this group, which had seven members including herself, that she had shared certain details about the sexual abuse perpetrated by K.E. in April 2020. Although she had deleted all the messages exchanged in the group some time earlier for fear that K.E. would monitor her social media activity, she had recently learned that one of the group's members, L.A., had saved screenshots of them. The applicant therefore requested that the relevant messages exchanged with her friends in 2020, obtained from L.A.'s Facebook account, be added as evidence to the criminal case file.

29. On 31 May 2021 the applicant's biological father, who had since returned to Georgia (see paragraph 12 above), was questioned by the Tbilisi investigator. He stated that his daughter had never told him that her stepfather had mistreated her in any way before her return from the USA. It had not been until early May 2021 that she had first told him that K.E. had used physical force against her, but she had not mentioned anything about being sexually abused at the time (see paragraph 20 above). He had only become aware of the situation after his cousin had reported the applicant's accusations to the police. He also stated that, feeling she would be embarrassed by the topic, he had not dared discuss those painful experiences with her, for fear of causing further trauma. In response to a question from the investigator, he also said that he had never had a strained relationship with his ex-wife or K.E. and that, on the contrary, he had always tried to maintain a friendly relationship with them in order to see his daughter more often.

30. On 5 June 2021 the applicant was questioned again by the Tbilisi investigator, in the presence of her lawyer, regarding her request to the prosecution authority of 28 May 2021 (see paragraph 28 above). She reiterated all the circumstances surrounding the recovery of the messages she had exchanged with her six friends in April 2020 and asked the investigator to add those messages to the criminal case file as evidence. She also said that the sexual abuse had caused her depression and anxiety, and that she had even contemplated suicide at times.

31. On 5 June 2021 a boy who lived in Khobi, with whom the applicant had recently become friends, was interviewed as part of the investigation. He stated that in May 2021 the applicant had confided in him that her stepfather had been inappropriately touching her in 2019. However, she had not shared any additional details with him about the incidents.

32. Between 8 and 11 June 2021 the Tbilisi investigator interviewed the applicant's six former classmates and friends, including L.A., with whom she had shared messages concerning the alleged sexual abuse (see paragraph 28 above). All the girls interviewed confirmed that they had received messages from the applicant in April 2020 describing K.E.'s alleged actions (flashing his penis and masturbating in front of the applicant, fondling her breasts, and so on). L.A. added that she had saved screenshots of them on her mobile phone. Two other girls interviewed stated that they had never deleted the relevant group chat from Facebook Messenger and that it could still be viewed by logging into their Facebook accounts. All the girls also added, in response to questions from the investigator, that K.E. had been known to be obsessively strict with the applicant, monitoring and limiting her contact with her friends. Some of them also stated that they had seen the applicant come to school with bruises on her legs, hands and face.

33. On 28 June 2021 the applicant's lawyer requested that the investigator add to the case file the opinion of a private psychiatrist who had examined the applicant between 27 May and 20 June 2021. The opinion diagnosed the applicant with an anxiety disorder caused by psychological trauma, which it stated could, in principle, be related to previous sexual abuse.

34. In the light of the statements given by the applicant's six former classmates, the Tbilisi investigator seized the mobile phones of the three girls who had told her that they had kept records of the relevant Facebook Messenger chat (see paragraph 32 above). The investigator then commissioned a State forensic expert specialising in information technology to retrieve the messages. On an unspecified date in July 2021 the expert confirmed that the seized phones contained records of a Facebook Messenger chat from April 2020 between the applicant and her six friends (see paragraphs 28 and 32 above), in which the applicant had described the allegations of sexual abuse against her stepfather. The investigator also noted from the messages that the applicant had mentioned confiding in a boy, Sh.T., with whom she had been in a romantic relationship at the time (see paragraph 13 above). On 13 July 2021 the Tbilisi investigator interviewed Sh.T., who denied ever having been a close friend of the applicant or having heard from her about issues regarding her relationship with her stepfather.

35. On 31 July 2021 F.A. was questioned by the Tbilisi investigator again. She stated that she had new and important information that had not been known to her during the first interview (see paragraph 9 above). F.A. explained that after the applicant had started living with her in Khobi following the opening of the criminal investigation on 7 May 2021 and the

issuance of restraining orders against T.K. and K.E. (see paragraph 10 above), their close relationship had grown stronger over time. The applicant had gradually opened up to her, describing several other instances of sexual abuse by K.E. In particular, there had reportedly been another incident in 2019 when he had pressed his erect penis against the applicant's face. Furthermore, he had reportedly forced the applicant to watch pornographic videos with him on his computer when T.K. had been away from home. With regard to the May 2019 incident, when K.E. had slept in the bed between the applicant and T.K. (see paragraph 14 above), F.A. clarified that K.E. had in fact fondled the applicant's genital area, not just her stomach, and had even inserted the tips of his fingers. The applicant had been too ashamed to share these exact details during her first interview with the investigator. F.A. also informed the investigator that the applicant had told her that K.E. had regularly harassed her verbally and physically, using derogatory insults and slapping her in the face, as well as punching and kicking her in the stomach, which had caused her to fear him. Lastly, in response to a question from the investigator, F.A. specified that she herself had never asked the applicant any additional questions about her painful past experiences for fear of further traumatising her, and that the applicant herself had over time felt the need to confide in her and provide the additional disturbing details.

36. On 10 August 2021 the applicant's lawyer, appearing to refer to the information provided by F.A. (see paragraph 35 above), requested that the prosecution authority arrange a new interview with her client in order to obtain new important statements. She referred, in particular, to the recently discovered information about K.E. penetrating the applicant's vagina with the tips of his fingers, which she argued could affect the classification of the offence of sexual abuse. The lawyer added that the interview should be conducted in accordance with the structured forensic interview protocol developed by the National Institute of Child Health and Human Development (NICHD) in the USA to ensure the quality of investigative interviews with children. She emphasised that this investigative technique was accepted worldwide and that there were child psychologists in Georgia trained in this forensic method, all of whom were affiliated with the Georgian Ministry of Public Health. On 10 September 2021 the prosecution rejected the lawyer's request, noting that the applicant had already been interviewed twice in the presence of a child psychologist by investigators trained in juvenile justice, and that there was no need for an additional interview at that stage.

37. On 23 February 2022 the applicant's lawyer appealed to the Tbilisi City Court against the prosecution authority's decisions of 28 May and 18 June 2021 (see paragraph 27 above) refusing to grant the applicant victim status. The lawyer argued that without the procedural status in question, the applicant would continue to be deprived of a number of important procedural rights, such as the ability to access the criminal case file.

38. On 9 March 2022 the Tbilisi City Court issued a final decision, dismissing the applicant's appeal as unfounded. After reviewing the material available in the criminal case file, the court determined that the information gathered to date in the investigation "was not sufficient to establish with certainty that a criminal offence had been committed" against the applicant or that "she had suffered any harm". Consequently, it concluded that the applicant could not be declared a victim.

39. The case file contains no information indicating that any further investigative measures were undertaken thereafter.

II. PROCEEDINGS BEFORE THE COURT

40. The application form was lodged with the Court on 19 July 2022 by the applicant in person. Furthermore, she authorised, by her own signature, three lawyers to represent her interests before the Court, one of whom had already represented her at the domestic level (see paragraphs 2 and 28 above).

41. On 30 May 2023, following the notification of the application to the Government, the latter informed the Court that the applicant, who was born on 1 August 2005, had been a minor at the time the application had been lodged.

42. On 12 July 2023 the applicant submitted a letter confirming her genuine interest in the proceedings before the Court and her intention to be represented by the three lawyers in question.

43. On 16 October 2023 the Government informed the Court that the applicant had still not reached the age of majority at the time she had submitted the letter of 12 July 2023.

44. On 22 November 2023 the applicant submitted another letter to the Court, again confirming that the application reflected her personal and genuine will. She reconfirmed her interest in the proceedings and stated that she had duly authorised the three Georgian lawyers to act on her behalf. The letter was accompanied by new authority forms, all dated 22 November 2023 and signed by the applicant and the lawyers.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Juvenile Justice Code

45. The Juvenile Justice Code, enacted on 12 June 2015, established a comprehensive legal framework governing the involvement of minors in proceedings related to both criminal and non-criminal (administrative) offences. It applies whether the minor is participating as an offender, a victim or a witness (Article 1). The age of majority is set at 18 (Article 3 § 1).

1. Participation of a minor in legal proceedings

46. Under Articles 3 and 10 of the Code, a minor may participate in legal proceedings either independently or through representation by a natural guardian (such as a parent) or a legal guardian (appointed by the competent authorities). Article 10 §§ 3 and 4 specify that the extent of an unrepresented minor's decision-making capacity in legal proceedings must correspond to their mental and emotional maturity. In cases where a minor's decision conflicts with that of their natural or legal guardian, the domestic authorities must carefully assess the situation and prioritise the decision that best serves the minor's interests.

47. Under Article 50 § 1 (f), a competent domestic authority is authorised to appoint a legal guardian for a minor if his or her natural guardian is physically unavailable to provide assistance.

2. Issues relating to the secondary victimisation of a child victim

48. Article 1 § 2 of the Code states that one of its purposes is to "prevent the secondary victimisation" of child victims.

49. Articles 15 § 1 and 16 § 1 provide that child victims of sexual offences are entitled to free legal aid at any stage of the proceedings. Additionally, all procedural measures involving child victims of criminal offences, whether during the investigation or trial, must be taken by specially trained professionals.

50. Under Article 23 § 1 and Article 29 § 2, a child victim of a criminal offence is entitled to support from a child psychologist, who must also be present during all procedural measures involving him or her.

51. Article 52 contains special rules for interviewing minors and provides as follows.

(a) A minor victim or witness may be interviewed if he or she is capable of conveying information relevant to the case, either orally or by other means.

(b) In cases involving sexual offences, audio or video-recordings may be made of interviews and the recorded testimony may be played at court hearings.

(c) The number of interviews with a minor victim or witness must be kept to a minimum, and additional interviews are permitted only when necessary for a thorough and objective investigation.

(d) A minor may not be questioned between 8 p.m. and 8 a.m.

(e) During interviews, a minor must be provided with adequate food and water at least every four hours and have unrestricted access to toilet facilities.

(f) Interviews with a child victim must be attended by his or her natural or legal guardian and may also (optionally) be attended by a child psychologist.

(g) It is strictly prohibited to conduct an interview with a minor victim in the presence of a parent or any other adult accused of abusing him or her.

B. Criminal prosecution of sexual offences

52. Chapter XXII of the Criminal Code, which criminalises various forms of sexual offences, consists of five distinct legal provisions (Articles 137 to 141). Based on their wording and authoritative legal commentaries interpreting the constituent elements of these crimes, the provisions can be understood as follows.

(a) Article 137 – Rape (penetrative sexual assault)

53. Article 137 defines rape as follows:

> "1. Rape, that is, any form of sexual penetration into a person's body using any part of the body or object, committed with violence, under the threat of violence, or by taking advantage of the victim's helplessness, shall be punishable by six to eight years' imprisonment ..."

54. The offence encompasses all non-consensual forms of vaginal, oral or anal penetration involving a penis, other body parts or objects. It applies exclusively to penetrative acts; non-penetrative sexual violence is covered under a separate provision (see paragraphs 61 to 63 below).

55. Full penetration is not required to establish the offence. The depth of penetration is immaterial – any degree of penetration, however slight, constitutes the element of the crime. Penetration of the labia majora or the anal opening is sufficient to qualify as rape. Evidence of ejaculation or physical traces of penetration is not necessary to prove the act.

56. A perpetrator may be of any sex or gender, and victims may also be of any sex or gender. Perpetrators are not limited to strangers; they may include individuals in positions of trust or authority over the victim, such as spouses or intimate partners, parents, stepparents, foster parents, police officers, guards or officials in detention facilities, teachers, employers, medical professionals, caregivers for the elderly or infirm, or tour guides.

57. Victims may belong to particularly vulnerable categories, such as minors, which constitutes an aggravating factor leading to harsher penalties. Article 137 § 4 (c) specifies that the rape of a minor carries a prison sentence of fifteen to twenty years.

58. The definition of violence under Article 137 appears to be limited to physical force. However, physical force should be interpreted according to its plain and ordinary meaning. The level of violence used does not need to meet a specific threshold, such as excessive or life-threatening force, for the act to be considered criminal. Proof of violence does not require visible physical injuries or evidence of physical resistance from the victim.

59. The threat of violence includes mental intimidation aimed at coercing the victim through the potential use of physical force. The threat does not need to be immediate; a future threat still constitutes an element of the crime. It does not have to be explicit and may be conveyed through words, actions or a combination of both. The perpetrator does not need to carry out the threat or even have the ability to do so – what matters is that the victim believes the threat is real and realisable.

60. Helplessness, as a legal element of rape, is understood as incapacity. It applies to individuals who are physically unable to give consent or who cannot comprehend the situation owing to their mental state. Under domestic legal interpretation, a person may be considered helpless if, at the time of the crime, they were incapacitated owing to factors such as drug or alcohol use, unconsciousness, sleep, illness, injury or age-related impairments.

(b) Article 138 – Sexual assault (non-penetrative acts)

61. Article 138 defines the offence as follows:

> "1. Any other act of a sexual nature that does not contain the elements of a crime under Article 137 ... committed with violence, under the threat of violence, or by taking advantage of the victim's helplessness shall be punishable by four to six years' imprisonment ..."

62. This provision covers acts of a sexual nature that do not involve penetration (for the definition of a penetrative sexual offence, see paragraph 55 above). The key distinction between Articles 137 and 138 is that Article 138 applies to non-consensual, non-penetrative physical contact of a sexual nature, whereas Article 137 applies to penetrative non-consensual sexual violence. The remaining elements of this crime should be interpreted in the same manner as those outlined in Article 137.

63. Under Article 137 §§ 3 and 4, which list the aggravating factors, non-penetrative sexual acts committed against a minor between 14 and 18 years old are punishable by eleven to fifteen years' imprisonment, while such acts committed against a minor under 14 years old carry a prison sentence of fifteen to twenty years.

(c) Article 139 – Sexual abuse (both penetrative and non-penetrative)

64. Article 139 defines the offence as follows:

> "1. Forcing a person to perform sexual penetration or other acts of a sexual nature, committed under the threat of property damage, disclosing defamatory information, revealing details of [the person's] private life, or any other information that may significantly affect the person's rights, and/or by taking advantage of the victim's helplessness or material, official or other dependence shall be punishable by up to five years' imprisonment ..."

65. This offence encompasses all the elements of the crimes under Articles 137 and 138, applying to both penetrative and non-penetrative non-

consensual sexual acts. However, unlike Articles 137 and 138, it does not involve physical violence or the threat of physical violence as a means of subjugation but rather coercion by psychological means, such as pressure, manipulation, intimidation or blackmail.

66. Similar to Articles 137 and 138, Article 139 includes provisions for vulnerable victims, such as minors, as an aggravating factor. In such cases, the punishment is more severe, with imprisonment ranging from nine to fifteen years (Article 139 § 4).

67. A number of domestic and international criminal law experts have criticised Article 139 for being redundant, arguing that it reinforces the controversial notion that rape always involves physical force and undermines the concept of affirmative consent. A scholarly debate is ongoing at the domestic level regarding whether Articles 137 and 138 should be broadened to encompass acts currently covered by Article 139.

(d) Article 140 – Sexual penetration of a minor

68. Article 140 proscribes the following offence:

> "Sexual penetration by an adult of a person under the age of 16 shall be punishable by seven to nine years' imprisonment."

69. The offence involves engaging in penetrative sexual intercourse with a minor, regardless of consent. The key difference between this offence and those under Articles 137 to 139 is therefore the element of consent. For the purposes of Article 140, it is irrelevant whether or not the minor consents, as the primary focus is on the victim's age.

70. All other elements of the crime (such as the definition of penetration, the sex of the perpetrator and the victim, and so on) are consistent with the characteristics of the offence of rape under Article 137 (see paragraphs 55-57 above).

71. Domestic legal commentaries on Article 140 concur that if a context-based investigation determines that the act was non-consensual (either legally or factually), the perpetrator should be charged with either rape (Article 137) or sexual abuse (Article 139), depending on whether physical force or the threat of physical force was used to achieve sexual gratification.

72. Some domestic legal commentaries on Article 140 highlight frequent challenges in assessing consent and coercive circumstances in cases involving minors.

(e) Article 141 – Indecent conduct towards a minor

73. Article 141 states:

> "Indecent conduct by an adult towards a person under the age of 16 shall be punishable by five to nine years' imprisonment."

74. This offence covers all other forms of sexual activity, regardless of consent, involving a child, including both contact offences – such as sexual touching of any part of the child's body, whether clothed or not, or forcing the child to undress or touch someone else – and non-contact offences – such as exposing oneself, flashing, showing pornography or forcing a child to participate in sexual activity or conversations online).

75. Similarly to Article 140 (see paragraph 71 above), if a context-based investigation reveals that the indecent conduct was committed against the child victim's will, the offence should be reclassified as a more serious offence under Article 139.

II. INTERATIONAL MATERIALS

76. On 2 June 1994 Georgia acceded to the United Nations (UN) Convention on the Rights of the Child, which was adopted by the UN General Assembly on 20 November 1989.

77. On 23 September 2014 Georgia ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention") which entered into force with respect to the respondent State on 1 January 2015.

78. The relevant provisions of these two international instruments were recently cited by the Court in its judgments in the cases of *A.P. v. Armenia* (no. 58737/14, §§ 77-79 and 81-82, 18 June 2024) and *B. v. Russia* (no. 36328/20, § 43, 7 February 2023).

79. The relevant part of the Explanatory Report to the Lanzarote Convention reads as follows:

Article 18 – Sexual abuse

117. Article 18 sets out the offence of sexual abuse of a child. This offence has to be committed intentionally for there to be criminal liability. The interpretation of the word 'intentionally' is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence.

118. Article 18 distinguishes two types of sexual abuse of minors.

119. Firstly, paragraph 1 (a) criminalises the fact of a person engaging in sexual activities with a child who has not reached the age as defined in domestic law below which it is prohibited to engage in sexual activities with him or her.

120. Secondly, paragraph 1 (b) criminalises the fact of a person engaging in sexual activities with a child, regardless of the age of the child, where use is made of coercion, force or threats, or when this person abuses a recognised position of trust, authority or influence over the child, or where abuse is made of a particularly vulnerable situation of the child ...

127. The term 'sexual activities' is not defined by the Convention. The negotiators preferred to leave to Parties the definition of the meaning and scope of this term.

128. Paragraph 2 reinforces for the purpose of legal certainty the requirement for all Parties to the Convention to define the age below which it is prohibited to engage in

> sexual activities with a child. The negotiators considered the possibility of harmonising criminal law in this area by establishing a legal age for sexual relations in the Convention, but as this age varies greatly in member States of the Council of Europe (from age 13 to 17) and even within each member State, depending on the relation which may exist between the perpetrator and the child victim. For these reasons it was decided to leave the definition to each Party.
>
> 129. It is not the intention of this Convention to criminalise sexual activities of young adolescents who are discovering their sexuality and engaging in sexual experiences with each other in the framework of sexual development. Nor is it intended to cover sexual activities between persons of similar ages and maturity. For this reason, paragraph 3 states that the Convention does not aim to govern consensual sexual activities between minors, even if they are below the legal age for sexual activities as provided in internal law. It is left to Parties to define what a 'minor' is ..."

80. On 19 May 2017 Georgia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention"), which entered into force with respect to Georgia on 1 September 2017. The relevant provisions of the Istanbul Convention were cited by the Court in its judgment in *A and B v. Croatia* (no. 7144/15, § 81, 20 June 2019).

81. On 13 October 2022 the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) – an independent human rights monitoring body mandated to monitor the implementation of the Istanbul Convention – adopted a report on its first (baseline) evaluation procedure carried out in respect of Georgia.

82. In paragraphs 309-315 of the report, GREVIO highlighted a number of shortcomings in the criminal investigation of domestic violence and, more broadly, violence against women, expressing "great concern" about persistent stereotypical and discriminatory attitudes within Georgia's criminal justice system that obstructed victims' access to justice. According to the report, investigators, prosecutors, defence lawyers and judges frequently engaged in victim blaming and lacked gender-sensitive approaches during investigations and court proceedings, thereby creating "a significant barrier to justice".

83. GREVIO also referred to a study examining 24 sexual violence cases, which found that victims were asked "irrelevant and insensitive questions" intended to discredit and humiliate them, undermining their credibility and contributing to "secondary victimisation". Victims were often required to recount traumatic events repeatedly. The same concerns were expressed by civil society experts, although the authorities asserted that police training initiatives had led to some improvement.

84. GREVIO also expressed concern regarding the strict evidentiary standards applied in sexual violence cases. Despite legislation providing that evidence had "no predetermined value", prosecutors and courts reportedly continued to require "two pieces of direct evidence" to proceed, both at the indictment and conviction stages. Forensic evidence was said to play a "decisive role" in prosecutions, with cases involving physical injuries or

biological material far more likely to advance. This reliance was identified as a key factor contributing to high attrition rates, as many cases failed to reach prosecution. Victims described forensic examinations as "particularly traumatising", citing long waiting times, the predominance of male experts and "unethical and humiliating attitudes".

85. GREVIO further considered problematic the reliance on stereotypes, including drawing adverse conclusions from the condition of a victim's hymen and ordering psychological examinations to assess whether a victim was "prone to lying". Victims frequently encountered bias, disbelief and "unethical and sometimes humiliating questions and comments". Although guidelines stipulated that a victim's clothing and sexual history should not influence case assessments, defence lawyers were reported to routinely question victims' "moral character", including their prior sexual relationships or manner of dress.

86. In paragraphs 319-321 of its report, GREVIO addressed a number of recommendations to the Georgian authorities on how to improve the law-enforcement response to credible allegations of abuse against women, including the need for on-the-job training for law-enforcement officials and the need "to swiftly identify and address any/all legislative and procedural factors that contribute to the very high threshold for proving rape in court, while paying due regard to the principle of avoiding re-traumatisation of victims during investigation and judicial processes".

87. The relevant part of Recommendation Rec (2006)8 of the Committee of Ministers to member States on assistance to crime victims, adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies, reads as follows:

1. Definitions

"1.3. Secondary victimisation means victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim."

2. Principles

"2.1. States should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognise the negative effects of crime on victims.

2.3. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the criminal act."

3. Assistance

"3.3. Victims should be protected as far as possible from secondary victimisation.

3.4. States should ensure that victims who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, can benefit from special measures best suited to their situation."

10. Protection

"10.1. States should ensure, at all stages of the procedure, the protection of the victim's physical and psychological integrity. Particular protection may be necessary for victims who could be required to provide testimony.

10.2. Specific protection measures should be taken for victims at risk of intimidation, reprisals or repeat victimisation."

88. Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice were adopted by the Committee of Ministers on 17 November 2010. The relevant part reads:

"**B. Best interests of the child**

1. Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.

2. In assessing the best interests of the involved or affected children:

a. their views and opinions should be given due weight;

b. all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;

c. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.

3. The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.

4. While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.

C. Dignity

1. Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case.

2. Children shall not be subjected to torture or inhuman or degrading treatment or punishment. ...

2. Legal counsel and representation

37. Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties. ...

42. In cases where there are conflicting interests between parents and children, the competent authority should appoint either a guardian *ad litem* or another independent representative to represent the views and interests of the child.

43. Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.

6. Evidence/statements by children

... 68. Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.

69. Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.

V. Promoting other child-friendly actions

Member states are encouraged to: ...

j. set up child-friendly, multi-agency and interdisciplinary centres for child victims and witnesses where children could be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals; ...”

THE LAW

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

89. The applicant complained that the domestic criminal proceedings had failed to meet the respondent State’s positive obligations to provide adequate legal protection against sexual abuse. She contended that the domestic legislative framework for combatting sexual violence against children was inadequate, that the criminal investigation into her allegations had been ineffective and that the investigators’ incompetent conduct had exposed her to further traumatic experiences, commonly referred to as secondary victimisation. She relied on Articles 3 and 8 of the Convention, which read as follows:

Article 3

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

Article 8

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

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' arguments

90. Firstly, the Government objected that the applicant, who had been a minor with limited legal capacity at the time of lodging her application, did not have standing to pursue the proceedings before the Court. They argued that an application on her behalf should have been lodged by the parent with whom she had had no conflict, namely her biological father. As a minor, she alone had not had the legal capacity to file the application or authorise her lawyers. Consequently, the case was, in the Government's opinion, either inadmissible *ratione personae* or should be struck out for lack of proper legal representation before the Court.

91. Secondly, the Government objected that the applicant had not exhausted the relevant domestic remedies for her complaints regarding the effectiveness of the criminal investigation into her allegations of sexual abuse, as she had not sought civil redress from the Ministry of the Interior. In the alternative, they submitted that her complaints were premature, as the criminal investigation was still ongoing. As to the applicant's complaints of secondary victimisation caused by the investigators' conduct, the Government argued that if she had believed that the police officers had acted unlawfully, she should have sued them for negligence or discriminatory behaviour or filed a criminal and/or disciplinary complaint.

92. The Government concluded that, in any event, the applicant's complaints regarding the effectiveness of the criminal investigation, including her secondary victimisation, were manifestly ill-founded.

93. In reply to the Government's first objection regarding her lack of *locus standi* before the Court, the applicant stated that her biological father had never been interested in acting as her guardian at the domestic level. In the absence of any willingness on his part to assist her in the criminal investigation, the domestic authorities had even appointed a social worker to act as her legal guardian (see paragraph 12 above). She argued that her father had also been uninterested in the proceedings before the Court, and that the only way for her to seek international protection had been to lodge the application with the Court herself, with the assistance of the lawyers who had represented her at the domestic level. She added that at the time of lodging her application, her biological father had not even been in Georgia but at an unknown address somewhere in Western Europe, where he had been working as a migrant labourer. Referring to her letter of 22 November 2023, she reiterated her wish to be represented before the Court by the three Georgian lawyers of her choice (see paragraphs 42 and 44 above).

94. Lastly, the applicant disagreed with the Government's remaining objections regarding the admissibility of the application.

2. The Court's assessment

(a) Legal standing

95. The Court reiterates that, under Article 34 of the Convention, it may receive applications from any person claiming to be a victim of a violation, by one of the High Contracting Parties, of the rights set forth in the Convention or its Protocols. There is no general obligation – nor any specific requirement for individuals with limited legal capacity – to be represented at the initial stage of the proceedings (see *Zehentner v. Austria*, no. 20082/02, § 39, 16 July 2009).

96. Both a minor and an adult who lacks legal capacity for other reasons may be allowed to conduct Convention proceedings in their own right (for an example of a minor applying directly to the Court in the absence of a parent or guardian, see *R.B. v. Estonia*, no. 22597/16, § 2, 22 June 2021). This applies regardless of whether such participation is contrary to the wishes of the person's guardian (compare *Zehentner*, cited above, §§ 39-40; and *A. v. the United Kingdom*, 23 September 1998, §§ 2, 7 and 16-18, *Reports of Judgments and Decisions* 1998-VI).

97. In the present case, the Court notes that the applicant was in a conflictual relationship with both her stepfather, the alleged perpetrator, and her mother (see paragraph 10 above) (see, *mutatis mutandis*, *L.R. v. North Macedonia*, no. 38067/15, § 50, 23 January 2020). Furthermore, as emphasised by the applicant and not contested by the Government, her biological father demonstrated a lack of interest in her case at the domestic level, which led first to a social worker, and subsequently to F.A., being appointed as the applicant's legal guardian (see paragraphs 12, 26 and 94 above). The relevant domestic law did not prevent the applicant, a minor at the time, from being a party to the criminal proceedings in her own right either (see paragraphs 46-47 above). It is also significant that, despite her age, she was able to present her complaints in a sufficiently substantiated manner in her application to the Court (compare *Zehentner*, cited above, § 40). Moreover, before and after reaching the age of majority, she explicitly confirmed her interest in the proceedings and her wish to be represented by three lawyers of her choice. In that respect, she submitted duly completed and signed forms of authority for the lawyers in question to represent her in the proceedings before the Court (contrast *Post v. the Netherlands*, no. 21727/08 (dec.), 20 January 2009) (see paragraphs 40, 42 and 44 above). In the light of these circumstances, the Court has no doubt that the applicant has standing to pursue the present application and considers that the Government's related objection should be dismissed.

(b) Non-exhaustion of domestic remedies

98. The Court notes that the rule of exhaustion of domestic remedies, as set out in Article 35 § 1 of the Convention, requires an applicant to use only

those remedies that are relevant to the alleged breaches, while also being available and sufficient. The application of this rule must take into account the specific context. Article 35 § 1 should be applied with a degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). The rule of exhaustion of domestic remedies is neither absolute nor automatic; when assessing compliance with this requirement, it is essential to consider the particular circumstances of each case (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 140, 27 November 2023).

99. In this regard, and in so far as the Government suggested that the applicant should have pursued a civil remedy in response to the alleged ineffectiveness of the criminal investigation into her allegations of sexual abuse, the Court reiterates, in line with its established case-law, that when acts constituting serious offences are directed against a person's physical or mental integrity, only effective criminal-law mechanisms can ensure adequate protection and serve as a deterrent (see, among many other authorities, *Identoba and Others v. Georgia*, no. 73235/12, § 86, 12 May 2015, with further references). In the present case, the alleged breaches of Articles 3 and 8 of the Convention concern the inadequate response of the national authorities to allegations of child sexual abuse. In such circumstances, it is the responsibility of member States to ensure the existence of effective criminal-law provisions, as civil remedies alone are insufficient (see, among many other authorities, *A and B v. Croatia*, no. 7144/15, § 92, 20 June 2019, with further references, and *R.B. v. Estonia*, cited above, § 65). As the criminal-law mechanism was duly initiated in the present case on the basis of the applicant's allegations of sexual abuse, the Court finds that the relevant domestic remedy was exhausted, and the applicant was not required to seek any alternative remedies.

100. With regard to the Government's separate argument that the applicant should have initiated additional civil, criminal or disciplinary proceedings against the police officers concerning her specific claims of secondary victimisation, it should be reiterated that when such acts occur within the course of a criminal investigation into a sexual offence, it is not uncommon for the Court to assess this issue as part of its broader examination of the adequacy of the investigation as a whole (compare, for instance, *A and B v. Croatia*, cited above, § 121; *X v. Greece*, no. 38588/21, §§ 68 and 85, 13 February 2024; *Y. v. Slovenia*, no. 41107/10, §§ 79, 97, and 101-104, ECHR 2015 (extracts); and *N.Ç. v. Turkey*, no. 40591/11, §§ 88 and 99-135, 9 February 2021). The Court sees no reason to depart from this approach in the present case, which extinguishes any need for the applicant to seek an additional domestic remedy beyond the already ongoing, albeit allegedly flawed, criminal proceedings.

101. In view of the foregoing, the Government's objection of non-exhaustion, premised on the applicant's failure to initiate separate

proceedings regarding the alleged ineffectiveness of the investigation and her secondary victimisation, must be dismissed.

102. As to the Government's argument that the application is inadmissible owing to its premature nature, the Court considers that this issue is closely linked to the substance of the applicant's complaints under Articles 3 and 8 of the Convention. Accordingly, it is appropriate to join this matter to the merits of those complaints.

(c) Conclusion

103. The Court further finds that the applicant's complaints under this head are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. Accordingly, this part of the application must be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

104. In her observations on the merits of the case, the applicant, without presenting any new legal arguments, invited the Court to refer to those already made in her application form. She argued, in particular, that the domestic authorities had failed to conduct an adequate investigation into the incidents of sexual abuse committed by her stepfather. In particular, she emphasised the authorities' refusal to grant her victim status in the criminal proceedings, as well as the lack of any tangible progress in the ongoing investigation despite the passage of time. In this regard, she complained that the investigating authorities had, up until that point, ignored her most recent allegations regarding her stepfather's touching and even slightly penetrating her genitals – allegations that should have led to a reclassification of the offence under investigation, from the lesser offence of indecent conduct towards a minor to a more serious offence.

105. The applicant further argued that the inadequate investigation of her sexual abuse case was, at least in part, attributable to shortcomings in the domestic legislative framework for prosecuting sexual offences. In particular, she submitted that Georgian legislation focuses exclusively on the element of physical violence, without adequately recognising that coercion may also take psychological forms. Furthermore, she criticised the domestic authorities for failing to classify the acts committed against her as rape, rather than merely indecent conduct towards a minor (see paragraph 8 above; also Articles 137 and 141 of the Criminal Code in paragraphs 53-60 and 73-75 above).

106. She also complained that the manner in which certain investigative measures had been taken had caused her additional trauma. In this regard, she made the following assertions:

(i) She claimed that she had first been interviewed by the Khobi investigator on 7 May 2021, without a guardian, child psychologist or legal representative being present. As she had been left alone, she had felt embarrassed and unable to disclose sensitive details to the investigator.

(ii) The Tbilisi investigator had subjected her – against her will – to a gynaecological examination, which had caused her further distress and anxiety (see paragraph 22 above). The applicant referred to that examination as a "virginity test", which she had found to be a painful and discriminatory experience that, in her view, was also unnecessary for the purposes of the criminal investigation into her allegations as no inferences could arguably be drawn from the condition of the hymen.

(iii) During her interview with the Tbilisi investigator on 13 May 2021, she had been deeply upset by two questions asked by the child psychologist invited to attend by the Tbilisi police. Specifically, she alleged that the psychologist had asked her (i) whether she had ever felt pleasure or had consented to her stepfather's actions, and (ii) whether she had ever dressed provocatively in his presence.

(b) The Government

107. The Government first objected to the applicant's assertion regarding the insufficiency of the domestic legislative framework for combating sexual offences in general, providing an overview of the relevant legal provisions. They argued that the criminal investigation into the applicant's allegations had been adequate, as it had been initiated promptly and conducted with reasonable diligence. Numerous investigative measures had been taken by the police, including thorough and objective interviews with all the witnesses concerned.

108. As regards the fact that the applicant had not yet been granted victim status, the Government submitted that this delay was attributable to the complexity of the investigating authorities' task. Given the sensitive nature of the case – the conflicting versions of events and the limited availability of direct or objective evidence – the authorities had had to exercise particular caution and avoid rushing into conclusions. The Government also contended that the competent domestic authorities had duly considered the applicant's rights as a potential child victim of sexual abuse. In particular, they pointed out that the applicant had had the right to legal aid, that the investigators assigned to her case had been trained in juvenile justice, that a legal guardian had been appointed to assist her during the taking of various investigative measures, that all interviews with her had been conducted in the presence of a child psychologist, and that, in general, all the officials who had had direct contact with her were of the same sex (female).

109. Submitting a complete copy of the applicant's criminal case file, in which all the material was numbered in chronological order from page one, the Government pointed out that there was no mention, however brief, of any

interview conducted by the Khobi investigator with the applicant in the material available in the case file. The case materials indicated, on the contrary, that the applicant's first interview regarding her allegations had taken place on 13 May 2021 with the Tbilisi investigator (see paragraphs 9 and 106 above).

110. The Government also stated that, since the transcripts of the applicant's first and second interviews (conducted on 13 May and 5 June 2021 respectively) only contained her responses to the questions asked, there was no evidence to substantiate her allegations regarding the inappropriate nature of certain questions asked by the psychologist.

111. With respect to the applicant's complaint concerning the need for the gynaecological and psychological examinations, the Government argued that both she and her legal representative had had the option of withholding consent for these procedures. They emphasised, however, that the applicant and her representative had freely consented to the medical examinations after being fully informed of their nature and purpose by both the investigator and the medical staff involved (see paragraphs 22 and 23 above). Moreover, the Government stated that a gynaecological examination was an essential element in determining whether the offence of sexual penetration had been committed.

2. Comments by the third-party intervener

112. The third-party intervener, the AIRE Centre, submitted an analysis of the Court's case-law under Articles 3 and 8 of the Convention regarding the effective investigation of sexual assault and the associated prohibition of gender-based discrimination under Article 14. In doing so, it drew parallels with additional obligations under a number of international legal treaties, such as the Lanzarote Convention, the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child.

3. The Court's assessment

(a) General principles

113. Under Articles 3 and 8 of the Convention, States are required to enact provisions criminalising the sexual abuse of children and to enforce them through effective investigation and prosecution. This obligation must be fulfilled with due regard to the particular vulnerability of children, their dignity, and their rights as both children and victims (see *A and B v. Croatia*, cited above, § 112; *Z v. Bulgaria*, no. 39257/17, § 70, 28 May 2020; and *R.B. v. Estonia*, cited above, § 84). This obligation also stems from the provisions of other international instruments, such as, in particular, Articles 18 to 24 of the Lanzarote Convention (see *X and Others v. Bulgaria* [GC], no. 22457/16, § 179, 2 February 2021).

114. The Court has repeatedly held that an effective investigation should, in principle, be capable of establishing the facts of the case and identifying and, where appropriate, punishing those responsible. This is an obligation of means, not of result. Authorities must take reasonable steps to secure the evidence concerning the incident (see *Z. v. Bulgaria*, no. 39257/17, § 65, 28 May 2020). However, there is no absolute right to the prosecution or conviction of any particular person in the absence of culpable failures in holding perpetrators accountable (see *Söderman v. Sweden* [GC], no. 5786/08, § 83, ECHR 2013). In cases of child sexual abuse, the procedural obligation to conduct an effective investigation requires authorities to respond promptly to complaints, having regard to the gravity of the allegations and the applicant's age at the time (see *P.M. v. Bulgaria*, no. 49669/07, §§ 64-65, 24 January 2012). Additionally, the Court has emphasised that the Convention requires the penalisation and effective prosecution of all non-consensual sexual acts, even in the absence of physical resistance by the victim (see *M.C. v. Bulgaria*, no. 39272/98, § 166, ECHR 2003-XII; *M.G.C. v. Romania*, no. 61495/11, § 59, 15 March 2016; and *I.C. v. Romania*, no. 36934/08, § 52, 24 May 2016). The authorities must also ensure that the proceedings are conducted in a way that protects victims from secondary victimisation by taking appropriate measures to mitigate distress and avoiding reliance on gender stereotypes or moralising commentary (see *J.L. v. Italy*, no. 5671/16, §§ 137-41, 27 May 2021; *X v. Greece*, cited above, § 86; and *X v. Cyprus*, no. 40733/22, §§ 121-23, 27 February 2025).

115. The best interests of the child must be a primary consideration in the State's positive obligation to protect children and ensure respect for their dignity and psychological integrity (see *G.U. v. Turkey*, no. 16143/10, § 73, 18 October 2016, and *N.Ç. v. Turkey*, cited above, §§ 101 and 113). Authorities are required to adopt a context-sensitive approach to interpreting consent, assessing the facts and conducting investigations in cases of violence against children (see *M.C. v. Bulgaria*, cited above, §§ 150, 177 and 183; *C.A.S. and C.S. v. Romania*, no. 26692/05, § 78, 20 March 2012; and *I.C. v. Romania*, cited above, §§ 54 and 58). The Court has also emphasised that it is important that the States have in place procedural rules guaranteeing and safeguarding children's testimony (see *G.U. v. Turkey*, cited above, § 73).

(b) Application of these principles to the circumstances of the present case

116. The Court notes that there is no doubt in the present case that the alleged sexual abuse of the applicant, who was a minor at the time, falls within the scope of both Article 3 and Article 8 of the Convention. This, in turn, triggers the State's positive obligations: (i) to enact criminal-law provisions that effectively punish the sexual abuse of children and (ii) to apply those provisions in practice through effective investigation and prosecution; such investigations and prosecutions must, furthermore, be

conducted in a manner that protects the best interests and rights of child victims in criminal proceedings, to have the child's particular vulnerability and corresponding needs adequately addressed (see, among other authorities, *X and Others v. Bulgaria*, cited above, §§ 180 and 192).

(i) Adequacy of the available criminal-law mechanisms

117. As regards the first positive obligation – the effectiveness of the criminal-law mechanisms provided for in the Georgian legal system in the light of the State's obligations under Articles 3 and 8 of the Convention – it is undisputed that domestic criminal law treats non-consensual sexual offences committed against a child as aggravated offences, imposing stricter penalties than for the same acts committed against an adult (see *A and B v. Croatia*, cited above, § 117).

118. Furthermore, the domestic criminal-law framework does not focus solely on the use of physical force or the victim's physical resistance in cases of sexual abuse. It also takes into account the possibility of the victim being overpowered through threats of force or various forms of psychological coercion (see paragraphs 64-67 and 114 above).

119. Lastly, Georgian criminal law goes even further by criminalising various forms of sexual activity between an adult and a person under 16 years old, even if the child appears to have given consent. In doing so, the Georgian legislature has aligned itself with Article 18 § 1 (a) of the Lanzarote Convention, which provides for the criminalisation of sexual activity between an adult and a child who has not yet reached the legal age for such activity (see the relevant excerpts from the Explanatory Report to the Lanzarote Convention, cited in paragraphs 79 above).

120. Overall, the Court considers that the respondent State is well equipped with an adequate legislative and regulatory framework for combating sexual offences against children, which appears apt to cover the acts complained of by the applicant in the present case.

(ii) Effectiveness of the criminal investigation and prosecution

121. With regard to the second question – whether an effective criminal investigation and prosecution have been conducted into the applicant's allegations – the Court notes that a criminal investigation was initiated immediately. During the first two months, the law-enforcement authorities carried out their investigative duties diligently (see paragraphs 8-35 above). Therefore, the investigation cannot be criticised in terms of promptness. However, despite the swift completion of several key investigative measures within a short period, the investigation, which, as submitted by the parties, is still ongoing (see paragraphs 91 and 104 above), has remained stagnant since July 2021, now approaching five years, without any further investigative steps being taken. The reasons for this prolonged inaction remain unclear.

122. To date, the investigation into the applicant's allegations has not yielded any conclusive findings and remains at a preliminary stage. Moreover, despite the applicant's repeated requests, she has not been formally recognised as a victim. Such an excessive delay in the investigation, coupled with the applicant's inability – directly resulting from the absence of formal victim status – to participate meaningfully in the process, is fundamentally incompatible with the State's positive obligations under Articles 3 and 8 of the Convention (see *Machalikashvili and Others v. Georgia*, no. 32245/19, §§ 59 and 95, 19 January 2023; *Aghdgomelashvili and Japaridze v. Georgia*, no. 7224/11, § 39, 8 October 2020, with further references; see also, *mutatis mutandis*, *Georgian Muslim Relations and Others v. Georgia*, no. 24225/19, §§ 97 and 100, 30 November 2023). In this regard, the Court reiterates that "justice delayed is often justice denied". Periods of unreasonable inactivity and a lack of diligence on the part of the authorities may render an investigation ineffective (see *Ochigava v. Georgia*, no. 14142/15, § 58, 16 February 2023).

123. The Court finds that the length of time already taken by the domestic authorities to complete even the initial stage of the investigation not only risks undermining the investigation itself – by diminishing the quantity and quality of the evidence and potentially compromising its outcome – but is also clearly incompatible with the nature of the alleged offence. Given the seriousness of the allegations – sexual abuse of a child – the best interests of the victim demanded a particularly swift investigation and an expedited trial. This would have helped minimise the traumatic and distressing impact on the applicant (see, *mutatis mutandis*, *N.D. v. Slovenia*, no. 16605/09, §§ 60 and 61, 15 January 2015).

124. The Court is particularly concerned by the decision of the Tbilisi City Court, which, in a final decision (see paragraph 38 above), dismissed the applicant's request to be recognised as a victim in the criminal proceedings. Despite the available evidence, including the applicant's detailed account and statements that, while not entirely free from inconsistencies, were nonetheless not manifestly frivolous and pointed to multiple instances of alleged sexual abuse by her stepfather, statements from independent witnesses, documentary evidence – including relevant Facebook Messenger chat records – further supporting the allegations, psychological assessment results indicating no tendency by the applicant to exaggerate specific information, as well as the medical opinion diagnosing her with an anxiety disorder associated with previous sexual abuse (see paragraphs 8-21, 23, 28 and 30-35 above), the domestic authorities still failed to acknowledge *prima facie* evidence of a criminal offence committed against the applicant. Their conclusion that, despite all the above-mentioned pieces of evidence, "she had not suffered any harm" can only be interpreted as a sign of an unwillingness to conduct a meaningful investigation into her serious allegations (compare,

mutatis mutandis, *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, §§ 65 and 66, 16 December 2021).

125. Furthermore, the investigating authorities' refusal to record the applicant's additional statements (see paragraph 36 above), which could potentially implicate the perpetrator in a penetrative sexual offence, further undermines the credibility of the investigation. It is important to note that the distinction between penetrative and non-penetrative sexual abuse carries significant legal implications, with the former being subject to more severe criminal sanctions under domestic law (for an analysis of the relevant domestic law, see paragraphs 52-75 above). In the Court's view, this omission serves as further evidence of the authorities' reluctance to conduct a thorough criminal investigation (compare, *mutatis mutandis*, *N.Ö. v. Türkiye*, no. 24733/15, § 53 *in fine*, 7 January 2025).

126. As to the applicant's further allegations concerning secondary victimisation during the investigation stage, the Court first notes that some of her factual claims are not consistent with or substantiated by the material available in the case file. Specifically, there is no evidence that the applicant was interviewed by the Khobi investigator on 7 May 2021 or that during the interview on 13 May 2021 she was asked about any "pleasure" derived from her stepfather's alleged abusive behaviour or whether she had dressed provocatively in his presence (see paragraphs 8-38, 106 and 109-110 above). Accordingly, the Court dismisses these factual claims as unsubstantiated.

127. However, two other factual claims appear to be supported by the material in the case file. First, it is undisputed that the applicant underwent a gynaecological examination at the request of the Tbilisi investigator. Secondly, the Court accepts, on the basis of the wording of the applicant's response in the transcript, that she may indeed have been asked during the interview on 13 May 2021 whether she had wanted the alleged perpetrator's sexual attention (see paragraphs 21-23 above).

128. With regard to the gynaecological examination, the Court, while refraining from taking a position on whether and what type of inferences may be drawn from the condition of the hymen, notes that it is not in itself unusual for investigating authorities to arrange such examinations in cases of alleged sexual abuse, even where, as in the present case, a significant period of time has elapsed between the alleged events and the examination (see, for instance, *N.Ö. v. Türkiye*, cited above, § 39, and *X and Others v. Bulgaria*, cited above, §§ 72 and 74). However, the Court is unable to discern any justification for conducting such a gynaecological examination in the specific circumstances of the present case. The examination was undoubtedly physically and psychologically traumatising for the applicant, who was a child at the time, given that she had made no allegation that could even remotely have suggested sexual abuse of a penetrative nature (see paragraphs 22-23 and 35-36 above; contrast *Y. v. Slovenia*, cited above, §§ 11 and 12, and *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 88, 17 March 2009).

129. With regard to the question put to the applicant during the interview of 13 May 2021 as to whether she might have wanted her stepfather's sexual attention, the Court considers that the wording of the question was inappropriate. By framing the issue in terms of whether the victim might have wanted the alleged abuser's sexual attention, the question was formulated in a manner that was sufficiently unprofessional to risk inducing feelings of self-blame and, by extension, further humiliation in the underage victim (compare GREVIO's report in respect of Georgia, cited in paragraph 81-86 above). In this connection, the Court further finds it problematic that the investigators did not record the interviews with the applicant in their entirety. Such an omission may be considered to run counter to established best practices for interviewing child victims of sexual abuse, which ordinarily require, and indeed recommend, that such interviews be video-recorded (compare *B v. Russia*, no. 36328/20, § 56, 7 February 2023).

(iii) Conclusions

130. In the light of the foregoing considerations, the Court concludes that, while there is no reason to doubt the adequacy of the domestic legislative and regulatory framework for combating sexual abuse, the criminal investigation into the applicant's allegations of sexual abuse was ineffective and liable to cause her additional and unwarranted distress, amounting to secondary victimisation. Given the particularly high stakes for the applicant, the investigation clearly failed to meet the requisite standard of special diligence (compare, *mutatis mutandis*, *J.I. v. Croatia*, no. 35898/16, § 84, 8 September 2022, and, in the context of domestic violence, *Tkhelidze v. Georgia*, no. 33056/17, § 48, 8 July 2021). This failure is evidenced by the investigating authorities' inactivity, the inconclusiveness of the investigation, the authorities' persistent failure – or possible unwillingness – to properly investigate the serious allegations against the applicant's stepfather, and the lack of meaningful involvement of the applicant in the proceedings as a recognised victim. Such shortcomings are incompatible with the requirement that investigations into the abuse of minors be both context-sensitive and rigorous (see, for instance, *C.A.S. and C.S. v. Romania*, cited above, § 78).

131. The Court therefore dismisses the objection concerning the premature nature of the relevant complaints and finds that there has accordingly been a violation of Articles 3 and 8 of the Convention on account of the lack of an effective criminal investigation.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

132. The applicant alleged that the deficiencies in the criminal investigation constituted discrimination based on sex. In particular, she contended that her status as a female child victim, as opposed to a male child victim, had been the primary reason for the investigators' failure to properly

examine her allegations of sexual abuse. Article 14 of the Convention reads as follows:

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

133. The Government submitted that the complaint of discrimination was wholly unsubstantiated. The applicant disagreed.

134. The Court observes that the applicant failed to provide any evidence capable of suggesting that, in comparable cases of sexual abuse, investigative failures disproportionately affect underage girls as compared to underage boys. In particular, the case file contains no information as to the prevalence, if any, of ineffective investigations into the abuse of girls in comparison with those concerning the abuse of boys (contrast, *mutatis mutandis*, in the context of domestic violence, *B.A. v. Iceland*, no. 17006/20, §§ 86 and 92, 26 August 2025). The complaint under Article 14 of the Convention is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (compare *N.Ç. v. Turkey*, cited above, § 136-37).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. 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."

136. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. She did not make any claim in respect of costs and expenses.

137. The Government stated that the amount claimed was excessive.

138. Ruling on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection concerning the premature nature of the complaints under Articles 3 and 8 of the Convention and *dismisses* it;

2. *Declares* the complaints under Articles 3 and 8 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Articles 3 and 8 of the Convention on account of the lack of an effective criminal investigation;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 31 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Faris Vehabović Acting President