

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

FOURTH SECTION

CASE OF C. v. ROMANIA

(Application no. 47358/20)

JUDGMENT

Art 8 • Private life • Positive obligations • Significant flaws in criminal investigation concerning alleged sexual harassment in workplace • Failure to protect complainant's personal integrity • Non-compliance with State duty to take measures for protection from secondary victimisation

STRASBOURG

30 August 2022

FINAL

30/11/2022

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



In the case of C. v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Yonko Grozev,
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges*,
and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 47358/20) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Ms C. ("the applicant"), on 8 October 2020;

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

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

the parties' observations;

Having deliberated in private on 7 June and 5 July 2022,

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

INTRODUCTION

1. The application concerns the State's positive obligations in respect of allegations of sexual harassment in the workplace. The Government were given notice of the applicant's complaints under Article 8 taken alone and in conjunction with Article 14 of the Convention.

THE FACTS

2. The applicant was born in 1970 and lives in Fibiş, Timiş County. She was represented by Ms B.I. Radu, a lawyer practising in Timişoara.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

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

5. The applicant was an employee of the D. company, which provided cleaning services. In 2014 she was assigned to work at Timişoara East railway station, which belonged to the State-owned railway company CFR Călători (see paragraph 34 below), where she remained until 25 October 2017 (see paragraph 8 *in fine* below).

6. On 3 November 2017 the applicant, assisted by a lawyer, lodged a criminal complaint with the prosecutor's office attached to the Timişoara

District Court ("the prosecutor's office"), against C.P., the railway station manager, accusing him of repeatedly trying to force himself on her over a period of two years. She relied on Article 223 of the Criminal Code (see paragraph 29 below). She proposed several witnesses and submitted recordings made by her of several discussions with C.P. of a sexual nature. The situation was described as follows in the criminal complaint:

> "[The applicant] has performed her duties for the past 5 years, but about 2 years ago, [C.P.] changed his initial attitude (which had been appropriate), requesting that [the applicant] have sexual intercourse with him.
>
> As she consistently refused [his advances], he undertook a series of acts designed to create discomfort in the workplace for the victim, terrorising her.
>
> He repeatedly tried to undress [the applicant] when he found her alone or in secluded places; he unbuttoned her jacket on several occasions and asked her to stay put because he would do something 'beautiful' to her.
>
> He was very insistent and, over time, became increasingly aggressive ... when [the applicant] refused [his advances] – and she always refused.
>
> In order not to jeopardise her job, [the applicant] avoided the perpetrator, but the latter followed her when she was alone or in places where he could carry out his harmful acts.
>
> He also altered his behaviour when met with her opposition, in that he refused to give her the cleaning products she needed for her job and would then accuse her of not doing her job properly.
>
> He also claimed on several occasions that he would 'kick her butt' and always emphasised his position as a boss, as opposed to her being a mere cleaning lady, and his degrading and insulting behaviour towards [the applicant] was notorious."

7. On 27 November 2017 the prosecutor's office started a criminal investigation into the facts alleged by the applicant.

8. On 5 December 2017 the prosecutor interviewed the applicant. She explained that C.P. had been trying to coerce her into having sexual intercourse with him, but never in the presence of other people. After repeated refusals by her, C.P. became verbally aggressive, harassing and accusing her of not doing her job properly. In September 2017, after C.P. refused to give her the cleaning supplies she needed to perform her tasks, she called R.M., her manager at the D. company, and told her about C.P.'s behaviour during the past two years. A few days later, she, accompanied by R.M. and F.C., the railway company employee overseeing the contract with the D. company, met U.C., the head of passenger safety at the Timişoara regional branch of the railway company, to discuss C.P.'s inappropriate behaviour towards her. They presented an audio-recording of an episode that the applicant had described as sexual harassment. Five days later, U.C. called her and F.C. back to his office, where C.P. was also present. U.C. confronted C.P., who, according to the applicant, admitted his actions and apologised to her. After that day, she no longer worked at Timişoara East railway station. On 1 October 2017 she was forced by F.C. to take her annual leave and upon her return, on 25 October 2017, she had to choose to either work at Timişoara

North railway station or resign. She chose the latter. She further explained that she had not reported C.P. before, because she was afraid of him; he would often say to her: "Who would believe you? You're a cleaning lady, and I'm the boss and everybody knows who I am."

9. The witnesses proposed by the applicant (people working in various posts at the railway station while she worked there) told the investigators that they had not personally seen C.P. making sexual advances to the applicant or treating her abusively. They also made the following statements.

10. B.M.L. told the investigators that she had known the applicant since the latter had started working at the railway station and that in the past year and a half she had changed and become stressed and worried – B.M.L. had also found her crying a few times. Eventually, the applicant had told her that C.P. had been sexually harassing her.

11. C.O.F. told the investigators that the applicant had told him and L.M. about C.P.'s attitude and the fact that she had been refusing his advances, but at that time C.O.F. had thought she might have misinterpreted C.P.'s actions and that he had only been joking.

12. L.M. said that in the past two years the applicant had sometimes been upset and had cried at work, as if she had been going through a difficult time. At first, the applicant had refused to talk, but eventually she had told L.M. and L.M.'s office colleagues that C.P. had been harassing her. At one point, the applicant had played the audio-recordings to L.M., who had recognised the voices as those of the applicant and C.P.

13. P.S.V. said that the applicant had told him how C.P. had been sexually harassing and verbally abusing her, telling her she was not doing her job well and that she was good for nothing. He said that on several occasions the applicant had come into his office crying, trembling and with a red face, and had told him about what she had been enduring at the hands of C.P. The witness had advised the applicant to talk to C.P.'s wife. The applicant had followed his advice and then told him that C.P.'s wife had thrown her out and called her shameless (*nesimţită*).

14. D.I. said that on the recordings presented to him, he had heard C.P. telling the applicant to stay put, and her refusing to do so. He had understood from those recordings that C.P. was making sexual advances to the applicant, and that she was resisting him. D.I. also declared that on several occasions he had seen the applicant upset and crying at work, and that she had told him that C.P. had insisted that they have sexual intercourse.

15. U.C. recounted the meeting that took place in his office between the applicant and C.P. (see paragraph 8 above). He stated that he had refused to hear any details about the alleged facts as they did not fall within his work responsibilities, but that he had encouraged the applicant to go to the police if she considered that a criminal offence had been committed. U.C. explained that during the meeting in his office, C.P. had apologised in general terms, without admitting to the facts alleged by the applicant.

16. It appears from the documents in the case file that no other inquiry took place in the railway company concerning the allegations made by the applicant against C.P.

17. A witness confrontation was held between the applicant and U.C., and they both maintained their version of how the meetings had taken place in U.C.'s office.

18. On 19 October 2018 C.P., who at that point had not yet been charged by the prosecutor's office (see paragraph 30 below), was heard as a witness. His main statements were set out in the prosecutor's decision (see paragraph 26 below) as follows. He asserted that he had had sexual intercourse with the applicant once, in 2014, and that he had avoided her afterwards for fear that his wife would find out. He also said that he had heard that, after their brief relationship, because he had no longer shown any interest in the applicant, she had had sexual intercourse with another employee from the railway station, and had got into a dispute with that employee and his wife, which had lasted until 2016. He further explained that since 2016 the applicant had started making advances to him and dressing "sexily" at work to provoke him; he would often touch her breasts in his office, but always with her consent. His statements concerning his interactions with the applicant were recorded as follows:

> "[S]ometimes when [the applicant] came to my office, I would touch her, with her consent, on her breasts, but never in the genital area. Each time I touched her breasts she consented and did not resist, she would laugh and even came to work wearing 'sexy' clothes, that is, not wearing a bra and wearing tights. In January 2017 [the applicant] told me she had recorded us when we were 'playing', that is, when I was touching her. When I heard that, I thought it was a joke, I did not take her seriously."

19. C.P.'s wife also gave statements. She told the prosecutor that in 2017 she had heard that the applicant had accused her husband of harassment. She had asked her husband if it was true and, if so, how he could have made advances to "that woman" who, she had heard, had had sexual intercourse with several men working at the railway station. Her husband had confessed to having had sexual intercourse with the applicant but denied sexually harassing her. He had explained to his wife that the applicant had falsely accused him in order to blackmail him. C.P.'s wife had confronted the applicant, who had then played her the audio-recordings, but she could not hear anything sexual in the dialogues. She told the prosecutor that after hearing the recordings she had asked the applicant why she had continued to go to C.P.'s office if she had felt threatened and harassed by him, but she had not answered. C.P.'s wife had ended the conversation by telling the applicant that she should be ashamed of herself for what she had done. She had spoken with her husband about the situation several times, but each time he had denied the allegations of sexual harassment.

20. R.M. and F.C., who were also interviewed by the prosecutor, recounted the meetings and confrontations described by the applicant in her statements.

21. F.C. said that when confronted in U.C.'s office (see paragraph 8 above), C.P. had denied that it was his voice on the audio-recordings presented by the applicant and that he had sexually harassed her for the past two and a half years, and that he had refused to apologise to her. F.C. further explained that the applicant had not felt upset or been crying during that meeting and had actually seemed rather cheerful. In her opinion, the applicant had been upset because she had wanted to take on a second job elsewhere and C.P. had refused to let her do so.

22. R.M. said that the applicant had informed her on several occasions in 2017 (she could not remember the exact dates) that C.P. had been sexually harassing her. She stated that she had not believed the applicant at first, that she had recognised the voices on the audio-recordings and that both the applicant and C.P. seemed to have consented to the sexual acts which seemed to have taken place between them.

23. The applicant also requested that the prosecutor hear M.A., who was in close contact with her during the period in question. M.A. stated that she had accompanied the applicant to F.C.'s office when she had told F.C. about the harassment. M.A. explained that during that meeting the applicant had not seemed very resolute in her description of the situation, and that in the recordings she and C.P. appeared to have a discussion with sexual content and both seemed to be consenting. M.A. also said that when she had confronted C.P., the latter had denied any sexual harassment. Lastly, M.A. described that she had once seen the applicant leaving C.P.'s office with her shirt unbuttoned.

24. The prosecutor's office also obtained transcripts of the private recordings made by the applicant of her interactions with C.P. In the first conversation, C.P. was heard urging the applicant to stay calm because he wanted to touch her breasts; she refused and asked him to give her the brooms she needed for cleaning. In the second recording, the applicant was heard asking C.P. to give her bags to collect the rubbish, but he kept asking her what was wrong with her and why she was nervous. C.P.'s words were not always audible; the applicant asked him to repeat: "What did you want to say? That when the heat comes, what? You will take revenge?" She asked him again for clarifications: "What will you do to me when the heat comes?", to which C.P. answered: "Beautiful things." The conversation continued, the applicant asking for the rubbish bags, and C.P. continuing his speech about the "beautiful things" that he would do to her, without naming or describing them.

25. On 8 November 2019 the applicant requested a confrontation with C.P., but as her request was submitted after the prosecutor had decided the case (see paragraph 26 below), it was not considered.

26. The prosecutor's office issued its decision on 22 October 2019 and notified it to the applicant and her lawyer on 15 and 19 November 2019. It decided not to prosecute C.P. and to end the investigation, on the grounds that the acts committed did not constitute a crime prohibited by law. The decision contained a comprehensive description of the statements given by the applicant and witnesses (see paragraphs 9 to 23 above), which were all reproduced with quotation marks and accompanied by the following legal analysis:

> "Consequently, in the light of the evidence in the file, the provisions of Article 16 § 1 (b) of the [Code of Criminal Procedure] apply, as the acts perpetrated by [C.P.] do not constitute the criminal offence at issue in the present case. In addition, the direct consequence required by law, that is, intimidation or humiliation of the victim, was not achieved, the acts thus not being typical.
>
> In accordance with Article 15 of the Criminal Code (Law no. 286/2009), a criminal offence is 'an act proscribed by the criminal law, committed with intent, unjustified and imputable'. The current definition of a criminal offence contains the three essential features of an offence, as prescribed by the legislature in 2009, namely typicality (the act must be proscribed by the criminal law), unlawfulness (*antijuridicitatea*) (the act must be unjustified, illicit) and imputability (the act must be imputable).
>
> Typicality results from the principle of incrimination and presupposes the correlation between the act actually committed, directly or indirectly, by a person, and the objective and subjective characteristics set by the legislature in the abstract model (type) proscribed by the criminal law.
>
> Thus, the classification of the act in the criminal law implies the requirement that the deed actually committed, whose classification as a criminal offence is undertaken, corresponds entirely to the description made of it by the legislature in the criminal law. This correspondence must exist concerning both the objective and subjective elements of the crime."

27. On 13 December 2019 the chief prosecutor of the same prosecutor's office upheld the above-mentioned decision on the grounds that the acts in question had not been committed with the degree of criminal liability required by law, thus justifying the application of Article 16 § 1 (b) of the Code of Criminal Procedure (see paragraph 30 below). That decision did not contain a description or reassessment of the evidence in the file.

28. The applicant complained about the prosecutors' decisions to the Timişoara District Court. In a final decision of 11 June 2020 it upheld them. It found it established that C.P. had asked for sexual favours from the applicant, but considered that she had not felt threatened in her sexual freedom or humiliated, elements required by law for the acts to constitute a criminal offence. It based its conclusion on the following arguments: (i) in the recordings, the applicant had not seemed embarrassed by the discussions with her alleged aggressor; (ii) the latter had declared during the investigation that they had once had sexual intercourse in the past; and (iii) according to the witness statements (see paragraphs 9 to 23 above), the applicant had only

sometimes seemed sad after her encounters with C.P., whereas other times she had seemed rather cheerful.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. Legislation

29. The Criminal Code prohibits sexual harassment in the following terms:

Article 208 – Harassment

"(1) Repeatedly following someone, without right or a legitimate interest, or watching his or her home, workplace or other places frequented by [him or her], thus causing him or her fear, shall be punishable by imprisonment of three to six months or a fine.

(2) Making telephone calls or remote communications, which, by their frequency or content, cause a person fear, shall be punished by one to three months' imprisonment or a fine if the act does not constitute a more serious offence.

(3) Criminal proceedings shall be initiated upon a complaint from the victim."

Article 223 – Sexual harassment

"(1) Repeatedly claiming sexual favours in a work relationship or other similar relationship, if the victim has been intimidated or humiliated, shall be punished by between three months and one year's imprisonment or a fine.

(2) Criminal proceedings shall be initiated upon a complaint from the victim."

30. The relevant provisions of the Code of Criminal Procedure concerning the initiation and termination of a criminal investigation read as follows:

Article 16 – Circumstances preventing the initiation and conduct of criminal proceedings

"(1) Criminal proceedings may not be initiated, and when already initiated may not be continued if: ...

(b) the acts are not prohibited by criminal law or have not been committed with the criminal liability required by law; ..."

Article 305 – Initiation of criminal proceedings

"(1) When the [criminal complaint] fulfils the conditions laid down by law ... the prosecuting authority shall initiate criminal proceedings in respect of the act committed or preparation of its commission, even if the perpetrator is named or known.

...

(3) Where there is evidence giving rise to a reasonable suspicion that a particular individual has committed the offence for which criminal proceedings have been

initiated and none of the situations provided for in Article 16 § 1 apply, the prosecuting authority shall order that the criminal proceedings continue and be conducted against the individual concerned, who shall become a suspect."

31. Law no. 202/2002 on equal opportunities and equal treatment between women and men defines harassment in the following terms:

Article 4

"The words and phrases below, for the purposes of this Law, shall have the following definitions:

...

(c) harassment refers to unwanted behaviour related to the sex of the person [in question] aimed at or causing an affront to the dignity of the person in question and the creation of an intimidating, hostile, degrading, humiliating or offensive environment;

(d) sexual harassment refers to unwanted physical, verbal or non-verbal behaviour with a sexual connotation aimed at or causing an affront to the dignity of the person [in question] and, in particular, the creation of an intimidating, hostile, degrading, humiliating or offensive environment;

(d^1) psychological harassment means any inappropriate behaviour that occurs over a period of time, is repetitive or systematic, and consists of physical acts, oral or written language, gestures or other intentional acts which may affect a person's personality, dignity, or physical or psychological integrity."

32. The relevant provisions of the Labour Code read as follows:

Article 6

"(1) Every employee who performs a job shall benefit from working conditions appropriate to the activity performed, social protection, and safety and health at work, as well as respect for his or her dignity and conscience, without any discrimination."

Article 39

"(1) The employee has, in principle, the following rights: ...

(d) the right to equal opportunities and treatment;

(e) the right to dignity at work;

(f) the right to safety and health at work; ..."

33. The relevant provisions of the Civil Code read as follows:

Article 72

"(1) Every person has the right to respect for his or her dignity.

(2) Any infringement of the honour or reputation of a person, without that person's consent or without respecting the limits set forth in Article 75, shall be forbidden."

Article 75

"(1) Breaches which are permitted by law, or by the international conventions and covenants concerning human rights to which Romania is a party, shall not constitute an infringement of the rights protected in this section [of the Civil Code].

(2) The exercise of constitutional rights and freedoms in good faith and in compliance with the international conventions and covenants to which Romania is a party shall not constitute an infringement of the rights protected in the present section [of the Civil Code]."

Article 1349

"(1) Every person has a duty to respect the rules of conduct that the law or local custom imposes and not to infringe, through [his or her] actions or inaction, the rights or legitimate interests of other people.

(2) Those who knowingly breach this obligation shall be responsible for all damage caused, and must provide reparation in full.

(3) In the specific cases provided by law, a person must provide reparation for damage caused by the deed of another, by objects or animals under their control, or by a building owned by them falling into ruin.

(4) Liability for damage caused by defective products shall be regulated by a specific Act."

34. The CFR Călători railway company was created by Government Decision no. 584/1998. The State, its sole shareholder, exercises its rights and obligations through the Ministry of Transport. In accordance with Article 4 of that Decision, the company carries out activities of national interest, ensuring public railway transport and the defence needs of the country.

35. The railway company has a Code of Ethics and Professional Conduct, which has been amended on several occasions. The 2013 version of the Code, which appears to have been valid until 8 November 2019, did not have any specific provisions concerning harassment in the workplace. The relevant provisions of the Code described the expected behaviour of employees as follows:

Article 11

"(1) In relations with ... co-workers, employees of the railway company are obliged to behave with respect, good faith, fairness and courtesy.

(2) Staff of the railway company must not harm the honour, reputation and dignity of the persons with whom they come into contact in the exercise of their duties."

Article 18

"(1) The management of the company may be notified by any person of:

(a) a breach of the provisions of this Code of Ethics by the [company's] employees.

..."

(2) The complaint provided for in paragraph (1) does not preclude the lodging of a separate complaint with the State authorities."

36. On 8 November 2019 the railway company adopted a new Code of Ethics and Professional Conduct, which remained in place until 11 June 2021, when it was replaced by new provisions. The relevant parts of the 2019 Code read as follows:

"II.9. Integrity and protection of personnel from any form of harassment

II.9.1. [The railway company] has an obligation to protect the moral integrity of employees, providing them with working conditions that respect the dignity of the individual.

II.9.2. Staff of the [railway company] have an obligation, both in internal relations and in relations with external partners, to avoid any form of moral harassment that may lead to discredit, intimidation, deterioration of working conditions etc.

II.9.3. In the performance of their duties, staff of [the railway company] are prohibited from displaying unwanted behaviour with a sexual connotation, whether expressed physically or through language with sexual allusions.

...

III.2. Individual responsibility

III.2.1. Each employee of [the railway company] is responsible for knowing and respecting the rules laid down in this Code. Non-compliance may engage the responsibility of the guilty individual, under the conditions provided for in the Internal Regulations of the company.

IV.4. Reporting breaches of the present Code

IV.4.1. Each employee of the[company] must report in writing to the Director General of the [company] any breaches and violations of the Code of Ethics and Professional Conduct.

...

IV.4.4. The Director General ... may set up inquiry commissions which have the power to propose disciplinary sanctions, under [the Labour Code]."

B. Practice of the National Council for Combating Discrimination

37. The Anti-Discrimination Act (Government Ordinance no. 137/2000 on combating and punishing all forms of discrimination) set up the National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării* – "the CNCD"), an autonomous State authority under parliamentary control, which was entrusted with specific powers in matters of discrimination, such as: preventing acts of discrimination and mediating in instances of such acts, conducting inquiries, detecting and punishing such acts, monitoring cases of discrimination and assisting victims of discrimination. Anyone who considers himself or herself a victim of

discrimination may lodge a complaint either with the CNCD or directly with the civil courts.

38. The CNCD's decision no. 886 of 3 December 2019 concerns a complaint brought by a female employee against her direct superior accusing him of sexual harassment; she was transferred to a different post in the company and eventually resigned, as she had allegedly become a victim of bullying after reporting it. The CNCD held that it had no power to investigate any aspects connected with the allegations of sexual harassment, as they were potentially a criminal offence and thus fell within the jurisdiction of the prosecutor's office. It examined the alleged discrimination based on the victim's beliefs concerning the measures taken by the employer in respect of her (the transfer and a disciplinary inquiry). It found that all the measures had been taken before the victim had made the accusation of sexual harassment against her superior and had been stayed pending the outcome of the ensuing criminal complaint. The relevant parts of the decision concerning the scope of the CNCD's powers read as follows:

> "70. In relation to these issues, bearing in mind the subject of the complaint, the evidence in the file and the arguments previously raised, it follows that the situation complained of by the claimant concerning sexual harassment, which would necessitate examining the subject of the present complaint from a discrimination standpoint, is beyond the scope of Article 2 of the [Anti-Discrimination Act]."

39. The CNCD's decision no. 438 of 17 July 2017 concerned public denigration in the press by the deputy chief of the Ploieşti County Police against an individual who had publicly and by means of a criminal complaint accused him of sexual harassment. The CNCD dismissed the complaint as inadmissible on the grounds that, as it was connected to a criminal investigation, it did not fall within the scope of the CNCD's powers.

40. The CNCD's decision no. 772 of 7 December 2016 concerned a refusal to transfer the victim's contract of employment to the new company which had taken over after her employer's dissolution, allegedly because she had refused to perform the sexual favours requested by her superior. The CNCD dismissed the complaint on the grounds that there was no evidence that she had been asked for any sexual favours or that her refusal to perform such sexual favours would have constituted the reason for not transferring her to the new company.

II. COUNCIL OF EUROPE MATERIAL

41. Part I of the European Social Charter (revised), opened for signature on 3 May 1996 (ETS 163), provides that the Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which a number of rights and principles, including the right to dignity at work, may be effectively realised. Part III provides, *inter alia*, that each of the Parties undertakes to consider

Part I as a declaration of the aims which it will pursue by all appropriate means.

42. Article 26 of the European Social Charter (revised) provides for the right to dignity at work. It reads as follows:

> "With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:
>
> 1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
>
> 2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct."

43. Romania ratified the European Social Charter (revised) on 7 May 1999, declaring itself legally bound to accept a number of its provisions. Article 26 is not, however, among them.

44. On 5 May 2011 the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence, which was opened for signature on 11 May 2011 and entered into force on 1 August 2014 (CETS 210 – "the Istanbul Convention"). With respect to Romania, the Convention was signed and ratified on 27 June 2014 and 23 May 2016 respectively, and entered into force on 1 September 2016. The relevant provisions read as follows:

Article 40 – Sexual harassment

> "Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction."

Article 45 – Sanctions and measures

> "1. Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.
>
> 2. Parties may adopt other measures in relation to perpetrators, such as:
>
> – monitoring or supervision of convicted persons;
>
> – withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way."

Article 49 – General obligations

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

2. Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention."

Article 54 – Investigations and evidence

"Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary."

III. EUROPEAN UNION MATERIAL

45. The relevant parts of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23) read as follows:

"Whereas:

...

6. Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment, vocational training and promotion. They should therefore be prohibited and should be subject to effective, proportionate and dissuasive penalties.

7. In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace and in access to employment, vocational training and promotion, in accordance with national law and practice.

...

Article 2 – Definitions

1. For the purposes of this Directive, the following definitions shall apply:

...

(c) 'harassment': where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) 'sexual harassment': where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of

a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

...

2. For the purposes of this Directive, discrimination includes:

(a) harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;

...

Article 14 – Prohibition of discrimination

1. There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty [establishing the European Community];

...

Article 25 – Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 5 October 2005 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 26 – Prevention of discrimination

Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion."

46. The relevant provisions of the European Parliament resolution of 26 October 2017 on combating sexual harassment and abuse in the EU (2017/2897(RSP), OJ 2018 C 346, p. 192) read as follows:

"C. whereas sexual harassment is defined in EU law as 'where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment';

D. whereas sexual harassment is a form of violence against women and girls and is the most extreme yet persistent form of gender-based discrimination; whereas some 90 % of victims of sexual harassment are female and approximately 10 % are male; whereas according to the EU-wide FRA study of 2014 entitled 'Violence against women' one in three women have experienced physical or sexual violence during their adult lives; whereas up to 55 % of women have been sexually harassed in the EU; whereas 32 % of all victims in the EU said the perpetrator was a superior, colleague or

customer; whereas 75 % of women in professions requiring qualifications or top management jobs have been sexually harassed; whereas 61 % of women employed in the service sector have been subjected to sexual harassment; whereas 20 % of young women (between the ages of 18 and 29) in the EU-28 have experienced cyber harassment; whereas one in ten women have been subjected to sexual harassment or stalking using new technology;

E. whereas cases of sexual harassment and bullying are significantly underreported to the authorities due to a fairly persistent low social awareness of the issue, insufficient channels for victim support and the perception that it is a sensitive issue for society, despite the existence of formal procedures to tackle it in the workplace and in other spheres;

F. whereas sexual violence and harassment in the workplace is a matter of health and safety and should be treated and prevented as such;

G. whereas discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation is prohibited by EU law;

H. whereas sexual violence and harassment are contrary to the principle of gender equality and equal treatment and constitute gender-based discrimination, and are therefore prohibited in employment, including with regard to access to employment, vocational training and promotion;

I. whereas the persistence of gender stereotypes, sexism, sexual harassment and abuse is a structural and widespread problem throughout Europe and the world, and is a phenomenon that involves victims and perpetrators of all ages, educational backgrounds, incomes and social positions, and whereas this has physical, sexual, emotional and psychological consequences for the victim; whereas the unequal distribution of power between men and women, gender stereotypes and sexism, including sexist hate speech, offline and online, are root causes of all forms of violence against women and have led to men’s domination over women and discrimination against them and to women’s full advancement being prevented;

...

M. whereas sexual harassment and abuse, predominantly by men against women, is a structural and widespread problem throughout Europe and the world, and is a phenomenon that involves victims and perpetrators of all ages, educational backgrounds, incomes and social positions, and that is linked to the unequal distribution of power between women and men in our society;

...

S. whereas sexual harassment or sexist behaviour is not harmless and whereas trivialising sexual harassment or sexual violence by using understated language reflects sexist attitudes towards women and communicates messages of control and power in the relationship between men and women, impacting on women’s dignity, autonomy and freedom;

...

Zero tolerance and the fight against sexual harassment and sexual abuse in the EU

1. Strongly condemns all forms of sexual violence and physical or psychological harassment and deplores the fact that these acts are too easily tolerated, whereas in fact they constitute a systemic violation of fundamental rights and a serious crime that must be punished as such; stresses that impunity must end by ensuring that perpetrators are prosecuted;

2. Insists on effective implementation of the existing legal framework addressing sexual harassment and abuse, encouraging at the same time the EU Member States, as well as public and private companies, to take further measures to effectively prevent and end sexual harassment in the workplace and elsewhere; stresses that the dedicated legal procedures established to address sexual harassment cases in the workplace should be followed; ..."

IV. INTERNATIONAL MATERIAL

47. On 21 June 2019 the United Nations International Labour Organization (ILO) adopted the Violence and Harassment Convention (no. 190), which is aimed at protecting workers from violence and harassment in the world of work, defined as "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment". It entered into force on 25 June 2021, but it appears that Romania has not yet submitted it to the competent authority or ratified it (Article 19 of the ILO Constitution).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

48. The applicant complained that the manner in which the authorities involved, notably the prosecutors and the courts, had reacted to and examined the humiliating and embarrassing situation in which she had been placed by C.P. had deprived her of a fair resolution of her complaints and had produced negative consequences for her private life, her relationship with her work colleagues and her health in general. She relied on Article 6 § 1 of the Convention.

49. The Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), will examine the complaint from the standpoint of Article 8 of the Convention (see, *mutatis mutandis*, *Špadijer v. Montenegro*, no. 31549/18, §§ 66 and 68-69, 9 November 2021), which reads as follows:

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

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

A. Admissibility

1. The Court's jurisdiction ratione materiae

50. While the Government made no comment as to the applicability of Article 8, this being a matter that goes to the Court's jurisdiction and which it must establish of its own motion (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018, and *Špadijer*, cited above, § 79, with further references), the Court finds it important to note the following.

51. The Court has previously held, in various contexts, that the concept of private life is a broad term not susceptible to exhaustive definition. It includes a person's physical and psychological integrity, and extends to other values such as well-being and dignity, personality development and relations with other human beings (see *Špadijer*, cited above, § 80, with further references). Moreover, the Court has already held that a person's body concerns an intimate aspect of private life (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 126, 25 June 2019).

52. In order for Article 8 to come into play, however, an attack on a person must attain a certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life. Not every act or measure which may be said to affect adversely the moral integrity of a person necessarily gives rise to such an interference (see *Špadijer*, cited above, § 81, and the cases cited therein).

53. In the instant case, the applicant felt distress as a result of C.P.'s alleged behaviour and complained that the State authorities had failed to provide her redress for her suffering. She described the sexual advances she had received over a period of more than two years (see paragraph 8 above). Moreover, they were considered, by the prosecutor, to be sufficiently serious to warrant starting an investigation (see paragraph 7 above) and their existence was thus confirmed, although their severity was found not to be of a criminal nature (see the prosecutor's decision of 22 October 2019, described in paragraph 26 above, and the Timişoara District Court's decision of 11 June 2020, described in paragraph 28 above).

54. The facts underlying the application thus concern the applicant's psychological integrity and her sexual life, both of which fall within the personal sphere protected by Article 8 (see, respectively, *Špadijer*, cited above, § 87, and *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, § 35, 25 July 2017). Bearing in mind the severity of the acts concerned and, more generally, what was at stake for the applicant, who alleged an attack on her sexual integrity, the Court finds that the treatment complained of by her reached the threshold of applicability of Article 8.

2. Other grounds of inadmissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

56. In her initial submissions, the applicant described the humiliation she had felt at the hands of C.P. over the period of time he had harassed her in her workplace, stating that she had suffered emotional abuse which had culminated in her being dismissed from her employment. She further argued that C.P. had lied in his statements about them having had sexual intercourse. He had also denigrated her in front of the prosecutor, most likely in retaliation for her complaint and to justify his completely inappropriate behaviour at work.

57. In her further submissions in reply to those of the Government, the applicant pointed out that the domestic courts had not taken into account the evidence she had presented about the sexual harassment she had suffered. She reiterated that C.P. had sexually harassed her in her workplace and had caused her humiliation, fear and low self-esteem.

(b) The Government

58. The Government averred that the authorities had taken sufficient measures to comply with their positive obligations. In particular, the applicant had been able to bring her grievances before the authorities and had benefited from adversarial proceedings, since she had been able to present her arguments and evidence and to contest C.P.'s submissions. At the same time, as an alleged victim of sexual harassment, she had received special protection during the domestic proceedings in that she had not attended a confrontation with C.P. or been asked to prove that she had suffered humiliation at his hands.

59. The Government argued that the criminal investigation and ensuing court proceedings had been effective, even if they had not ended as the applicant had expected, that is, with C.P.'s conviction. On this point, they reiterated that while the victim's statements were essential in proceedings concerning sexual harassment, they had to be corroborated by other evidence. However, in the present case, the evidence did not support the applicant's allegations that she had suffered psychological harm or humiliation.

60. Lastly, the Government pointed out that the domestic decisions had been amply and relevantly reasoned.

2. The Court's assessment

(a) General principles

61. The relevant principles concerning protection of the right to respect for private life are described in, for example, *Nicolae Virgiliu Tănase* (cited above, §§ 125-28). In particular, while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in effective respect for private life, which may involve the adoption of measures in the sphere of the relations of individuals between themselves (ibid., § 125; see also *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013, and *Špadijer*, cited above, § 85).

62. The Court has previously held that the concept of private life includes a person's physical and psychological integrity. Under Article 8, States have a duty to protect the physical and psychological integrity of an individual from other persons. To that end, they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals, including in the context of harassment at work (see *Špadijer*, cited above, § 87, with further references).

63. In the context of attacks on the physical integrity of a person, such protection should be ensured through efficient criminal-law mechanisms (see *Remetin v. Croatia (no. 2)*, no. 7446/12, § 70 *in fine*, 24 July 2014, and the cases cited therein). Where attacks on physical integrity come from a private individual, the Convention does not necessarily require State-assisted prosecution of the attacker in order to secure the applicant's Convention rights (see *Sandra Janković v. Croatia*, no. 38478/05, § 50, 5 March 2009). In such instances, it is conceivable under the Convention for domestic law to afford the applicant the possibility of pursuing the prosecution of his or her attacker, either as a private prosecutor or as the injured party in the role of a subsidiary prosecutor (see *M.S. v. Croatia*, no. 36337/10, § 75, 25 April 2013). In each case, however, irrespective of whether the prosecution remained in the hands of the domestic authorities or the applicant availed himself or herself of the possibility of pursuing the prosecution of his or her attacker, the Court must examine the relevant criminal-law mechanisms and the manner in which they were implemented (see *Remetin*, cited above, §§ 95-96, with further references).

64. As regards less serious acts between individuals which may violate psychological integrity, an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (see *Špadijer*, cited above, § 89, with further references, and *A, B and C v. Latvia*, no. 30808/11, § 151, 31 March 2016).

65. Moreover, as far as positive obligations under Article 8 are concerned, this is an area in which Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals. The Court's task is not to substitute itself for the competent domestic authorities in determining the most appropriate methods of protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see *R.B. v. Hungary*, no. 64602/12, §§ 81-82, 12 April 2016).

66. Lastly, the Court has already held, on several occasions, that criminal proceedings should be organised in such a way as not to unjustifiably imperil the life, liberty or security of witnesses, and in particular those of victims called upon to testify, or their interests coming generally within the ambit of Article 8 of the Convention (see, for further details, in the context of a victim of child sexual abuse, *Y. v. Slovenia*, no. 41107/10, § 103, ECHR 2015, with further references).

(b) Application of those principles to the facts of the present case

67. At the outset, the Court observes that the case concerns the application of the system put in place to protect against sexual harassment in the workplace (see paragraph 48 above, and contrast *A, B and C v. Latvia*, cited above, § 153, where the applicants complained exclusively of the lack of a criminal-law response to their situation of sexual harassment). The facts of the case fall within a category of acts for which the Court has already found that an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place (see the case-law cited in paragraph 64 above).

68. The applicant first informed her manager, who brought the situation to the attention of the perpetrator's employer, namely the railway company (see paragraph 8 above). In this connection, the Court reiterates that the railway company is owned by the State and thus represents a public authority whose acts may engage the State's responsibility under the Convention (see paragraph 34 above; see also *Libert v. France*, no. 588/13, §§ 38-39, 22 February 2018).

69. That said, little seems to have been done by the railway company in response to the allegations of sexual harassment by one of its employees. Despite the existence of an internal policy prohibiting any behaviour that breaches a person's dignity and encouraging the reporting of such behaviour to the management (see paragraph 35 above), U.C., who had been informed of the situation and had heard the parties involved, refused to look into the applicant's case and instructed her to go to the police (see paragraphs 8 and 15 above). Equally importantly, without any apparent warning, the applicant was

subjected to a confrontation with C.P. in U.C.'s office (see paragraph 8 above).

70. Furthermore, there is no indication that U.C. pointed her to anyone else in the company who would have been able to deal with her grievances, or that he himself brought the matter to the attention of the appropriate staff within the railway company. In fact, it appears that no internal inquiry took place at all (see paragraph 16 above).

71. In this context, it is impossible for the Court to assess whether any mechanisms were put in place at employer level to deal with sexual harassment in the workplace. This, in itself, may run counter to the requirements of Article 8 of the Convention. In this connection, the Court reiterates that Directive 2006/54/EC unequivocally condemns sexual harassment and urges States to take preventive measures against it (see paragraph 45 above). The Court further notes that the European Parliament, in its resolution of 26 October 2017, acknowledges that harassment in the workplace is a matter of health and safety and should be treated and prevented as such and calls for further measures to effectively prevent and end sexual harassment in the workplace and elsewhere (see paragraph 46 above).

72. Be that as it may, the Court observes that the main focus of the applicant's complaint was the deficient response given by the prosecutors and courts to her complaints of sexual harassment in the workplace (see paragraph 48 above). Consequently, the Court will turn to the mechanisms that the State authorities did put in place and that the applicant was able to use in order to seek redress for her grievances.

73. In this connection, the Court notes that the domestic law of the respondent State criminalises sexual harassment in the workplace (see paragraph 29 above). In addition, the right to respect for reputation and dignity is protected by Article 72 of the Civil Code, and an infringement of another person's rights may, in principle, be invoked in a civil action for damages lodged under the provisions of Article 1349 of the Civil Code (see paragraph 33 above). The Court has already found that, when properly conducted, a criminal investigation constitutes an effective domestic remedy for complaints concerning an alleged infringement of private life punishable by domestic law (see, *mutatis mutandis*, *Association ACCEPT and Others v. Romania*, no. 19237/16, § 81, 1 June 2021).

74. In fact, the police and prosecutor considered that a criminal investigation was required (see *A, B and C v. Latvia*, cited above, § 161 *in fine*). The applicant alleged having experienced humiliation and, in addition, having been subjected to unwanted physical contact (see paragraphs 6 and 24 above); while consent was disputed by the two parties, the verification of this aspect does not have an impact on the severity of the act itself but will be assessed as an aspect pertaining to the effectiveness of the investigation (see, *mutatis mutandis*, *M.C. v. Bulgaria*, no. 39272/98, §§ 179-82, ECHR 2003-XII). Lastly, the Court must observe that sexual harassment is

considered by domestic law to be the most serious form of harassment, carrying a harsher sentence than other forms of harassment prohibited by the Criminal Code (see paragraph 29 above).

75. The applicant therefore had no reason to doubt that the criminal investigation would be effective and capable of providing redress (see, *mutatis mutandis*, *Association ACCEPT and Others*, cited above, § 81). In this connection, the Court reiterates that, if deemed effective, criminal-law remedies would by themselves be capable of satisfying the procedural obligation of Article 8 (see *Botoyan v. Armenia*, no. 5766/17, § 109 *in fine*, 8 February 2022, with further references). In the light of the above, and bearing in mind that the domestic authorities concluded that she had not been humiliated by C.P. (see paragraphs 26 and 28 above), the applicant cannot be required to have tried other remedies, such as an action in the civil courts, that were also available but probably no more likely to be successful (ibid., §§ 116 and 125).

76. Lastly on this point, the Court cannot but note that the Government did not argue that the applicant should have lodged a separate civil action against C.P., nor did they provide any examples of relevant domestic practice that would allow it to draw appropriate inferences (see paragraphs 37-40 above).

77. Consequently, the Court will examine whether, in the criminal proceedings concerning the allegations of sexual harassment perpetrated against the applicant, the State sufficiently protected her right to respect for her private life, in particular her personal integrity. That assessment is not dependent on whether the investigation in question led to a result favourable to her (see, *mutatis mutandis*, *Špadijer*, cited above, § 91).

78. In the present case, the Court observes that the applicant lodged a criminal complaint against C.P. for sexual harassment (see paragraph 6 above). The investigation started promptly (see paragraph 7 above) and the authorities, namely the prosecutor's office and the District Court, confirmed that C.P. had committed the acts alleged by the applicant (see paragraphs 26-28 above). However, they also considered that the acts in question did not meet the requirements provided for by the criminal law to constitute the criminal offence of sexual harassment. The decisions thus adopted in the case found either that the perpetrator was not criminally liable for the alleged criminal offence or that the applicant had not felt humiliated by the acts, an element required by domestic law in order for the acts to constitute the offence of sexual harassment (see paragraph 29 above).

79. However, there is nothing in the domestic decisions allowing the Court to ascertain how the authorities reached their conclusion. The prosecutor's office did no more than describe in detail the evidence submitted, offering no explanation as to how those elements of fact supported its decision of 22 October 2019 (see paragraph 26 above). It appears that the prosecutor's office did not consider the applicant's statements to be pertinent

evidence, as it did not make any assessment of their coherence and credibility. Moreover, the applicant's statements do not seem to have been placed into context by the prosecutor. In this connection, the Court must reiterate that, like domestic violence, cases of sexual harassment do not always surface as they continue to be significantly under-reported – it often takes place within personal relationships and behind closed doors, which makes it even more difficult for victims to prove (see paragraph 9 above; see also, *mutatis mutandis*, *Opuz v. Turkey*, no. 33401/02, § 132, ECHR 2009, and recital E of European Parliament resolution of 26 October 2017, quoted in paragraph 46 above). These lacunae were not fixed by either the chief prosecutor or the District Court in their subsequent decisions. Like the decision of the prosecutor's office of 22 October 2019, the decisions upholding it do not contain reasons capable of explaining the manner in which the law was interpreted and applied to the facts of the case (see paragraphs 26-28 above).

80. The Court observes that the main reason permeating both the decision of the prosecutor's office of 22 October 2019 and that of the District Court of 11 June 2020 is the absence of humiliation of the victim by the acts in question. However, the authorities gave no further explanation for their findings and did not try to place into context the evidence suggesting that she had sometimes seemed sad after her encounters with C.P., while at other times she had seemed rather cheerful (see paragraph 28 above). For instance, the mention of those assertions in the decisions was not accompanied by any assessment of the relationship of power and subordination between the applicant and C.P., or the threats allegedly made by him against her, although those elements were duly brought to the authorities' attention during the proceedings (see paragraph 8 *in fine* and, *mutatis mutandis*, *Bărbulescu v. Romania* [GC], no. 61496/08, § 117, 5 September 2017).

81. The authorities made no attempt to relate their findings to domestic law despite the fact that respect for dignity is a prominent feature in the legislation of the respondent State (see paragraphs 31 and 32 above).

82. Moreover, the authorities did not take active steps to ascertain the consequences that C.P.'s actions had had for the applicant. In this connection, bearing in mind the relevance that the element of the victim's intimidation or humiliation has for establishing the existence of the offence of sexual harassment under domestic law (see paragraph 29 above), the authorities could have ordered a psychological assessment of the applicant for the purpose of obtaining a specialist analysis of her reactions after her encounters with C.P. and to determine the existence of possible psychological consequences of the alleged harassment (see, *mutatis mutandis*, *M.G.C. v. Romania*, no. 61495/11, § 70, 15 March 2016). They could also have verified whether there were any reasons why the applicant would make false accusations against C.P., as was hinted at by some of the witness statements. However, the Court observes that none of the above was carried out at any

stage of the investigation in the present case (see, *mutatis mutandis*, *I.C. v. Romania*, no. 36934/08, § 54, 24 May 2016).

83. In addition, the Court notes with concern that the decision of the prosecutor's office of 22 October 2019 contained a detailed account of the insinuations made by C.P. in his statements about the applicant's private life and the alleged motives for her actions and accusations (see paragraph 18 above). As asserted by the applicant, they might have been no more than a defence strategy for C.P. (see paragraphs 18-19 and 56 above). While it may have been necessary for the prosecutor to make reference to certain aspects of those statements, it is difficult to see what purpose was served in terms of the examination of the criminal offence by their extensive reproduction in the prosecutor's decision. Besides being insensitive and disrespectful towards the applicant, their presence stigmatised her and may be seen as an infringement of her rights guaranteed by Article 8 of the Convention (see, *mutatis mutandis*, *J.L. v. Italy*, no. 5671/16, § 136, 27 May 2021, and *Sanchez Cardenas v. Norway*, no. 12148/03, §§ 33-39, 4 October 2007).

84. In the same vein, it must be noted that during the criminal investigation the applicant was confronted with U.C. No explanation was given by the prosecutor as to the necessity of that confrontation or its impact on the applicant. The Court reiterates that the necessity of a confrontation must be carefully weighed up by the authorities, and that the victim's dignity and sensitivity must be considered and protected (see, *mutatis mutandis*, *Y. v. Slovenia*, cited above, § 103).

85. In this connection, the Court reiterates that in the international arena sexual harassment is unequivocally condemned and States are urged to effectively punish perpetrators and thus put an end to impunity (see paragraphs 44-46 above). At the same time, international instruments, notably the European Social Charter and the Istanbul Convention, require the Contracting Parties to take the necessary legislative and other measures to protect the rights and interests of victims (see paragraphs 41-43 and 44 above respectively). Such measures involve, *inter alia*, protection from secondary victimisation (for further details see, *mutatis mutandis*, *Y. v. Slovenia*, cited above, § 104), a duty that the authorities failed to perform in the present case.

86. Lastly, the Court observes that even after the railway company had become aware of the complaints of sexual harassment, the applicant continued to suffer its consequences as she was eventually forced to leave her employment (see paragraphs 5 and 8 *in fine* above). This element, which undoubtedly added to her distress and feelings of powerlessness, had no bearing on the manner in which the authorities assessed her grievances.

87. For these reasons, without overstepping the scope of its examination and the principle of subsidiarity, and without expressing an opinion on C.P.'s guilt, the Court finds that the investigation of the applicant's case had such significant flaws as to amount to a breach of the States' positive obligations

under Article 8 of the Convention (see, *mutatis mutandis*, *M.C. v. Bulgaria*, § 167, and *Söderman*, §§ 90-91, both cited above).

88. There has accordingly been a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. Lastly, the parties were also invited to comment on compliance with the requirements of Article 8 taken together with Article 14 of the Convention. The Government argued that the applicant had failed to exhaust domestic remedies, notably to bring her claim of discrimination either before the CNCD or directly in the courts. They relied on the CNCD's practice (see paragraphs 37-40 above). The applicant made no comments concerning Article 14.

90. Bearing in mind the nature and substance of the violation found in the present case under Article 8 (see paragraph 87 above), and considering that the applicant did not provide any material to allow the Court to assess the existence of potential discrimination, the Court does not find it necessary to examine separately the admissibility and merits of this complaint (see, *mutatis mutandis*, *V.C. v. Slovakia*, no. 18968/07, § 180, 8 November 2011).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

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

93. The Government argued that the claim was excessive and that the finding of a violation should constitute sufficient just satisfaction.

94. The Court considers that the applicant must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

95. The applicant did not claim any amount under this head. Consequently, the Court is not called upon to make any award in respect of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 8 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 8 taken together with Article 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred 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;

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

Done in English, and notified in writing on 30 August 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President