

## Failure by Georgian authorities to effectively investigate allegations of sexual abuse of a child

The case of [X v. Georgia](#) (application no. 35640/22) concerned allegations of sexual abuse of a child and the alleged ineffectiveness of the subsequent criminal investigation. In today's **Chamber judgment**<sup>1</sup> in the case, the European Court of Human Rights held, unanimously, that there had been: **a violation of Articles 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for private and family life)** of the European Convention on Human Rights.

In May 2021 a criminal investigation was opened into allegations of sexual abuse made by X against her stepfather. X gave a detailed statement to the police, who gathered evidence supporting her allegations. According to the information available in the case file, no action has been taken to further the investigation since July 2021.

The Court found that while the domestic legislative and regulatory framework for combating sexual abuse in Georgia was adequate, the criminal investigation into X's allegations had been ineffective. In particular, the investigation had been dormant for almost 5 years and the reasons for that were unclear. The domestic court's conclusion when refusing to grant X victim status that she had not suffered any harm, despite all the evidence, could only be interpreted as a sign of unwillingness to conduct a meaningful investigation into her serious allegations. Furthermore, the refusal by the authorities to take a new statement from her which may have implicated her stepfather in more serious offences also served as evidence of the authorities' reluctance to conduct a thorough criminal investigation. There had been no justification for carrying out a gynaecological examination in the specific circumstances of X's case and a question put to her in interview had been worded in a way which could potentially have caused her additional distress.

The criminal investigation into X's allegations of sexual abuse had been ineffective and resulted in her further victimisation.

### Principal facts

The applicant, X, is a Georgian national who was born in 2005 and lives in Georgia.

In May 2021 X confided in a relative that she had been sexually abused by her stepfather when she was 13 years old. The alleged abuse was reported to the police on 7 May 2021 and a criminal investigation was opened. Interviews, including of X, her mother and her stepfather, took place. X underwent psychological and gynaecological examinations and other evidence was gathered.

On 28 May 2021 the prosecution authority rejected a request by X to be granted victim status on the basis that the investigation was still in its early stages. That decision was upheld by a senior prosecutor in June 2021.

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1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In August 2021 X's lawyer requested that the prosecution authority arrange another interview with X as new information had come to light. In particular, X had made further disclosures, alleging more serious offences.

In February 2022 X's lawyer appealed against the decisions refusing to grant X victim status. In March 2022 the Tbilisi City Court dismissed the appeal as unfounded, finding that the evidence collected at that time had not been sufficient to establish with certainty that a criminal offence had been committed against X, or that she had suffered any harm.

The criminal investigation remains open.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life) of the European Convention, X complained that the national authorities had failed to conduct an adequate investigation into her allegations. She argued that the inadequate investigation was at least in part attributable to shortcomings in the domestic legislative framework for prosecuting sexual offences. Further, she complained that the way in which certain investigative measures had been taken had caused her additional harm. She also argued, relying on Article 14 (prohibition of discrimination), that the deficiencies in the criminal investigation constituted discrimination based on sex.

The application was lodged with the European Court of Human Rights on 19 July 2022.

The Centre for Advice on Individual Rights in Europe (the AIRE Centre) was granted leave to intervene as a third party.

Judgment was given by a Chamber of seven judges, composed as follows:

Faris **Vehabović** (Bosnia and Herzegovina), *President*,  
Lado **Chanturia** (Georgia),  
Lorraine **Schembri Orland** (Malta),  
Ana Maria **Guerra Martins** (Portugal),  
Anne Louise **Bormann** (Denmark),  
Sebastian **Rădulețu** (Romania),  
András **Jakab** (Austria),

and also Hasan **Bakırcı**, *Section Registrar*.

## Decision of the Court

States were required to enact provisions criminalising the sexual abuse of children and to enforce them through effective investigation and prosecution.

The Court found that the Georgian legislative and regulatory framework for combating sexual offences against children was adequate. Among other things, the criminal law treated non-consensual sexual offences committed against a child as aggravated offences and did not focus solely on the use of physical force as a means of coercion.

As to the effectiveness of the criminal investigation and prosecution, the Court noted that the investigation remained at a preliminary stage and no investigative steps had been taken since July 2021. The reasons for that prolonged inaction remained unclear. The length of time taken to complete even the initial stage of the investigation was clearly incompatible with the nature of the alleged offence and of X's best interests.

The Court was particularly concerned by the decision of the Tbilisi City Court dismissing X's request to be recognised as a victim in the criminal proceedings. Despite the available evidence, which included X's detailed account, statements from independent witnesses, documentary evidence, a psychological assessment indicating no tendency by X to exaggerate, as well as a medical opinion diagnosing her with an anxiety disorder associated with sexual abuse, the national authorities had failed to acknowledge prima facie evidence of a criminal offence committed against her. Their conclusion, despite all the evidence, that X had not suffered any harm could only be interpreted as a sign of unwillingness to conduct a meaningful investigation into her serious allegations. In addition, the authorities' refusal to record her additional statement, which could have potentially implicated her stepfather in a more serious sexual offence carrying a more severe penalty, further undermined the credibility of the investigation.

While it was not unusual for gynaecological examinations to be undertaken in cases of alleged sexual abuse, there was no justification for conducting one in the specific circumstances of X's case. The examination had undoubtedly been physically and psychologically traumatising for X, who had been a child at the time. The Court considered that a question put to X during the interview as to whether she had wanted her stepfather's sexual attention had been inappropriately worded, causing her further potential harm.

The Court concluded that the criminal investigation into X's allegations of sexual abuse had been ineffective and may have caused her additional and unwarranted distress. That failure was evidenced by the investigating authorities' inactivity, the inconclusiveness of the investigation, the persistent failure to properly investigate the serious allegations against her stepfather, and the lack of meaningful involvement of X in the proceedings as a recognised victim. Such shortcomings were incompatible with the requirement that investigations into the abuse of minors be both context-sensitive and rigorous.

There had therefore been a violation of Articles 3 and 8 of the Convention on account of the lack of an effective criminal investigation.

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The Court had no evidence before it to suggest that, in comparable cases of sexual abuse, investigative failures disproportionately affect underage girls as compared to underage boys.

The complaint about discrimination under Article 14 was therefore inadmissible.

#### **Just satisfaction (Article 41)**

The Court held that Georgia was to pay the applicant 10,000 euros in respect of non-pecuniary damage.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.