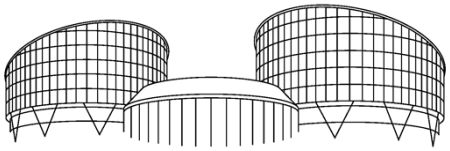

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF A.P. v. ARMENIA

(Application no. 58737/14)

JUDGMENT

Art 3 (substantive) • Positive obligations • State's failure to protect fourteen-year old pupil with an intellectual disability from sexual abuse in her State school by a teacher, also a public official at the time • Failure to ensure existence of an appropriate legislative and regulatory framework for the prevention, detection and reporting of sexual abuse of minors and to provide training of persons working in contact with children • State school authorities' failure to take appropriate measures to adequately protect applicant from sexual abuse
Art 8 • Private life • Publication of applicant's full name and address together with complete texts of judicial decisions dismissing her civil damages claim for sexual abuse on the publicly accessible online official judicial database, despite her specific request not to publish that information • Civil claim directly linked to and the consequence of the sexual abuse suffered • Disclosure of information left applicant and her family in constant uncertainty that she could be identified as a victim of a sexual crime • Interference not "in accordance with the law"
Art 13 (+ Art 3) • Lack of effective remedy as a result of absence of possibility to claim compensation for non-pecuniary damage suffered

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 June 2024

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

In the case of A.P. v. Armenia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Ana Maria Guerra Martins,
Anne Louise Bormann*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 58737/14) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Ms A.P. ("the applicant"), on 19 August 2014;

the decision to give notice to the Armenian Government ("the Government") of the complaints under Articles 3, 8 and 13 of the Convention and to declare inadmissible the remainder of the application;

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

the parties' observations;

Having deliberated in private on 21 November 2023, 5 December 2023 and 28 May 2024,

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

INTRODUCTION

1. The case concerns a complaint lodged under Article 3 of the Convention by the applicant – a person with an intellectual disability who was a minor at the time of the events at issue in the present case – concerning the sexual abuse to which she was subjected by a teacher in her State school (who was also a public official). It also concerns the publication of details concerning a civil claim for damages lodged by the applicant (including her full name) in the publicly accessible online judicial database; it further concerns the lack of any legal possibility for her to claim compensation from the State for the ill-treatment that she suffered, raising issues under Articles 8 and 13 of the Convention respectively.

THE FACTS

2. The applicant was born in 1997 and lives in a village in Armenia. She was granted legal aid and was represented by Mr K. Mezhlumyan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case, as submitted by the parties and as can be seen from the documents produced before the Court, may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant has had a mild intellectual disability from birth.

6. At the time of the events in issue the applicant was fourteen years old. She was a pupil in the ninth grade at her local State school, where A.G. – the then administrative head of the village (*համայնքի ղեկավար*), and a married man aged 49 – worked as a sports teacher.

II. INVESTIGATION

7. On 23 February 2012 the applicant's mother, E.P., lodged a crime report with the police about the sexual abuse of the applicant by A.G. in a classroom at her school.

8. On the same date the investigator took statements (*բացատրություն*) from the applicant and N.M. (a twelfth-grade pupil in the same school).

9. In particular, the applicant recounted three separate instances of her having been sexually assaulted by A.G. – the last one having occurred on the previous day (that is, on 22 February 2012); immediately after that incident, she had recounted what had just happened to several girls in her class, one of whom had then informed their class teacher, K.H.

10. In her statement N.M. said that A.G. was not respected among the school's pupils or the residents of the village in general, since he had a reputation as a shameless "skirt-chaser" (*կնամոլ* – a word having a more pejorative meaning in Armenian than the English equivalent; literally translates as "woman addict").

At the beginning of February, according to N.M., during a joint sports lesson with the applicant's class, A.G. had left the classroom with the applicant, who had returned after about twenty or twenty-five minutes. Her fellow pupils had tried to find out from the applicant what had happened; however, A.G. had returned to the classroom, so they had stopped asking the applicant questions. Knowing of A.G.'s bad reputation and suspecting that he had called the applicant away for the purposes of "something indecent", the pupils had decided to follow up on the matter, including making plans to record on video anything that they might witness.

About three weeks later, on 22 February 2012 N.M. had been in mathematics class with A.S., her class teacher (and a teacher of mathematics). Two girls from her class had come in late and had told N.M. that A.G. had

called the applicant away from her lessons. Believing that A.G. had called the applicant away for the purpose of engaging in sexual relations with her, the pupils had decided to accomplish their plan of videotaping the entire process. Having received permission from A.S. to leave the classroom, N.M. had gone to the applicant's classroom, but seeing that A.G. was there alone, had come back. A little later one of the pupils had reported that A.G. was taking the applicant back to the school from the courtyard. N.M. had once again asked for permission to leave and had left the classroom. She had asked a pupil from another class to give her a mobile phone so that she could make a recording and had approached the applicant's classroom. N.M. had tried to record through a hole in the door but could not. Looking through that hole she had seen A.G. pulling the applicant towards himself and touching her bottom; the applicant had resisted. Horrified by what she had seen, N.M. had run back to her classroom and asked A.S. and the pupils to come and open the door to the applicant's classroom in order to see what A.G. was doing to her; however, nobody had followed her. She had gone to the office of the headmistress, but the latter had not been there. She had then gone to another classroom, where N.G. was teaching; she had told N.G. that A.G. was alone with the applicant in the classroom and had asked her to come with her and to open the door; N.G. had also refused, telling her to go to the headmistress (S.M.), her class teacher (A.S.) or the applicant's class teacher (K.H.). N.M. had then gone to another classroom where she had told H.B. (a history teacher) and the pupils in that class to come and see what A.G. was doing to the applicant. They had also refused to go with her. When N.M. had left that classroom, she had seen A.G. leaving the classroom in which he had been with the applicant. During the next break between lessons, N.M. had seen the applicant in the corridor; she had been in "bad shape" (*թույլ և տկար վիճակում*). Almost everyone had seen the applicant in that condition, including her class teacher, K.H., who had taken the applicant into her classroom.

11. On 24 February 2012 criminal proceedings were instituted on the basis of the applicant's mother's complaint (see paragraph 7 above) under Article 142 of the former Criminal Code ("the old CC", in force until 1 July 2022 – see paragraph 70 below).

12. The applicant and a number of witnesses were questioned on different dates at the end of February.

13. The applicant's mother, E.P., stated, among other things, that A.G. was known in the village as a "shameless and immoral skirt-chaser". About seven months previously she had asked A.G. to help her to apply for a social welfare benefit. On 23 February 2012 the applicant and her other daughter had returned from the school in tears and had told her that A.G. had touched the applicant inappropriately. The applicant had then told her that about three weeks before that A.G. had touched her breasts in her classroom and asked to hold his penis after which she had cried and ran away; she had also told E.P. details of the events of the previous day (22 February 2012). After

the applicant had finished recounting A.G.'s behaviour towards her, some of their relatives had come over to their home to discuss the situation; E.P. had then – later the same evening – lodged a crime report with the police (see paragraph 7 above).

14. During her questioning as a witness N.M. mainly reiterated the account of the events that she had given previously (see paragraph 10 above). She added that when she had run back to her classroom in order to alert A.S. and her fellow pupils of what was happening, she had even pushed A.S. out of the classroom. A.S. had then walked towards the applicant's classroom but had then returned without having opened the door. N.M. had asked her to open the door, but A.S. had not even approached it. During the break she had told K.H. what had happened. K.H. had then approached the applicant and had taken her into her own classroom.

15. A.S. (see paragraph 10 above) stated that she was N.M.'s class teacher. She knew the applicant from their village as someone who was reserved, not particularly talkative, modest and vulnerable (*խեղճ*). She refused to describe A.G.'s character, stating that he had little to no contact with the teaching staff. She submitted that on 22 February 2012 N.M. had been very emotional when she had come back into the classroom; she had even tried to physically push her out of the classroom. Since N.M. had not said specifically why she was upset, A.S. had thought that there had been a fight. She had left the classroom and, seeing that all was silent in the corridor, she had returned to the classroom. They (meaning she and the pupils) had then seen the applicant in the courtyard walking in a tottery fashion. She had told the pupils that there was no noise in the corridor, to which they had replied that no noise was ever made during "that". Surprised, she had asked what had happened and the pupils had made her understand that A.G. had been alone with the applicant and that something had happened. A.S. had then learned that N.M. had also approached teachers H.B., N.G. and K.H. about the same matter.

16. H.B. (see paragraph 10 above) stated, *inter alia*, that A.G. was known as a "skirt-chaser" in the village. On 22 February 2012 N.M. had entered his classroom in an emotional state and had asked him to go with her. Not knowing what exactly was going on, he had stayed where he was. When he had tried to clarify what was happening, N.M. had told him to come and see what A.G. was doing. He had then told N.M. that he was not on best terms with A.G. and did not follow her.

17. M.H. (a pupil who had been in H.B.'s classroom on the morning of 22 February 2012 – see paragraph 16 above) told the investigator that N.M. had asked her if she could borrow her mobile telephone in order to record A.G. and the applicant who, according to N.M., were alone at that moment. Shortly afterwards, N.M. had returned to the classroom and had asked H.B. and the pupils to come and see what A.G. was doing with the

fourteen-year-old applicant. N.M. had been very emotional and had implored H.B. to go with her, but H.B. had not done so.

18. In the course of the investigation N.M.'s mother stated that they had received anonymous telephone threats and threats from A.G.'s relatives (via third parties) aimed at persuading N.M. to withdraw her statements. She was therefore afraid for her daughter's safety.

19. On an unspecified date in March 2012 G.P. (the applicant's uncle) was questioned. He stated, in particular, that A.G. was a "shameless" and "immoral" person who had the reputation in the village of a "skirt-chaser". He was also a sports teacher and behaved strictly, roughly and vulgarly towards the pupils, who were afraid of him. On 23 February 2012 G.P. had heard from his nephew that there were rumours going around the village that A.G. had groped the applicant. Upon hearing that, he had gone to the house of his brother (the applicant's father). They had summoned A.G. to the applicant's house in order to ask him what had happened. Without even asking what that was about, A.G. had entered the applicant's bedroom and had taken hold of the applicant – shaking her and shouting at her. The child had started shivering; they had taken A.G. outside and had told him that, if he had indeed done nothing to the child, then he could go and fetch the police. About two hours passed but he did not return (either with the police or without them). Having found out that A.H. (the school's senior teacher) was at home, G.P., his son and his nephew had gone to her house and had asked if she was aware of what was happening in the school. A.H. had asked if the question concerned the applicant and, when G.P. had replied in the affirmative, she had told that she had known about it for a long time and that "they did not want to make a noise about it" since "they did not want to have to deal with" A.G. After that conversation, G.P. had called the police, who had arrived and had taken the applicant to the police station. The next day the applicant stated that A.G. had been abusing her for the past three months.

When questioned, G.P.'s son gave an account of the events that was identical to that given by G.P.

20. On 6 March 2012 A.G. was charged with aggravated rape under Article 138 § 2 (3) of the old CC (see paragraph 67 below).

21. In the course of the investigation the applicant was subjected to forensic medical examinations and a forensic psychiatric and psychological examination.

22. The report issued following the psychiatric and psychological expert examination indicated that the applicant had insufficiently developed intellectual capabilities and was impressionable, which could have affected her behaviour in the situation at hand. The applicant had been suffering from anxiety and fear, and had rubbed her hands together and cried when speaking about what had happened. Because of the applicant's psychological condition, and the level of her intellectual and personal development, she had

understood only the superficial side of what had happened to her – not the nature and meaning of those actions.

23. On 13 March 2012 a confrontation was held between A.G. and N.M. during which the former denied the latter's account of the events in question, asking why N.M. had not entered the classroom where he and the applicant had been together. N.M. replied that the reason had been his abrupt personality – she had been afraid; even the male teacher (that is to say H.B. – see paragraph 16 above) had been afraid; moreover, she had wanted to expose him to everyone in the school.

24. On the same date the charges against A.G. were modified and he was charged with aggravated rape and "indecent acts" under Articles 138 § 2 (3) and 142 § 2 of the old CC (see paragraphs 67 and 70 below). The investigator found the following to have been established.

> "... [A.G.], taking advantage of the fact that he was the administrative head of the village ... and [a school teacher] and had a reputation among the pupils as a strict teacher ... at the end of November 2011 ... instructed [the applicant] to come to his office in the village administrative office building where, taking advantage of the girl's [deferential] attitude towards him as the administrative head of the village and a teacher, he caressed her [intimate body parts] ... and then, employing force ... and threatening to kill her should [the applicant] make a noise, raped her ...
>
> Also, on 10 January 2012 and at the beginning of February 2012, ... during a sports lesson, [taking advantage of] his authority as a teacher, [A.G.] instructed [the applicant] to go with him to an [empty] classroom ... where he, in the same manner, engaged in sexual intercourse with [the applicant], overcoming her resistance.
>
> Subsequently, on 22 February 2012 ... [A.G.] released the pupils from the sports lesson and called [the applicant] into a classroom, where he caressed her [intimate body parts]; ... however, noticing that someone was watching through the hole in the door, he ceased his actions and asked [the applicant] to return to her classmates."

25. On 16 March 2012 A.M., a former pupil of the same school who had graduated in June 2011 after finishing eleventh grade (that is, a year earlier than usual), stated to the police that she had known A.G. for a long time as the administrative head of their village and as her sports teacher. When A.M. had been in the tenth grade, A.G. had actively started seeking contact with her by, for instance, remaining with her in the classroom when there was nobody around, making conversation with her (including about her personal life), and so on. One day in May 2010 A.G. had bought her a dress and had confessed that he had fallen in love with her. A.M. had first rejected him, saying that she did not want to have sex until she was properly married, but A.G. had convinced her that everything would work out for her – she would be able to get married even after losing her virginity; he had then had sexual intercourse with her. Thereafter they had met often; eventually, in January 2011, when A.M. was in the eleventh grade, she had become pregnant by A.G. They had continued to see each other until almost the completion of her pregnancy (around September 2011). She stated that she had not reported

A.G. before because she had been afraid to do so; but now she merely wanted to tell the truth about what had happened to her.

26. On 26 March 2012 S.M., the school headmistress (see paragraph 10 above), was questioned. She stated, *inter alia*, that the applicant had limited intellectual capabilities and would often communicate by nodding her head or by uttering very brief phrases. Pupils obeyed A.G., and were even afraid of him. On 22 February 2012 K.H. (see paragraph 9 above) and A.H. (see paragraph 19 above) had come to her office, stating that "something" had happened between A.G. and the applicant, but that they did not know exactly what. She had then summoned the applicant, who had not said anything specific. Thereafter, she had summoned N.M., who had told her that she had seen through the hole in the door A.G. and the applicant standing by the wall in the classroom. According to S.M., N.M. had told her nothing further about that incident. The next day S.M. had learned that the applicant had confessed that A.G. had had sexual intercourse with her; the forensic medical examination had confirmed that.

27. When questioned as a witness, the applicant's class teacher, K.H. (see paragraphs 9, 10 and 14 above), stated, *inter alia*, that after classes on Saturday, 18 February 2012 N.M. had approached her, saying that she had something to tell K.H. about one of the pupils in her class. N.M. had then stated that there was something going on between A.G. and the applicant. When K.H. had asked for details, N.M. stated that A.G. was engaging in intimate relations (*ինչ-որ ինտիմ հարաբերություններ*) with the applicant. K.H. had then stated that she was surprised and, not believing what N.M. was saying, she told N.M. that, even though she did not understand the seriousness of what she was saying, in any case N.M. had been right to tell her. K.H. had then told N.M. that she would try to find out the truth of the matter, and would give it her attention. On Wednesday, 22 February 2012 N.M. had approached her during the break after the first lesson of the day, saying that she had something to tell her about the same matter that she had told her about on the previous Saturday and asking K.H. to go and see the condition that the applicant was currently in. K.H. had then gone to her classroom and had seen the applicant standing still by the door. She had asked the applicant what was going on, but the applicant had not replied. She had then left the applicant in the classroom and, when she had been leaving the classroom, she had seen the senior teacher, A.H. (see paragraph 19 above), and had told her that A.G. had "an issue" with her pupil, which needed to be clarified. They had gone together to the office of the headmistress, where K.H. had said "the same" to the headmistress, who had then said that she wished to speak to the applicant. K.H. had accompanied the applicant to the office of the headmistress and had then returned to her classroom to continue with her lessons. At the end of classes she had asked the other pupils to leave and had had a conversation with the applicant. The applicant had given replies to her questions when K.H. had spoken about other topics but had kept silent when speaking about A.G.,

staring at the same spot with a strange facial expression. K.H. had then asked the applicant if she would want any man to "come close" to her and she had replied "no". K.H. had then asked the applicant if she wished K.H. to protect her, and the applicant had replied "yes". K.H. had then explained to the applicant that, if someone wanted to approach her or to hurt her, she should not allow it, should shout and tell that person that she would tell K.H. She had then told the applicant to go home. The next day K.H. had learned that criminal proceedings had started in respect of A.G. Thereafter, from a conversation that she had had with the applicant's parents, she had learned that A.G. had raped the applicant.

28. On 17 July 2012 the case was sent to the Regional Court for examination on the merits. The relevant parts of the indictment read as follows:

> "... [A.G.] has been described by the school staff as a strict teacher, [and an] immoral person ... [who engages in] shameless behaviour, as a result of which pupils are afraid of him and do not dare to contradict him ...
>
> At the end of November 2011 [A.G.] instructed [the applicant] to go to the village administrative office building after classes. After classes [the applicant] went to the village administrative office building ...; [A.G.], threatening that he would kill [the applicant] if she made a noise ... had forcibly had sexual intercourse with her ...
>
> On 10 January 2012 ... [A.G.] permitted the pupils to go outside to play but instructed [the applicant] to stay in the classroom, ... He closed the door of the classroom after the pupils had left ..., threatened to beat [the applicant] if she made any noise ... and had sexual intercourse with her ...
>
> At the beginning of February 2012 ... [A.G.] again had sexual intercourse with [the applicant] in [the applicant's classroom] during a joint sports class with the twelfth grade ...
>
> Several pupils in senior classes, having noticed the frequent instances of [A.G.] and [the applicant] spending time [together alone] – and knowing of [A.G.'s] reputation as a 'skirt-chaser' – on [N.M.'s] initiative decided to clarify the reasons for their [so doing] ...
>
> On 22 February 2012 ... having noticed that someone was observing [them] ... [A.G.] ceased his actions and ordered [the applicant] to join her classmates.
>
> [N.M.], wishing to have teachers and pupils witness what had happened, immediately informed them thereof, but the latter avoided [doing that], citing various excuses, and did not go.
>
> ... [A.G.] denied that he was guilty [of anything] and submitted that ... he had asked [the applicant] to leave the classroom in order to ask her to tell her mother to go to the village administrative office building the next day [and to] bring with her the documents necessary for [applying for the above-mentioned welfare benefit] ... On 22 February 2012, ... when the pupils had left to play in the courtyard, he had summoned [the applicant] and asked if her mother's social welfare issue had been resolved ...
>
> [A.G.'s] arguments are ill-founded ..."

III. TRIAL

29. The Regional Court conducted the trial *in camera*.

30. In the course of the trial a number of witnesses – including the pupils, certain teachers and the headmistress of the school – gave evidence.

31. N.M. essentially reiterated her earlier description of the events (see paragraphs 10 and 14 above), providing some additional details. She submitted, in particular, the following:

> "...
>
> Seeing that I could not do anything, and being afraid to open the door myself, I went to my classroom. I entered the classroom and immediately addressed [A.S.], and the kids understood at once what was going on. I explained [my concerns to A.S.], and asked [A.S.] to open the door [to the classroom where A.G. and the applicant were alone together] and see what the head of our village was doing there. [A.S.] and the pupils went out and moved towards the door; then [A.S.] made a sign with her hand, saying it was not our business, and we left. Then, once everyone was back in the classroom, and seeing that nobody was doing anything, I went to the office of the headmistress and, seeing that she was not there, I quickly ran to [N.G.]. Several days before this incident I had informed [N.G.] that there ... were such suspicions and had asked [N.G.] not to tell anyone, so that we could [make a] video recording. [N.G.] advised me to speak either with the headmistress or the applicant's class teacher. Seeing that N.G. was not coming either ... I went to the eleventh graders' classroom, where [H.B.] was giving a lesson. I explained to him that [A.G.] was doing immoral things; he said that he did not want to have anything to do with that man [because] he had had a conflict with him, and did not come [with me] ...
>
> The entire school understood what had happened ... Then during the break I met [K.H.] and told her what I had seen. Thereafter, senior pupils [began boycotting A.G.'s] classes. One or two days later the kids organised a protest; then the whole village became aware of what [A.G.] had been doing on school grounds..."

N.M. was asked, *inter alia*, the following questions, to which she replied as follows:

> "...
>
> [Prosecutor]: When you asked [A.S.] to go out [of the classroom with you], what did she say?
>
> [Answer]: We approached the door on tiptoes; [A.S.] put her finger to her lips to hush us, and told us that it was none of our business; we left; I understood what was going on.
>
> ...
>
> [Defence lawyer]: The headmistress testified that she had invited you to her office to find out what was happening between [A.G.] and [the applicant].
>
> [N.M.]: As far as I remember, no such thing happened.
>
> ...
>
> [Defence lawyer]: When you saw all that, why didn't you tell other teachers?

[N.M.]: I went and told to come and see what the administrative head of the village was doing to a fourteen-year-old child.

[Defence lawyer]: And why did they not come?

[N.M.]: I think they had understood [what was actually going on]. I think [N.G.] was well aware – which is why she did not come.

..."

32. The relevant parts of the statement made by A.S. (see paragraph 15 above) at the trial are as follows:

"... I did not realise what was going on ...

[Prosecutor]: You did not know why [N.M.] was calling you?

[A.S.]: No, [N.M.] did not say anything specific. I thought there had been a fight; I thought that was about [a certain teacher who had the same first name as the applicant].

...

[Prosecutor]: If [N.M.] had stated that there were immoral acts going on between [A.G.] and [the applicant], what would have you done in that case? What step would you have taken?

[A.S.]: I am not sure.

...

[Presiding judge]: You mentioned that the children made you understand that something had happened; you say that you did not understand anything – you even thought that it concerned a teacher [who had the same first name as the applicant]; what does that mean...?

[A.S.]: When I went out and then came back to the classroom, I told [the children] not to worry – it was peaceful [outside] and there were no sounds ..., to which [the pupils] replied that there was no sound during 'that'.

[Presiding judge]: And why did you not go to check where [A.G.] and [the applicant] were?

[A.S.]: Well, when I saw from the window that [the applicant] had left [the classroom], why would I go? They were no longer together.

[Presiding judge]: In your pre-trial statement you mentioned that [the applicant] had been walking 'totteringly' but now you do not mention [that detail] ...

[A.S.]: That had been noted incorrectly; when I said 'walking in a tottery fashion', I meant that [the applicant] had leaned towards the wall ..."

33. H.B. (see paragraph 16 above) stated to the trial court that he had told N.M. that he had not been on good terms with A.G. and had not accompanied her when she had asked him to; he had learned only afterwards that "they" (that is, A.G. and the applicant) had been "alone in the room".

34. The school headmistress, S.M. (see paragraph 26 above), testified that she had been teaching during the first study hour on 22 February 2012. As was her habit, she had approached the window; from there she had seen that the entire ninth grade was outside in the school courtyard. She was very

surprised because they were supposed to be having a sports class. So she had immediately gone out to find out what was going on, as she had known that A.G. was supposed to be taking the ninth-graders for that class. S.M. had opened the door of her classroom and had seen A.G. coming out of the staffroom, so she had asked him why the pupils were running around outside, enquiring whether they had abandoned the lesson. A.G. had replied that the pupils had asked to go outside, so he had allowed them to do so and that he would soon join them in the courtyard. Having clarified the situation, S.M. had continued her lesson. During the break after the second lesson, when S.M. had already been back in her office, the senior teacher (A.H. – see paragraph 19 above) and the ninth-grade class teacher (K.H. – see paragraph 9 above) had come to S.M.'s office and had said that something had happened between A.G. and the applicant but they did not know what exactly. She had tried to find out from the applicant; but – incapable of proper speech – she had simply been nodding her head in reply to S.M.'s questions. S.M. had then been told that N.M. was aware of the matter, so S.M. had invited N.M. to her office. The latter had told her that through the hole in the door to the applicant's classroom she had seen A.G. and the applicant standing next to the wall and had immediately approached several teachers, asking them to go to the classroom to witness what was going on, but that they had refused; by then the applicant had already left the classroom in question. The next day S.M. had heard – meaning that it had spread all over the school and the entire village that "they" had seen something; precisely what "they" had seen she still did not know. It had been common gossip that A.G. and the applicant were having a relationship, and that A.G. was engaging in sexual relations with the applicant. Whether that was true or not she could neither confirm nor deny.

To the prosecutor's question whether S.M. had not sought to clarify from N.M. the reason for the latter calling on the other teachers to follow her, S.M. replied: "Maybe so that they could come and see that they were standing by the wall".

When requested by the presiding judge to characterise A.G., S.M. stated: "He is a bit [emotionally] unstable but a humane person ... Now the victims are his enemies right? But if something happens to them ..., they will need help, [A.G.] will be the first one to be there and help. He is that kind of a good person."

35. During the trial A.M. (see paragraph 25 above) also gave evidence, essentially reiterating her previous statement and explaining that she had not approached the authorities earlier because A.G. had been at large and she had been afraid; she had gone to the police after the incident with the applicant. She also stated that before entering the courtroom, she had been threatened by A.G.'s son.

36. The applicant's mother, E.P. (see paragraph 13 above), stated, among other things, that one day at the beginning of 2012 her daughters (the

applicant and her sister) had come back from school crying, saying that people at the school were saying that the applicant and A.G. were "together". E.P. had started getting ready in order to go to the house of the senior teacher (A.H. – see paragraph 19 above), but the applicant's uncles had come to their house and asked the applicant what had been happening at the school. The applicant had told them everything and they had summoned A.G. to their house. After A.G. had left, they had telephoned about two hours later to see if he was coming back to clarify what had happened; he had not shown up, so they had telephoned the police. A day later A.G.'s wife and his mother had come to their house; the wife had been very rude to the applicant. Subsequently, on another day, A.G.'s mother had come to their house with a big stick in her hands making threats. About a month later A.G.'s brother-in-law had come to their house offering the family money to withdraw their crime report; E.P. had refused. In response to a question posed by the prosecutor, E.P. replied that she had been the one who had personally dealt with matters relating to the above-mentioned social welfare benefit. In any case, it had already been a year since the family had stopped receiving any social assistance because, according to E.P., A.G. had had it terminated.

37. On 4 September 2012, while the trial was still ongoing, an online newspaper, which had been closely following the applicant's case, published an article entitled "Mother says she killed her baby – claims [A.G.] was the father"; the article named A.M. as the mother (see paragraphs 25 and 35 above). Following the publication of that article, the prosecution requested the trial court to provide it with the records of the respective statements that A.M. had given before and during the trial.

38. On 10 September 2012 the police launched an investigation in respect of A.G. under Article 140 of the old CC (compelling someone to engage in sexual acts – see paragraph 70 below). Thereafter, on 16 September 2012 the police launched an investigation into the alleged murder of A.M.'s new-born baby and charges were brought against A.G. and A.A. (a woman from the same village).

39. By a decision of 21 January 2013 the investigator terminated the prosecution proceedings in respect of A.G. The decision stated, in particular, the following:

> "...in the course of the investigation ... [A.G.] was charged ... with having compelled [A.M.] to engage in sexual acts and having organised the murder of a new-born baby, those actions having been undertaken in the following manner:
>
> ... having blackmailed [A.M.] [by threatening to have her held criminally liable for theft] ... [A.G.] compelled a 15-year-old [A.M.] to regularly have sexual relations with him, as a result of which [A.M.] became pregnant by [him] in 2011.
>
> Not being able to persuade [A.M.] to terminate her pregnancy, [A.G.] organised the murder of [her] new-born.
>
> On 8 October 2011 ... pursuant to [A.G.'s] instructions ... nurse [A.A.] and her daughter went to [A.M.'s] house ... where, having complied with [A.G.'s] prior

instructions, [A.A.] took the new-born baby to the adjacent garden and ... killed the new-born baby by means of suffocation.

On 16 October 2012 ... detention was applied in respect of the accused [A.G.].

The evidence gathered as a result of a complete, thorough and objective examination disproved the murder of [A.M.'s] new-born baby by [A.A.] upon [A.G.'s] instructions and [A.M.'s] rape by [A.G.]; accordingly, on 21 January 2013, decisions were taken to terminate ... [A.A.'s and A.G.'s prosecution]. On the same day [A.G.] was charged... with having compelled [A.M.] to engage in sexual intercourse with him.

... on the basis of the [Amnesty Act], which has entered into force ..., [I] decide ... to terminate [A.G.'s] prosecution..."

40. On 27 February 2013, having found the facts as described in the charges (see paragraphs 20, 24 and 28 above) as established, the Regional Court convicted A.G. of the rape of a minor, considering it one (continuous) crime as regards all three counts of rape, and of indecent acts committed in respect of a minor under, respectively, Articles 138 § 2 (3) and 142 § 1 of the old CC (see paragraphs 67 and 70 below); he was sentenced to eight years' imprisonment.

41. The Regional Court's judgment was appealed by the applicant and A.G. As regards the applicant's appeal in particular, it was argued that, although it had been found as established that A.G. had raped the applicant three times on three different occasions (different time and place), the trial court had convicted him of one count of rape.

42. On 14 May 2013 the Criminal Court of Appeal upheld the Regional Court's judgment essentially reiterating the description of the facts in the charges and the evidence examined during the trial.

43. The Regional Court's judgment was upheld at final instance by a decision of the Court of Cassation of 15 July 2013. That decision was sent to the applicant on 17 July 2013.

44. The publicly accessible online judicial database (Datalex), which is the official database to which court decisions are published systematically, does not contain any details concerning the criminal case. It merely states the number of the case (together with A.G.'s name), listed as "in camera proceedings".

IV. CLAIM FOR DAMAGES

45. On 17 February 2014 a civil claim for compensation in the amount of 60,000,000 Armenian drams (AMD) for non-pecuniary damage was lodged against the State (represented by the Ministry of Finance) on behalf of the applicant by her father.

It was submitted – with reference to the Regional Court's judgment (see paragraph 40 above) – that it had been established that A.G., having abused his authority as administrative head of the village and school teacher, had sexually assaulted the applicant on four different occasions between

November 2011 and February 2012. That abuse had moreover taken place in the village administrative office building during A.G.'s working hours and in the school during class hours whereas he was under an obligation to protect the applicant's safety and her best interests.

Referring to the Court's case-law and the relevant domestic and international legal instruments concerning the rights of children and the rights of persons with disabilities, it was argued that, despite its international obligations, including under Article 19 of the UN Convention on the Rights of the Child to take all appropriate legislative, administrative, social and educational measures to protect children from violence, including sexual abuse (see paragraph 78 below), the State had failed to create the requisite tools and mechanisms for the protection of children (and especially disabled children) in State schools and public bodies.

It was submitted that the number of sexual offences in respect of minors had risen and that children coming from socially disadvantaged groups were the most common victims of such crimes. Such a child was the applicant, who had an intellectual disability and whose family was extremely poor and who had been abused in a place where she should have been most protected and by a person who should have protected her from such abuse in the first place.

Furthermore, with reference to the Court's relevant case-law and Article 6 of the Constitution (see paragraph 52 below) it was argued that the State was under an international obligation to pay compensation for non-pecuniary damage suffered by persons who had been subjected to treatment contrary to Article 3 of the Convention. The applicant lived in a small village whose inhabitants held predominantly conservative views, where there existed a negative attitude towards victims of sexual abuse, and where everyone was aware of what had happened to her. As a result she felt even more humiliated and debased.

Lastly, it was requested that the case be examined behind closed doors and that no information (including the applicant's name) concerning the proceedings be published in Datalex (see paragraph 44 above), in view of the fact that the case concerned the private life of a minor who had been the victim of a sexual crime.

46. On 19 February 2014 the Kentron and Nork-Marash District Court of Yerevan rejected the applicant's claim on the grounds that the procedural requirements with regard to the form and content of the claim had not been met. The reasoning part of the decision read in its entirety as follows.

> "[The applicant's representative] has lodged a claim against the Republic of Armenia, represented by the Ministry of Finance of the Republic of Armenia, seeking compensation for non-pecuniary damage.
>
> Having examined the claim and the supporting material, [I] find that the claim should be rejected, pursuant to [the relevant Articles of the Code of Civil Procedure] ...
>
> The content of the claim consists of a list of various laws and the interpretation thereof.

> The claim does not state the circumstances on which it is based, the evidence substantiating the claim and the calculation of the amount claimed ..."

47. An appeal was lodged on behalf of the applicant, arguing that the grounds for the claim had in fact been referred to, as had the evidence substantiating her claim – namely, the judgment of the Regional Court of 27 February 2013 (see paragraph 40 above).

48. On 28 March 2014 the Civil Court of Appeal dismissed the applicant's appeal, finding that the lower court should have declined to admit her civil claim. The relevant parts of its decision read as follows.

> "[The applicant's legal representative] lodged a claim ... against the Republic of Armenia seeking compensation for non-pecuniary damage in the amount of [AMD] 60,000,000.
>
> ...
>
> 2. The grounds for appeal, arguments and request [for the lower court's decision to be quashed]
>
> ...
>
> The [District Court's] decision is groundless; it deprives the [applicant] of her right to judicial protection; ... therefore, the decision should be quashed, given the fact that the claim mentioned the grounds on which it was based ...
>
> The claim indicated the evidence on which it was based, in particular the [Regional Court's] judgment of 27 February 2013, which had entered into force ...
>
> ...
>
> 3. The reasoning and findings of [the Court of Appeal]
>
> ...
>
> [The applicant's representative] has ... referred to a number of legal provisions – namely, Articles 3, 19, 23 of the [UN Convention on the Rights of the Child], Articles 5, 7, 16 and 17 of the [UN Convention on the Rights of Persons with Disabilities], Articles 3, 6, 14, 16, 18, 19 of the [Armenian] Constitution, sections 3 and 9 of the [Law on the Rights of the Child] ... sections 20 and 22 of the [Public Education Act] ... [and] Article 3 of [the Convention] ...
>
> In view of the aforementioned, [the Court of Appeal] observes that [the applicant] cannot claim compensation for non-pecuniary damage, since the legislation of the Republic of Armenia does not provide for [the payment of] compensation for non-pecuniary damage. Therefore, given these circumstances, [the District Court] should have simply refused to accept the claim for examination, instead of rejecting it ...
>
> ... considering that neither the [Civil Code] nor any other legal instruments provide for compensation for non-pecuniary damage, it is necessary to adopt a new judicial decision and refuse the admission of the claim ..."

49. After the delivery of the Court of Appeal's decision, it was discovered that the applicant's full name and address, as well as the judicial decisions rendered within the framework of her claim for damages (see paragraphs 46 and 48 above), had been published on Datalex.

50. An appeal on points of law was lodged on behalf of the applicant (by her lawyer) arguing that the refusal to accept for examination the compensation claim (on the grounds that the national legislation did not guarantee the right to compensation for non-pecuniary damage) had not been in line with the requirements of, *inter alia*, Articles 3 and 13 of the Convention and Article 6 of the Constitution (see paragraph 52 below). Moreover, information concerning the claim (including the texts of the decisions of the lower courts, which had contained the applicant's full name) had been published on Datalex – despite a specific request having been lodged that such information not be published (see paragraph 45 *in fine*).

51. By a decision of 30 April 2014 the Court of Cassation declared the appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. The Constitution of 1995 (following amendments introduced on 27 November 2005)

52. The relevant provisions of the Constitution, as in force at the material time, read as follows.

Article 3

"A human being [and] his/her dignity, fundamental rights and freedoms are of an inalienable and ultimate value.

The Republic of Armenia shall ensure the protection of fundamental human and civil rights and freedoms, in accordance with the principles and standards of international law.

The State's exercise of power shall be limited by the fundamental human and civil rights and freedoms."

Article 6

"The Constitution has supreme legal force and the principles [set out] thereby shall apply directly.

Laws shall conform to the Constitution. Other legal instruments shall conform to the Constitution and the laws.

Laws shall come into force following their publication in the Official Bulletin. Other legal instruments shall come into force after publication in the manner prescribed by law.

International agreements concluded shall come into force only after being ratified or approved. [Such] international agreements [form] a constituent part of the legal system of the Republic of Armenia. If a ratified international agreement stipulates standards other than those set out by the laws, the standards [set out by] the agreement shall

prevail. International agreements not complying with the Constitution cannot be ratified.

...”

Article 17

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

...”

Article 38

“...

Basic general education is compulsory, with the exception of such cases provided by law. The law may provide for a higher level of compulsory education.

Secondary education in state educational institutions shall be free.

The law shall define the principles of autonomy in respect of institutions of higher education.

The procedures for establishing and operating educational institutions shall be defined by law.

...”

B. Law on the Rights of the Child

53. Section 3 of the Law on the Rights of the Child (*«Երեխայի իրավունքների մասին» ՀՀ օրենք*), adopted on 29 May 1996 and in force from 27 June 1996, provides that authorised State and local-government bodies must ensure the protection of children’s rights. The State cooperates, through its relevant bodies, with persons and social entities that contribute to the protection of children’s rights.

54. Section 9 provides that every child has the right to be protected from any type of violence (physical, psychological and so on). The State and its relevant bodies ensure children’s protection from, *inter alia*, violence, exploitation, indecency and breaches of their rights and lawful interests.

C. Public Education Act

55. Section 6(3) of the Public Education Act, adopted on 10 July 2009 and in force since 15 August 2009, provides that the government of Armenia sets the minimum acceptable standard of a State-provided education.

56. Section 7(11) provides that the provision by a school of any of the public-educational curricula (including pre-elementary) is subject to the granting of a licence by the authorised State body in charge of education (the Ministry of Education at the material time).

57. Section 9(3) provides that the State, as represented by the government of Armenia, founds State educational institutions. The government of

Armenia approves the standard model statute used for all State educational institutions. The statute of a non-State educational institution is approved by its founder on the basis of the model statute approved by the government (section 9 (5)).

58. Section 20(2) provides that pupils have the right to be protected from physical and psychological abuse, exploitation, and actions or inaction on the part of pedagogical and other staff which are in breach of pupils' rights or which infringe their honour and dignity.

59. Section 22(1) provides that, for the purpose of the implementation of the educational curriculum, educational institutions must ensure, *inter alia*, safe and secure conditions, regular work routines, the availability of medical assistance and the necessary conditions for the physical development and maintenance of the health of pupils.

60. Section 24(1) provides that lists of pedagogical staff posts, the description of such posts, the qualifications required to fill those posts, the procedures for recruitment in respect thereof, the termination of the employment of a pedagogue, and the allocation of retirement pensions and the provision of medical examinations to pedagogues are established by the government.

In the event that there is a vacancy for the post of teacher in a State educational institution, it is to be filled in by means of a competition held in accordance with the procedure established by the authorised State body in charge of education and by the statute of the educational institution in question (section 24(3)).

61. Section 26(2) provides that the State shall organise (every five years) a regular assessment of the compatibility of each teacher to the description of the post occupied by him or her in an educational institution.

62. Section 32 sets out the powers of local-government bodies in the sphere of public education. It states, in particular, that the administrative head of each community shall support the implementation of public-education policy within that community, register all children of school age, and ensure that they are admitted into an educational institution.

63. Under section 33, the functioning of an educational institution is overseen by its founder and the authorised State body in charge of education, as well as by other State bodies in cases defined by the law.

64. Section 35(1) states that the financial resources of an educational institution are drawn from the State budget, and from other sources not prohibited by the law. Non-State educational institutions may be financed by the State budget if the requirements and conditions laid down by the government are met (section 35(3)).

D. Public Service Act (no longer in force)

65. Section 3(1) of the Public Service Act (in force from 17 June 2011 until 1 January 2020) stated, at the material time, that "public service" included State service, community service, and State- and municipality-level posts.

66. Under section 4(3) the post of administrative head of a community was a "political post", within the meaning of the Public Service Act. Under section 4(1) and (2) a political post was a type of State post; a person who occupied such a post could be replaced following changes in the political sphere, except in cases provided by the law.

E. Criminal law

67. At the time in question, Article 138 of the old CC, adopted on 18 April 2003 and in force until 1 July 2022, criminalised rape, which was defined by the first paragraph of Article 138 as "sexual intercourse between a man and a woman against her will, using violence (or the threat thereof) against [a woman] or some other person, or taking advantage of a woman's helplessness ...".

Article 138 § 2 provided for a heavier sentence (four to ten years' imprisonment) in the event of aggravated rape, which included the rape of a minor (Article 138 § 2 (3)).

Article 138 § 3 provided for an even a heavier sentence (eight to fifteen years' imprisonment) in the event of the rape of a person under the age of fourteen.

Following the events of the instant case, several additions were made to the list of aggravating circumstances under Article 138 §§ 2 and 3; those additions included the rape of a minor by a parent, a teacher, an employee of an educational or medical institution or a person entrusted with the upbringing or care of the victim (Article 138 § 3).

68. Article 139 criminalised "violent sexual actions" and deemed them to constitute an aggravating circumstance that attracted a heavier sentence in the event that the victim was a minor.

69. The old CC did not define the term "minor", although in practice it is understood to apply to all persons under the age of majority under the civil law – that is, eighteen years.

70. Article 142 § 1 of the old CC, as in force at the material time, criminalised "indecent acts" with a person under the age of sixteen, if the relevant acts did not contain the elements of the offences set out in Articles 140 (compelling someone to engage in sexual acts) and 141 (sexual intercourse or other sexual activities with a person under the age of sixteen). Article 142 § 2 provided for a heavier sentence in the event that the same offence was accompanied by the use of violence or the threat thereof.

F. Right to compensation

71. The relevant provisions of the Civil Code (as in force at the material time) concerning civil liability for damage and the obligation to afford compensation for damage, provide as follows.

72. Under Article 17 § 1, a person whose rights have been violated may claim full compensation for the damage suffered, unless the law or contract provides a lower amount of compensation.

"Damage" comprises (i) the expenses borne or to be borne by the person whose rights have been violated in the course of restoring the violated rights, and (ii) loss of property or damage thereto (that is, material damage) – including loss of income (Article 17 § 2).

73. Article 18 provides that damage caused to natural or legal persons as a result of unlawful actions (or failure to act) on the part of State and local self-government bodies or their officials is subject to compensation by the Republic of Armenia or the relevant local governance body.

74. Since 1 November 2014 Article 17 § 2 (see paragraph 72 above) has included non-pecuniary damage in the list of types of civil damage for which compensation can be claimed in civil proceedings.

As a result, the Civil Code was supplemented by new provisions – Articles 162.1 and 1087.2 (for a full description of the relevant provisions, see *Botoyan v. Armenia*, no. 5766/17, §§ 52 and 57, 8 February 2022), which regulate the procedure for claiming compensation for non-pecuniary damage from the State for a violation of certain rights that are guaranteed by the Armenian Constitution and the Convention.

Until the introduction of further amendments on 30 December 2015 (which came into force on 1 January 2016), compensation in respect of non-pecuniary damage could be claimed from the State where it had been established by a judicial ruling that a person's rights (as guaranteed by Articles 2, 3 and 5 of the Convention) had been violated, as well as in cases of wrongful conviction. Following the amendments that entered into force on 1 January 2016, compensation for non-pecuniary damage could be claimed from the State for the finding of breach of a number of other rights.

G. Decision of the Constitutional Court of 5 November 2013 on the conformity of Article 17 § 2 of the Civil Code with the Constitution

75. In its decision of 5 November 2013 the Constitutional Court found Article 17 § 2 of the Civil Code (see paragraph 72 above) to be incompatible with the Constitution in so far as it did not specify non-pecuniary damage as a type of civil damage and did not provide the possibility to obtain compensation for non-pecuniary damage by impeding the effective exercise of the right of access to court and the right to a fair trial and at the same time

hindering due compliance with its international obligations by the Republic of Armenia.

The Constitutional Court stated that Article 17 § 2 of the Civil Code would lose its legal force at the latest on 1 October 2014.

H. *Ad hoc* report of the Human Rights Defender (that is, the Ombudsman) concerning the observance by the Republic of Armenia of its obligations under the Convention on the Rights of the Child and its Protocols for the period from 2013 until 2022

76. In 2023 the Human Rights Defender published an *ad hoc* report on the progress of the implementation by Armenia of the United Nations Convention on the Rights of the Child and its Protocols (see paragraph 77 below) and on the recommendations of the Committee on the Rights of the Child (including those reflected in its General Comment No. 13 – see paragraph 79 below) with regard to the period between 2013 and 2022. The relevant parts of that report read as follows (footnotes omitted).

> "**2. The right of the child not to be subjected to any kind of violence**
>
> ... the examination by the staff of the [Human Rights Defender] shows that the parents are not properly informed about the mechanisms of protection of their children's rights and do not know which body they should address to in case their child has been subjected to ill-treatment in school.
>
> ... children often do not know that any kind of violence in their respect, including by teachers, is forbidden. This indicates that children are not well-informed about their right to be protected from violence. Children have mentioned that in case of violence and ill-treatment in school there are no effective channelling procedures ...
>
> ...
>
> **Recommendations**
>
> **...**
>
> **-** formulate expressly guaranteed legal and practical procedures for children to personally report violence inflicted on them and to be protected [from such violence].
>
> ...
>
> - examine the cases of violence in the education system and formulate a procedure aimed at the prevention, detection and reporting of suspicious instances of violence against children or among children in pre-schools and schools.
>
> - constantly raise children's awareness about their rights in pre-schools and schools ..."

II. INTERNATIONAL LAW

A. United Nations

1. Convention on the Rights of the Child

77. The United Nations Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989, has binding force under international law on the States parties – including all member States of the Council of Europe (see *Söderman v. Sweden* [GC], no. 5786/08, § 51, ECHR 2013). Armenia acceded to this Convention on 23 June 1993.

78. The relevant Articles of that Convention read as follows.

Article 19

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

Article 23

"1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and

vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."

Article 34

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials."

79. In its General Comment No. 13 of 18 April 2011 the Committee on the Rights of the Child made the following observations concerning Article 19 of that Convention (footnotes omitted).

"4. **Definition of violence.** For the purposes of the present general comment, 'violence' is understood to mean 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse' as listed in article 19, paragraph 1, of the Convention ...

25. **Sexual abuse and exploitation.** Sexual abuse and exploitation includes:

(a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;

...

32. **Institutional and system violations of child rights.** Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children ...

...

36. **Perpetrators of violence.** ... Furthermore, children are at risk of being exposed to violence in many settings where professionals and State actors have often misused their power over children, such as schools, residential homes, police stations or justice institutions. All of these conditions fall under the scope of article 19, which is not limited to violence perpetrated solely by caregivers in a personal context.

...

39. '***All appropriate* ... measures**'. The term 'appropriate' refers to the broad range of measures cutting across all sectors of Government, which must be used and be effective in order to prevent and respond to all forms of violence ...

40. Legislative measures refer to both legislation, including the budget, and the implementing and enforcing measures. They comprise national, provincial and municipal laws and all relevant regulations, which define frameworks, systems, mechanisms and the roles and responsibilities of concerned agencies and competent officers."

Article 19 § 2 imposes an obligation to take measures to, *inter alia*, identify and report violence, investigate such violence and ensure judicial involvement. As regards the obligation to identify and report violence, the Committee noted the following.

> "46. **Prevention.** The Committee emphasizes in the strongest terms that child protection must begin with proactive prevention of all forms of violence as well as explicitly prohibit all forms of violence. States have the obligation to adopt all measures necessary to ensure that adults responsible for the care, guidance and upbringing of children will respect and protect children's rights ...
>
> 47. Prevention measures include, but are not limited to:
>
> ...
>
> (d) For professionals and institutions (Government and civil society):
>
> (i) Identifying prevention opportunities and informing policy and practice on the basis of research studies and data collection;
>
> (ii) Implementing, through a participatory process, rights-based child protection policies and procedures and professional ethics codes and standards of care;
>
> ...
>
> 48. **Identification.** This includes identifying risk factors for particular individuals or groups of children and caregivers (in order to trigger targeted prevention initiatives) and identifying signs of actual maltreatment (in order to trigger appropriate intervention as early as possible). This requires that all who come in contact with children are aware of risk factors and indicators of all forms of violence, have received guidance on how to interpret such indicators, and have the necessary knowledge, willingness and ability to take appropriate action (including the provision of emergency protection). Children must be provided with as many opportunities as possible to signal emerging problems before they reach a state of crisis, and for adults to recognize and act on such problems even if the child does not explicitly ask for help. Particular vigilance is needed when it comes to marginalized groups of children who are rendered particularly vulnerable due to their alternative methods of communicating, their immobility and/or the perceived view that they are incompetent, such as children with disabilities. Reasonable accommodation should be provided to ensure that they are able to communicate and signal problems on an equal basis with others.
>
> 49. **Reporting.** The Committee strongly recommends that all States parties develop safe, well-publicized, confidential and accessible support mechanisms for children, their representatives and others to report violence against children ...
>
> 50. **Referral.** The person receiving the report should have clear guidance and training on when and how to refer the issue to whichever agency is responsible for coordinating the response ..."

2. Convention on the Rights of Persons with Disabilities

80. The United Nations Convention on the Rights of Persons with Disabilities, adopted by the General Assembly of the United Nations on 13 December 2006, has binding force under international law on the States parties – including Armenia, which acceded to the Convention on 22 September 2010. Its relevant parts provide as follows.

Article 7 – Children with disabilities

"1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right."

Article 16 – Freedom from exploitation, violence and abuse

"1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

...

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted."

B. Council of Europe

1. The Lanzarote Convention

81. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention"), adopted on 12 July 2007, obliges the parties thereto to take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children. The Lanzarote Convention was signed by Armenia on 29 September 2010. It was ratified by Armenia on 7 September 2020 and came into force on 1 January 2021. Its relevant parts provide as follows.

Chapter II – Preventive measures
Article 4 – Principles

"Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children."

Article 5 – Recruitment, training and awareness raising of persons working in contact with children

"1. Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.

2. Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them ...

..."

Chapter IV – Protective measures and assistance to victims
Article 12 – Reporting suspicion of sexual exploitation or sexual abuse

"...

2. Each Party shall take the necessary legislative or other measures to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

..."

Article 13 – Helplines

"Each Party shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity."

Chapter VI – Substantive criminal law
Article 18 – Sexual abuse

"1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

(a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;

(b) engaging in sexual activities with a child where:

- use is made of coercion, force or threats; or

- abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or

- abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

..."

Article 28 – Aggravating circumstances

"Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:

...

(c) the offence was committed against a particularly vulnerable victim;

(d) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;

..."

Article 31 – General measures of protection

"(1) Each party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:

...

(e) protecting their privacy, their identity and their image and by taking measures in accordance with international law to prevent the public dissemination of any information that could lead to their identification;

..."

2. The Explanatory Report to the Lanzarote Convention

82. The Explanatory Report to the Lanzarote Convention contains the following comments.

Article 5 – Recruitment, training and awareness raising of persons working in contact with children

"54. Paragraphs 1 and 2 are intended to ensure that persons who have regular contacts with children have sufficient awareness of the rights of children and their protection, and an adequate knowledge of sexual exploitation and sexual abuse of children. This provision lists the categories of persons involved: those who work with children in education, health, social protection, judicial, and law enforcement sectors as well as those who deal with children in the fields of sport, culture and leisure activities ...

...

56. Paragraph 2 also requires persons having regular contacts with children to have adequate knowledge and awareness to recognise cases of sexual exploitation and sexual abuse and of the possibility of reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse, as provided in Article 12 paragraph 1. It should be noted that there is no specific training obligation in this provision. Having 'adequate knowledge' could imply training or otherwise providing information for people who come in contact with children so that children who are victims of sexual exploitation or sexual abuse can be identified as early as possible, but it is left to Parties to decide how to achieve this.

..."

Article 12 – Reporting suspicion of sexual exploitation or sexual abuse

"...

91. In paragraph 2, Parties are required to encourage any person who has knowledge or suspicion of sexual exploitation or abuse of a child to report to the competent services. It is the responsibility of each Party to determine the competent authorities to which such suspicions may be reported. These competent authorities are not limited to child protection services or relevant social services. The requirement of suspicion "in good faith" is aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untruthful facts carried out with malicious intent."

Article 18 – Sexual abuse

"...

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.

...

123. The second indent relates to abuse of a recognised position of trust, authority or influence over the child. This can refer, for example, to situations where a relationship of trust has been established with the child, where the relationship occurs within the context of a professional activity (care providers in institutions, teachers, doctors, etc) or to other relationships, such as where there is unequal physical, economic, religious or social power.

...

126. The third indent relates to abuse of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence. Disability includes children with physical and sensory impairments, intellectual disabilities and autism, and mentally ill children... The term dependence also covers other situations in which the child has no other real and acceptable option than to submit to the abuse. The reasons for such situations may be physical, emotional, family-related, social or economic, such as, for example, an insecure or illegal administrative situation, a situation of economic dependence or a fragile state of health ..."

Article 28 – Aggravating circumstances

"...

198. The third aggravating circumstance is where the offence was committed against a particularly vulnerable victim. Examples of vulnerability include where the child is physically or mentally disabled or socially handicapped ...

199. The fourth aggravating circumstance concerns where the offence was committed by ... a person having abused his or her authority ... A person having authority refers to anyone who is in a position of superiority over the child, including, for instance, a teacher, employer, an older sibling or other older child.

..."

Article 31 – General measures of protection

"...

222. The article goes on to list a number of procedural rules designed to implement the general principles set out in Article 31: the possibility for victims of being heard, of supplying evidence, of having their privacy, particularly their identity and image protected, and of being protected against any risk of retaliation and repeat victimisation. The negotiators wished to stress that the protection of the victim's identity, image and privacy extends to the risk of 'public' disclosure, and that these requirements should not prevent this information being revealed in the context of the actual proceedings, in order to respect the principles that both parties must be heard and the inherent rights of the defence during a criminal prosecution.

..."

3. The Committee of Ministers of the Council of Europe

83. On 31 October 2001 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2001)16 on the protection of children against sexual exploitation. In Article III (Criminal law, procedure and coercive measures in general) point 32 reads as follows.

"Ensure throughout judicial, mediation or administrative proceedings the confidentiality of records and respect for the privacy of children who have been victims of sexual exploitation."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

84. The applicant complained that she had been the victim of sexual abuse by her teacher (who was also the administrative head of her village) and that the State had failed to protect her against that abuse. She relied on Article 3 of the Convention, which reads as follows:

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

A. Scope of the complaint

85. The Court observes at the outset that no issue arises in respect of the present case – and it not has been argued otherwise by the applicant – as to whether the authorities complied with their procedural obligation to carry out an effective investigation into the abuse suffered by the applicant (compare, *mutatis mutandis* and in the context of Article 8 of the Convention, *A, B and C v. Latvia*, no. 30808/11, §§ 114, 162 and 165-74, 31 March 2016).

The applicant's complaint before the Court concerns specifically the abuse suffered by her at the hands of a public official and State-school teacher and the State's failure to protect her from that abuse (see paragraph 84 above and

paragraph 101 below). Consequently, having regard to the circumstances of the present case and the relevant case-law principles (see, in particular, paragraphs 104-107 below), the Court considers it appropriate to examine the applicant's grievances from the standpoint of the State's positive obligations under Article 3 of the Convention to protect children and especially children with disabilities from serious ill-treatment such as sexual abuse within the context of State education. In doing so, the Court will accordingly examine the question of the respondent State's responsibility as regards the compliance with its positive obligation to adequately protect children from such treatment (see, *mutatis mutandis*, *Söderman v. Sweden* [GC], no. 5786/08, § 89, ECHR 2013, and *O'Keeffe v. Ireland* [GC], no. 35810/09, § 168, ECHR 2014 (extracts)).

B. Admissibility

1. Compliance with the six-month rule

(a) The parties' submissions

86. The Government maintained that the six-month period in respect of the applicant's complaint under Article 3 of the Convention should be calculated from the date of the final decision rendered within the framework of the criminal proceedings against A.G. In particular, the criminal proceedings at issue had been terminated by the Court of Cassation's decision of 15 July 2013, and the relevant decision had been dispatched on 17 July 2013 (see paragraph 43 above), whereas the applicant had lodged her application only on 19 August 2014 – that is, after the completion on 30 April 2014 of the civil proceedings concerning her compensation claim (see paragraph 51 above), thereby failing to comply with the six-month time limit.

87. The Government argued that the applicant's complaint under Article 3 of the Convention had been examined and addressed within the scope of the criminal proceedings that had resulted in A.G.'s conviction, whereas her civil claim had concerned only compensation-related matters. They submitted that the civil proceedings initiated by the applicant could not have and should not have been considered to constitute an effective remedy, as her claim had been bound to be unsuccessful given the state of domestic law at the material time in that there had existed no legal possibility to claim compensation for non-pecuniary damage. Having regard to (i) the Court's finding in the case of *Poghosyan and Baghdasaryan v. Armenia* (no. 22999/06, § 47, ECHR 2012) to the effect that during the period in question it had not been possible to seek compensation for non-pecuniary damage under domestic law, and (ii) the Constitutional Court's decision of 5 November 2013 (see paragraph 75 above) – both of which had preceded the lodging of the applicant's civil claim on 17 February 2014 (see paragraph 45 above) – it should have been clear to the applicant that her civil claim had no reasonable prospects of success.

88. The applicant submitted that her claim for damages against the State (see paragraph 45 above), which had referred to the findings of the criminal investigation, had been based directly on her complaint under Article 3 of the Convention. With reference to the relevant national and international law it had been clearly argued in her claim that the State had failed in its obligations as the applicant had suffered abuse in a place where she should have been protected from such treatment and at the hands of a person who should have ensured such protection.

89. Moreover, on the basis of Article 6 of the Constitution (see paragraph 52 above) it had been argued in the initial claim and subsequent appeals that the domestic courts were not bound by domestic law, since ratified international conventions (including the Convention, and as a consequence the case-law of the Court) were subject to direct application under the domestic legal order and, under the same Article, had precedence over domestic legal provisions in the event of any conflict therewith. Accordingly, the applicant had been confident that there existed a reasonable legal possibility for her claim to succeed and there had been a willingness to make use of that possibility by giving the State an opportunity to afford the applicant redress before lodging an application with the Court.

(b) The Court's assessment

90. The object of the six-month time-limit under Article 35 § 1 of the Convention is to promote legal certainty by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-40, 29 June 2012)

91. The requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month period are closely related, as they are not only combined in the same Article, but also expressed in a single sentence whose grammatical construction implies a correlation. Thus, as a rule, the six-month period runs from the date of the final decision in the process of the exhaustion of domestic remedies. Article 35 § 1 cannot be interpreted in a manner that would require an applicant to inform the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level; otherwise, the principle of subsidiarity would be breached. However, this provision allows only remedies that are normal and effective to be taken into account, as an applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions that have no power or authority to offer effective redress for the complaint in issue under the Convention. It follows that if an applicant has recourse to a remedy that is

doomed to fail from the outset, the decision on that appeal cannot be taken into account for the purposes of calculating the six-month period (see *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018).

92. The Government argued that the date of the final decision in the criminal proceedings against A.G. should be taken into account for the purposes of calculating the six-month time-limit in respect of the applicant's complaint under Article 3 of the Convention (see paragraphs 86 and 87 above). Having made that argument, however, the Government failed to explain what kind of redress, if any, those proceedings (which concerned the determination of A.G.'s individual criminal responsibility) could have afforded the applicant in so far as her Convention complaints (see paragraph 84 above and paragraph 101 below) were concerned. In this connection, the Court notes that the Government did not specify any domestic legal procedure whereby the applicant would have been able to claim damages from the State within the framework of the proceedings against A.G.

93. The Government further argued that in view of the absence of a legal possibility of claiming compensation for non-pecuniary damage at the material time – in line with the Court's judgment in the case of *Poghosyan and Baghdasaryan* (cited above) and the Constitutional Court's decision of 5 November 2013 (see paragraph 75 above) – it should have become obvious to the applicant that her civil claim against the State had no reasonable prospects of success (see paragraphs 72, 74 and 87 above). The Court does not share this view for the following reasons.

94. The Court has consistently held that effective protection against rape and sexual abuse requires measures of a criminal-law nature (see, among many other authorities, *M.C. v. Bulgaria*, no. 39272/98, § 186, ECHR 2003XII). It has accordingly dismissed pleas of inadmissibility where, in the absence of an effective criminal investigation, a respondent State suggested civil remedies in the context of exhaustion (see, for example, *R.B. v. Estonia*, no. 22597/16, § 65, 22 June 2021, with further references). In the present case, however, the criminal remedy did have a favourable outcome for the applicant in that A.G. was effectively prosecuted and convicted (see paragraphs 20 and 40 above). Indeed, the applicant's grievances before the Court, as already noted (see paragraph 85 above) do not concern the effectiveness of the investigation into the abuse suffered by her but the responsibility of the State in relation to that abuse (see paragraph 101 below for the arguments raised by the applicant in that respect).

95. Furthermore, the applicant had recourse to the civil courts seeking compensation from the State during a particular period of time when there was uncertainty in domestic law in so far as the issue of compensation for non-pecuniary damage was concerned. In particular, she lodged her civil claim on 17 February 2014 with the Kentron and Nork-Marash District Court of Yerevan – that is, after the Constitutional Court had declared Article 17 § 2 of the Civil Code unconstitutional in so far as it did not provide for the

possibility to claim compensation for non-pecuniary damage (see paragraphs 45 and 75 above) and which had earlier been found to be in breach of Armenia's obligations under the Convention (see *Poghosyan and Baghdasaryan*, cited above, §§ 46-48) but before the introduction on 1 November 2014 of the legislative amendments (see paragraphs 74 above) providing explicitly for a possibility to claim compensation for non-pecuniary damage from the State for a violation of certain Convention rights (compare, *mutatis mutandis*, *Nana Muradyan v. Armenia*, no. 69517/11, §§ 101-11, 5 April 2022, where the Court examined the effectiveness of the newly-introduced civil remedy in the context of Article 2 of the Convention). Given those circumstances, and although the impugned legal provision was still in force at the moment when the applicant lodged her civil claim (see paragraph 75 above *in fine*), in the Court's view it was not unreasonable for her to expect that the domestic courts would not apply a legal provision which had already been found unconstitutional and which had also been found to be in breach of the requirements of Article 13 of the Convention (see *Poghosyan and Baghdasaryan*, cited above, §§ 46-48).

96. In addition, under Article 6 of the Constitution – in the wording that was then in force (see paragraph 52 above) and which was referred to in the applicant's claim together with the relevant principles of international law (see paragraph 45 above) – ratified international conventions had precedence over domestic legal provisions that were not in line with them.

97. The Court notes that in her claim the applicant clearly raised her Convention complaint and made a reference to the relevant and applicable domestic- and international-law provisions (including Article 6 of the Constitution) to argue that the domestic courts had a solid legal basis to allow her claim by acknowledging the breach of her rights (as guaranteed under Article 3 of the Convention) and by awarding her compensation for non-pecuniary damage (see paragraph 45 above). Indeed, as submitted by the applicant (see paragraphs 88 and 89 above), she had considered that there existed a real possibility for her claim to succeed and she was willing to give the State an opportunity to put matters right through its own legal system (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014) before introducing an application before the Court.

98. In view of the foregoing, and given the specific circumstances of the present case, including the particular period of time when the relevant civil proceedings took place, the Court considers that it was not clear from the outset that the compensation claim against the State would be ineffective in the applicant's case. Taking also into account the fact that given the doubt about its effectiveness, the remedy in question should be tried, the Court cannot blame the applicant for having tried to exhaust it (see, *mutatis mutandis*, *Červenka v. the Czech Republic*, no. 62507/12, § 121, 13 October 2016).

99. The Court notes that the final decision in the civil proceedings against the State was delivered on 30 April 2014 (see paragraph 51 above) and that the applicant lodged her application on 19 August 2014 – that is, in compliance with the six-month rule. The Court therefore dismisses the Government's objection as to the alleged failure to comply with the six-month rule.

2. Other grounds for inadmissibility

100. 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.

C. Merits

1. The parties' submissions

101. The applicant submitted that she had been the victim of sexual abuse by a public official (the administrative head of the village where she lived, and her teacher in a State school); that official had taken advantage of (i) the influence that he had over her in the light of his professional and public standing and (ii) her particular vulnerability as someone who had underdeveloped intellectual capabilities. Furthermore, the abuse had taken place in the village administrative office building during working hours, with A.G. acting in his official capacity as the administrative head of that community and in the State school during class hours. The State had failed to adopt the necessary measures and safeguards to protect the children from ill-treatment, including serious breaches of their physical integrity.

102. The Government submitted that A.G. had received a severe punishment for his immoral acts. At the same time, his actions should not be attributed to the State since he had not acted in an official capacity.

2. The Court's assessment

(a) General principles

103. The relevant principles with regard to the protection of children from ill-treatment have been recently summarised in *X and Others v. Bulgaria* ([GC], no. 22457/16, §§ 176-83, 2 February 2021; see also *O'Keeffe*, cited above, §§ 144-46 and 148-49 as regards the protection of children in the particular context of education).

104. In particular, the positive obligation of protection from treatment contrary to Article 3 of the Convention comprises, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision; and, thirdly, an obligation to carry out an effective

investigation into arguable claims of infliction of such treatment (see *X and Others v. Bulgaria*, cited above, § 178).

105. The Court noted in *O'Keeffe* (cited above, § 145) that the positive obligation of protection assumes particular importance in the context of the provision of an important public service such as primary education, school authorities being obliged to protect the health and well-being of pupils and, in particular, of young children who are especially vulnerable and are under the exclusive control of those authorities. Furthermore, having regard to the fundamental nature of the rights guaranteed by Article 3 and the particularly vulnerable nature of children, it is an inherent obligation of the authorities to ensure their protection from ill-treatment, especially in a primary-education context, through the adoption, as necessary, of special measures and safeguards (ibid., § 146).

106. In addition, the Court has emphasised the particular importance of the protection of children who are even more vulnerable owing to disability (see *X and Y v. the Netherlands*, 26 March 1985, §§ 21-30, Series A no. 91 where the Court found that the absence of legislation criminalising sexual advances to a mentally disabled adolescent meant that the State had failed to fulfil a positive obligation to protect the Article 8 rights of the victim, and, in the context of a facility for disabled children and under Article 2 of the Convention, *Nencheva and Others v. Bulgaria*, no. 48609/06, §§ 106-16 and 119-20, 18 June 2013).

107. Effective measures of deterrence against grave acts, such as rape and the sexual abuse of children, can only be achieved by the existence of effective criminal-law provisions backed up by law-enforcement machinery. Importantly, the nature of child sexual abuse is such, particularly when the abuser is in a position of authority over the child, that the existence of useful detection and reporting mechanisms are fundamental to the effective implementation of the relevant criminal laws (see *Söderman*, § 82, and *O'Keeffe*, § 148, with further references, both cited above). The obligation to have in place effective criminal-law provisions stems also from other international instruments, such as Articles 19 and 34 of the United Nations Convention on the Rights of the Child and Chapter VI (entitled "Substantive criminal law") of the Lanzarote Convention (see paragraphs 77-78 and 81 above; see also *X and Others v. Bulgaria*, § 179, and *A, B and C v. Latvia*, § 148, both cited above).

108. The Court also notes that it is not necessary to show that "but for" the omission on the part of the State the ill-treatment would not have happened. A failure to take reasonably available measures that could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the State (see *O'Keeffe*, cited above, § 149, and *E. and Others v. the United Kingdom*, no. 33218/96, § 99, 26 November 2002).

109. As to the content of the positive obligation to take operational protective measures (see paragraph 104 above), Article 3 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of ill-treatment. However, this positive obligation is to be interpreted in such a way as not to impose an impossible or disproportionate burden on the authorities, bearing in mind the unpredictability of human conduct and the operational choices that must be made in terms of priorities and resources. Accordingly, not every risk of ill-treatment can entail for the authorities a Convention requirement to take measures to prevent that risk from materialising. However, the required measures should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge. Accordingly, not every risk of ill-treatment could entail for the authorities a Convention requirement to take measures to prevent that risk from materialising (see *O'Keeffe*, § 144, with further references, and *X and Others v. Bulgaria*, §§ 181-83, both cited above).

(b) Application of those principles to the present case

110. The Court notes that the applicant, owing to her relatively young age and disability (see paragraphs 5 and 6 above), was in a particularly vulnerable situation. Therefore, the sexual abuse and violence to which she was subjected was undoubtedly serious enough to fall within the scope of Article 3 of the Convention (see, for example and *mutatis mutandis*, *C.A.S. and C.S. v. Romania*, no. 26692/05, § 73, 20 March 2012; *M.C. v. Bulgaria*, § 148; and *X and Others v. Bulgaria*, § 193, both cited above).

111. The Government appeared to suggest that the State should be released from its Convention obligations since A.G. had not been acting in his official capacity. They argued, therefore, that A.G.'s actions should not be directly attributable to the State, given the fact that he had been prosecuted and convicted (see paragraph 102 above) – even though in their comments regarding the applicant's complaint under Article 8 they had referred to "the established fact that the applicant had been raped and indecently assaulted by a State official and school teacher" (see paragraph 147 below).

112. As already mentioned in paragraph 85 above, having regard to the circumstances of the present case and the applicable case-law principles (see paragraphs 104-107 above), the Court considers it more appropriate to examine the applicant's complaints from the standpoint of the State's positive obligations under Article 3 of the Convention to protect children and especially children with disabilities from sexual abuse within the context of State education rather than from the standpoint of direct attribution of responsibility for ill-treatment in the same context (compare *V.K. v. Russia*, no. 68059/13, §§ 173-84, 7 March 2017, concerning ill-treatment inflicted by teachers of a State nursery school; see also, and within the context of Article 8

of the Convention, *F.O. v. Croatia*, no. 29555/13, § 89, 22 April 2021, concerning verbal abuse by a teacher in a State school).

113. The Court notes at this juncture that, as already stated in paragraph 85 above, no issue arises in the present case as regards the State's positive "procedural" obligation under Article 3 of the Convention to carry out an effective investigation into the infliction of treatment contrary to that provision. Indeed, A.G.'s actions were reported to the law-enforcement authorities by the applicant's mother on 23 February 2012 – that is to say the day after the school incident of 22 February 2012 (see paragraphs 7 and 31-34 above) – and the law-enforcement authorities reacted promptly to the complaint that the applicant had been seriously abused by instituting criminal proceedings the day after that complaint was lodged (see paragraph 11 above). The ensuing criminal proceedings resulted in A.G.'s prosecution and conviction (see paragraphs 20, 24 and 40 above). Hence, the Court will proceed to examine whether the respondent State complied with its positive "substantive" obligations under Article 3 of the Convention – namely the obligation to put in place a legislative and regulatory framework of protection and (in certain well-defined circumstances) the obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision (see *X and Others v. Bulgaria*, cited above, § 178).

(i) Regarding the obligation to put in place an appropriate legislative and regulatory framework

114. The Court observes that A.G., who was the applicant's teacher and who was also a public official at the relevant time (see paragraphs 55-57 and 60-64 above for the relevant regulations concerning the organisation of State education; see also paragraphs 65 and 66 for a description of the post of "administrative head of a community"), was convicted of aggravated rape (of a minor) and indecent acts committed in respect of a minor under Articles 138 § 2 (3) and 142 § 1 of the old CC (see paragraphs 40, 67 and 70 above).

115. The Court notes that the applicant did not call into question the existence in the domestic law of the respondent State of criminal legislation aimed at preventing and punishing child sexual abuse. It observes in that regard that the old CC criminalised the sexual abuse of minors – including rape, "violent sexual actions" and "indecent acts" (see paragraphs 67, 68 and 70 above). The old CC laid down a heavier sentence in the event that the rape in question had been committed in respect of a minor, and an even heavier sentence if committed in respect of a minor under the age of fourteen (Article 138 §§ 2 and 3, see paragraph 67 above); the offence of "violent sexual actions" also attracted a heavier sentence in the event that the victim was a minor (see paragraph 68 above); indecent assault in respect of a minor detailed by Article 142 of the old CC constituted a separate offence (see paragraph 70 above). The provisions in question appear to cover the acts

complained of by the applicant in the present case (see, *mutatis mutandis*, *X and Others v. Bulgaria*, cited above, § 194).

116. The Court reiterates that States have a heightened duty of protection towards children under their care and control, especially those children who are in a particularly vulnerable situation owing to disability (see paragraphs 105 and 106 above for a summary of the relevant case-law). In the light of this principle, the Court must next determine whether the remainder of the respondent State's framework of laws and regulations (notably its mechanisms for the prevention, detection and reporting of ill-treatment) provided effective protection for children (particularly those with disabilities) attending a State school against the risk of sexual abuse (see, *mutatis mutandis*, the above-cited cases of *Söderman*, § 89, and *O'Keeffe*, § 152).

117. There is nothing to suggest that any mechanisms designed to ensure the prevention, detection and reporting of any ill-treatment (including sexual abuse) in educational institutions had been put in place by the time of the material events (compare and contrast *X and Others v. Bulgaria*, cited above, § 195), such procedures being fundamental to the enforcement of the criminal laws, to the prevention of such ill-treatment and – more generally, therefore – to the fulfilment of the positive protective obligation of the State (see *O'Keeffe*, cited above, § 162). Indeed, in her *ad hoc* report concerning the observance by Armenia of its obligations under the UN Convention on the Rights of the Child covering the period from 2013 until 2022, the Human Rights Defender noted the lack of such mechanisms, and recommended that the authorities create procedures for the prevention, detection and reporting of ill-treatment in schools (see paragraph 76 above). In her report the Human Rights Defender also noted that neither parents nor children knew to whom or to which body they should turn in the event of ill-treatment and that children had reported to the representatives of the Human Rights Defender's Office the absence of effective channels in schools through which to lodge complaints of ill-treatment (ibid.).

118. The facts of the present case illustrate, in the Court's opinion, the consequences of this complete absence of any protective mechanisms – notably mechanisms via which to detect and report abuse.

119. Indeed, the account of the events of 22 February 2012 given by the witnesses (including pupils, teachers and the headmistress of the school that the applicant was attending) shows that none of them were aware of what actions should be taken when confronted with a situation of abuse – never mind when such a situation was actually happening on the school premises during study hours (see, for example, paragraph 32 above for the trial statement of N.M.'s class teacher, A.S., who explicitly stated that she was "not sure" what action she would have undertaken had N.M. explicitly stated that the applicant was being sexually assaulted at that very moment).

120. There is nothing to suggest that the teachers and those in charge – including the headmistress and the applicant's class teacher (see paragraph 10 above) – had been instructed on how to identify child abuse. Neither is there anything to suggest that the teachers and the headmistress had received clear guidance and training regarding what to do or where to turn upon receiving a report of abuse (see, in this respect, points 49 and 50 of General Comment No. 13 of the Committee on the Rights of the Child (cited in paragraph 79 above) and Articles 4, 5, 12 and 13 of the Lanzarote Convention and the Explanatory Report thereto, cited in paragraphs 81 and 82 above). There is equally nothing to suggest that there were any special mechanisms and safeguards in place for those children (such as the applicant) who were even more vulnerable to abuse and exploitation owing to a disability (see the relevant provisions of the UN Convention on Persons with Disabilities cited in paragraph 80 above, and Article 23 of the UN Convention on the Rights of the Child cited in paragraph 78 above).

121. As a result, having received reports (on 18 and 22 February 2012 respectively – see paragraphs 27, 31 *in fine*, 32 and 33 above) about the suspected and then actual abuse of the applicant – a particularly vulnerable minor with an intellectual disability – the teachers apparently were given no instruction and/or guidance on how to react and what actions to take, thus failing to undertake any action in relation to those reports (either on 18 February or thereafter on 22 February 2012). In addition, neither did the headmistress who, having been informed of the matter on 22 February 2012, did not take any formal action – not even reporting the abuse to the relevant authorities and/or informing the family. As a matter of fact, the family became aware of what had happened only the next day because gossip had started to circulate in the school and around the entire village that the applicant had been involved with A.G. – rather than the family being informed of the matter by the school (see, in particular, paragraphs 13 and 19 above). Thus, her family being completely unaware of the events the day before, the applicant was apparently sent to school the next day (see paragraph 13 above) as usual, whereas there is nothing to suggest that any formal action had been undertaken by the school authorities in respect of A.G., who apparently continued his teaching activities following the incident of 22 February 2012 (see N.M.'s statement in paragraph 31 above *in fine* to the effect that after the events of 22 February 2012 pupils of senior classes boycotted A.G.'s classes). The Court reiterates in this connection that it is not necessary to show that "but for" an omission on the part of the State the ill-treatment would not have happened. A failure to take readily available measures that could have had a real prospect of altering the outcome or mitigating the harm caused is sufficient to engage the responsibility of the State (see the case-law cited in paragraph 108 above). Adequate action taken by K.H. following N.M.'s assertions of 18 February 2012 could reasonably have been expected to prevent any further instances of the applicant being

abused (including the abuse that took place on 22 February 2012, which owing to the pupils' – and particularly N.M.'s – efforts was the last). At the same time, proper reaction and follow-up measures in respect of the report of 22 February 2012 on the part of the alerted teachers and subsequently the headmistress could have been reasonably expected to at least "minimise the damage" already suffered by the applicant (see, *mutatis mutandis*, *E. and Others*, cited above, § 100).

122. In view of the foregoing, the Court finds that the respondent State failed to provide effective protection for children attending school (particularly those with disabilities) against the risk of sexual abuse, through the adoption and implementation of a framework of laws and regulations aimed at the prevention, detection and reporting of such abuse as well as the training of persons working in contact with children, in breach of the obligations in that regard stemming from Article 3 of the Convention.

(ii) Regarding the obligation to take preventive operational measures

123. The Court notes that the domestic criminal investigation established that the applicant had suffered sexual abuse at the hands of A.G. (her teacher and a public official at the time in question) for the first time in November 2011 when he raped her in the village administrative office building. The abuse continued over the following three months (that is, until February 2012) – with two more incidents of rape occurring in the school building, followed by one incident of indecent assault that had also taken place in the school building on 22 February 2012 (see paragraph 24 above).

124. As the Court observed in paragraph 110 above, the applicant in the present case was in a particularly vulnerable situation. It notes in this connection that the then fourteen-year-old applicant – although she attended a State school with the rest of her peers – is mentally disabled (see paragraphs 5 and 6 above). According to the expert psychological report issued in the course of the criminal proceedings, because of the level of her mental development, she could not understand the meaning of the sexual abuse to which she was being subjected. The same report also stated that the applicant suffered from anxiety and fear, rubbing her hands and crying when asked about the suffered abuse (see paragraph 22 above).

125. Given those circumstances, the Court considers that the obligation imposed on the authorities by Article 3 of the Convention to take preventive operational measures was heightened in the present case and required the authorities in question to exercise particular vigilance (see, *mutatis mutandis*, *X and Others v. Bulgaria*, cited above, § 197 as regards the authorities' heightened duty to ensure the safety, health and well-being of children placed in an orphanage). It must therefore ascertain whether, in the present case, the school authorities of the respondent State knew or ought to have known at the time of the existence of a real and immediate risk for the applicant of being subjected to treatment contrary to Article 3 and, if so, whether they took all

the measures that could reasonably be expected of them to avoid that risk (see the case-law quoted in paragraph 109 above).

126. The Court attaches particular importance to the fact that the abuse at issue in the present case took place within the context of a relationship of trust and authority (see *A, B and C v. Latvia*, cited above, § 161) resulting from A.G.'s position as an educator and administrative head of the village where the applicant and her family lived.

127. The Court notes that a number of witnesses questioned during the domestic investigation and at the trial – including pupils, teachers and other residents of the village – stated that A.G. had the reputation of a "shameless skirt-chaser" in the village (see, for instance, paragraphs 10, 13, 16 and 19 above). In fact, as was explained by N.M. in her initial statement, it was due to the knowledge of A.G.'s "bad reputation" that the children quickly suspected that A.G. might have been doing "something indecent" to the applicant and decided to follow up on the matter (see paragraph 10 above).

128. The Court further notes that in the witness statement that she gave during the investigation, K.H. (the applicant's class teacher) stated that on 18 February 2012 N.M. had specifically approached her after the classes and voiced her suspicions that A.G. was conducting an intimate relationship with the applicant (see paragraph 27 above).

129. Additionally, in her statement during the trial N.M told the court that she had also informed N.G. (another teacher) of her suspicions concerning A.G. (see paragraph 31 above). The Court observes in this connection that N.G. was not questioned during either the investigation or the trial. It therefore attaches less evidentiary value to this assertion of N.M. in comparison to K.H.'s statement that she had been alerted about the applicant's possible abuse by A.G. several days before the incident of 22 February 2012 (see paragraphs 27 and 128 above). In the same vein, considering that the senior teacher, A.H., was not questioned either, there is no possibility to verify the statements of G.P. (the applicant's uncle) and his son according to which, when asked to explain what had happened to the applicant at the school, A.H. had stated that she had known for a long time and that "they did not want to make a noise about it" since "they did not want to have to deal with" A.G. (see paragraph 19 above).

130. In any event, the Court finds it established that at least one teacher – namely K.H., the applicant's class teacher (that is to say the person directly in charge of her class, who should have been more familiar with the applicant's particular vulnerability) – received a tip-off regarding the possibility that the applicant was being abused by A.G. already on 18 February 2012. It follows that – at the very latest – on that date the school authorities' positive obligation to protect the applicant was triggered (see the case-law principles cited in paragraph 109 above). However, there is nothing to suggest that K.H., the applicant's class teacher, followed up on such serious concerns (see paragraphs 27 and 128 above), which moreover related to a

particularly vulnerable pupil who had insufficiently developed intellectual capabilities (see paragraph 22 above). In point of fact, K.H. stated that she had not believed N.M. and had even rebuked the latter for not realising the seriousness of her statements. She did not indicate that she had informed the headmistress and/or any of the other teachers (see paragraph 27 above).

131. The Court notes the importance of not only prevention and detection but also of reporting within the context of the need to protect minors from sexual abuse – particularly when the abuser is in a position of authority over the child (see the case-law principles set out in paragraphs 105 and 107 above; see also points 46-50 of General Comment No. 13 of the Committee on the Rights of the Child, which are cited in paragraph 79 above; see, in addition, Articles 4, 5 and 12 of the Lanzarote Convention and the Explanatory Report thereto, cited in paragraphs 81 and 82 above).

In that connection, the Court will next examine the manner in which the school authorities (including the teachers and the headmistress) handled the entire situation on 22 February 2012, when they received a tip-off regarding the applicant's actual abuse – that is to say the moment at which the school authorities' obligation to protect the applicant was triggered once again (see paragraph 130 above), and in the aftermath.

132. The Court notes in this respect that N.M. – who was apparently rendered horrified and very emotional by what she had witnessed – approached at least three teachers, urging them to go with her to open the door to the applicant's classroom (something that she had been afraid to do herself) in order to see what was happening there; however, none of those teachers followed her (see paragraphs 10, 15, 16 and 31 above; see also paragraph 28 above for the prosecution's description of the relevant teachers' behaviour that day).

133. The first person that N.M. approached was her own class teacher, A.S.: N.M. ran back to her own classroom and asked A.S. to come with her "to see what A.G. was doing" to the applicant. Apparently, N.M. even pushed A.S. out of the classroom; however, according to N.M.'s account, A.S. hushed the pupils, saying that it was none of their business and went back to her own classroom without opening the door (see paragraphs 10 and 31 above). In her initial statement A.S. submitted that N.M. had not been specific in her allegations and that she (that is, A.S.) had thought that there had been a fight (see paragraph 15 above). When giving evidence before the trial court, A.S. stated that she had thought that N.M. had been speaking about another teacher who had the same first name as the applicant. Notably, however, she also stated that she was "not sure" what she would have done if N.M. had explicitly stated that there was something immoral going on between A.G. and the applicant (see paragraph 32 above).

134. The second teacher that N.M. approached was N.G., to whom, according to the former's statement, she had confided her suspicions that the applicant was being abused by A.G. several days previously (see

paragraphs 31 and 128 above). N.M. explained to N.G. that A.G. was alone with the applicant in the classroom and asked her to go with her to open the door, but N.G. refused (see paragraph 10 above).

135. Thereafter, N.M. went to another classroom, where H.B. was teaching. According to N.M.'s account, she asked H.B. to go with her to see what A.G. was doing to the applicant; she told H.B. that A.G. was doing "immoral things", but H.B. (who in his subsequent statement described A.G. as a "skirt-chaser" – see paragraph 16 above) refused, referring to his conflict with A.G. (see paragraphs 10 and 31 above). According to H.B.'s account of the same events, N.M. had asked him to come and see what A.G. was doing and that he had learned only afterwards that A.G. and the applicant "had been alone in the room" (see paragraphs 16 and 33 above). Notably, M.H., a pupil who had been in H.B.'s class, stated during the investigation that N.M. had told H.B. to come with her to see what A.G. was doing with the fourteen-year-old applicant (see paragraph 17 above) – an account that corroborated N.M.'s assertion (given in reply to the defence lawyer's questions during the trial) that she had told the teachers to "see what the administrative head of the village was doing to a fourteen-year-old child" (see paragraph 31 above).

136. Thus, even when told that the applicant was actually being abused during class hours, the alerted teachers had failed to take any meaningful action – they had not intervened immediately, and nor had they checked on the applicant afterwards and/or informed her class teacher or the headmistress about the report.

137. As a matter of fact, it was yet again N.M., who approached the applicant's class teacher, K.H., during the break and informed her of the matter (see paragraph 27 above). However, even then, the only action that K.H. and S.M. (the headmistress, who had been informed in the meantime) undertook was to speak to the applicant – a minor with an intellectual disability and communication difficulties, who had just suffered the abuse in question – and to send her home, without even informing her parents of the incident in question (see paragraphs 26, 27 and 121 above). It remains unclear whether S.M. had also spoken with N.M., as the former claimed (see paragraphs 26 and 34 above) given that N.M. had not mentioned anything about that meeting in her otherwise quite detailed account of the events (see paragraphs 10 and 14 above) and given that N.M. essentially denied in court that such a meeting had ever taken place (see paragraph 31 above). In any event, there is nothing to suggest that S.M. at least spoke with A.G. – either on that day or subsequently – in order to question him about the incident; nor is there anything to suggest that she took any formal action to clarify the matter and/or bring it to the attention of the relevant authorities. Rather, according to S.M.'s own account, she "heard" the next day that "the applicant [had] confessed that A.G. had [had] sexual intercourse with her" (see paragraph 26 above; see also paragraph 34 above in respect of S.M.'s

reference during the trial to what "was being said" in the village about A.G. and the applicant having "a relationship").

138. In the absence of any information – let alone any assistance from the school – on 23 February 2012 (when the matter became the subject of conversation in the village) the members of the applicant's family tried to find out what had happened the day before in the school by making their own enquiries – firstly approaching A.G. himself and then senior teacher A.H. (see paragraphs 19 and 36 above); they then turned to the police in the evening, when the applicant's mother lodged a crime report (see paragraphs 7 and 13 above).

139. It is not for the Court to speculate whether the failure of the applicant's class teacher to act upon the initial report regarding the risk of her being abused (see, in particular, paragraph 27 above), the subsequent reluctance on the part of the teachers to act upon the report of the applicant's actual abuse, and the failure of the headmistress to act on the day of the incident and in its aftermath was owing to the fact that A.G. was not only their colleague but also the administrative head of the village – someone who apparently had authority in the village (given the extent of pressure brought to bear on the witnesses and the applicant's family throughout the criminal proceedings – see paragraphs 18, 35 and 36 above). At the same time, the Court observes in that regard that, apart from H.B. (who apparently had a personal issue with A.G. – see paragraph 16 above), A.G.'s other colleagues (who were questioned during the criminal proceedings) either described him positively or refrained from ascribing to him any characteristics at all (see the statements of the teacher, A.S., and the headmistress, S.M., respectively in paragraphs 15 and 34 above). Notably, the headmistress in her pre-trial statement mentioned that "sexual intercourse" had taken place between A.G. and the applicant (which, according to her, had been confirmed by a forensic medical examination – see paragraph 26 above); however, before the trial court – apparently with A.G. present in the courtroom – she by contrast referred to "common gossip" and something that "they" had seen (of which she had not been aware – see paragraph 34 above). Before the trial court the headmistress also characterised A.G. as a "humane" and "good" person who would have been willing to help the applicant and her family – even though they had been "enemies" to him (see paragraph 34 above). Such a perspective and attitude on the part of the headmistress sits uncomfortably with the school authorities' obligation to protect pupils from ill-treatment in general (see the relevant case-law principles summarised in paragraph 105 above; see also, *mutatis mutandis*, *F.O. v. Croatia*, cited above, § 93) and her role as a public servant responsible for the overall functioning of the school and – most importantly for the purposes of the present case – the safety of the pupils (including their protection from wrongful actions on the part of pedagogical staff in particular – see paragraph 58 above).

140. In sum, as has been demonstrated above, the applicant's class teacher became aware on 18 February 2012 of the likelihood that the applicant was being abused by A.G. – that is, four days before she was further abused on 22 February 2012. That likelihood should have been addressed, at a minimum, by informing the school administration and/or the other teachers – which, as noted in paragraph 130 above, was not done. Furthermore, neither did the other teachers adequately follow up on the subsequent report of 22 February 2012 that the likelihood of abuse had in fact turned out to be fact (see paragraph 136 above).

(iii) Conclusion

141. In view of the foregoing, the Court finds that the respondent State failed to fulfil its positive obligation to protect the applicant – a teenage girl at the material time, with a mental disability – from the sexual abuse to which she was subjected while a pupil in a State school and, moreover, at the hands of a person who was also a public official at the time in question. That obligation was not fulfilled, given that the State failed to ensure the existence of an appropriate legislative and regulatory framework for the prevention, detection and reporting of sexual abuse of minors (see paragraph 122 above) and given that the State school authorities failed to take appropriate measures to adequately protect the applicant from the sexual abuse to which she fell victim (see paragraphs 130, 136 and 140 above).

142. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

143. The applicant complained that there had been a breach of her right to respect for her private life as a result of the publication on Datalex (including her full name and address) concerning her civil claim for damages. She relied on Article 8 of the Convention, the relevant parts of which read as follows.

> "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

144. 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' arguments

(a) The applicant

145. The applicant argued that the sexual abuse of which she had been the victim had inevitably been a painful and tragic episode of her life which should have been dealt with as discreetly as possible. It had therefore been requested – firstly in an application lodged along with her civil claim (see paragraph 45 *in fine* above), and then in the appeal on points of law lodged after the discovery of the publication of the details concerning her claim on Datalex (see paragraphs 49 and 50 above) – that the courts exclude the public from the civil proceedings and refrain from making any information about her civil claim (which concerned an intimate aspect of her private life) publicly available on the Internet. However, the courts had nevertheless disclosed such information; they had thereby unjustifiably interfered with her private life and had humiliated the applicant and her parents, who had been in constant fear that at any moment any person could find out via the Internet about that tragic episode in the applicant's life – a risk that was long-term and had no limitation in time.

146. The information that had been published – including the applicant's name and the name of the village that she was from, the fact that she had a legal representative (meaning that she was a minor) and that she had sought compensation for non-pecuniary damage from the State – was sufficient for someone who had heard about the applicant's case from the media to be able to identify her.

(b) The Government

147. The Government argued that there had been no interference with the applicant's right to respect for her private life. In this regard, they pointed out that the information published on Datalex had only included her name and address, the amount claimed by her in compensation for non-pecuniary damage and the procedural decisions taken in the case. According to the Government, there had been nothing in the published information to indicate that the applicant had been subjected to sexual abuse by A.G., whose name had not even been mentioned in the published judicial decisions. Neither had the grounds for the applicant's claim (namely, the established fact that the applicant had been raped and indecently assaulted by a State official and school teacher) been published on the online platform in question.

148. Moreover, while it was true that the reference number of the criminal case against A.G. had been mentioned, the fact that the trial had been held *in camera* meant that no further information about the criminal proceedings could have been found on Datalex.

149. Thus, in the Government's submission, the publication of the impugned details about the civil claim brought by the applicant had not constituted an interference with her right to respect for her private life since the content of the published information had not been such as to make it possible to identify her as a victim of sexual abuse.

2. The Court's assessment

(a) Whether there was an interference with the applicant's right to respect for her private life

150. The Court observes at the outset that the civil claim lodged on behalf of the applicant (who was a minor at the relevant time – see paragraph 6 above) was directly linked to and was the consequence of the sexual abuse suffered by her (see paragraph 45 above). The courts were specifically requested to examine the claim *in camera* and not to publish its details, in the light of the nature of the case and the fact that the applicant was a minor who had become the victim of sexual abuse (ibid.).

151. It appears that no procedural decision was ever taken regarding the above-mentioned request lodged on behalf of the applicant that the proceedings not be held in public. In fact, given that the courts essentially refused to examine the merits of the claim, no actual hearings were apparently held during the civil proceedings in question. At the same time, despite the specific request that the information concerning the case not be published, the applicant's full name and address – together with the complete texts of the judicial decisions adopted in the course of the proceedings – were nevertheless made available on Datalex (see paragraphs 46, 48, 49 and 51 above).

152. The Government essentially argued that there had been no interference with the applicant's right to respect for her private life because the published information (including the relevant judicial decisions) had not contained any specific information about the fact that the applicant had been subjected to sexual abuse (see paragraphs 147-149 above).

153. The Court reiterates that the concept of "private life" is a broad term (not susceptible to exhaustive definition) which covers the physical and psychological integrity of a person and which can therefore embrace multiple aspects of a person's identity, such as a name or elements relating to a person's right to his or her own image (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012, and *Vicent Del Campo v. Spain*, no. 25527/13, § 36, 6 November 2018, with further references). It covers personal information which individuals can legitimately expect should not be published without their consent (see *Axel Springer AG*, cited above, § 83 and the references cited therein).

154. Moreover, individuals who lack legal capacity, such as children, are particularly vulnerable; therefore, Article 8 and other provisions of the

Convention impose on the State the positive obligation to take into account the particular vulnerability of young persons (see, as a most recent authority, *I.V.Ț. v. Romania*, no. 35582/15, § 46, 1 March 2022).

155. Furthermore, the Court has emphasised the particular importance of the protection of the identity of victims of a crime, especially minor victims who have been subjected to violence and sexual abuse (see, in particular, *Kurier Zeitungsverlag und Druckerei GmbH v. Austria*, no. 3401/07, § 53, 17 January 2012). Such an approach is in line with the requirements of the relevant international legal instruments – including Article 31 of the Lanzarote Convention (see paragraph 81 above; see also the Explanatory Report cited in paragraph 82 above) and Recommendation Rec(2001)16 of the Committee of Ministers of the Council of Europe (see paragraph 83 above; see also *Kurier Zeitungsverlag und Druckerei GmbH*, cited above, § 53).

156. The Court notes that, as already stated in paragraph 151 above, the domestic courts did not take a decision on the request whereby the applicant – a particularly vulnerable minor due to her disability who had fallen victim of a serious sexual crime – had requested that her civil claim linked to the crime at issue be examined *in camera*. As a result, the reasons, if any, for not allowing the applicant's request not to disclose her identity and other personal information remain unknown. Eventually not only were the applicant's full name and address disclosed on Datalex (compare *J.S. v. the United Kingdom*, (dec.), no. 445/10, § 71, 3 March 2015, where the Court dismissed a complaint lodged by a minor who had been accused of assaulting a teacher; the complaint concerned the disclosure in a press release issued by the prosecution of information about the minor that had not included his name, age or other personal information) but the judicial decisions rendered in the proceedings had been uploaded to Datalex in their entirety (see paragraphs 49 and 151 above; also compare *Y. v. Turkey*, (dec.), no. 648/10, § 82, 17 February 2015, where the fact that the applicant's identity and HIV-positive status had been disclosed in a judicial decision – which had not been published or made public in any other way, and was not accessible to the public – was not found in and of itself to have infringed the applicant's right to respect for her private life).

157. The Court further notes that at least one of the decisions given within the context of the civil proceedings – namely that delivered by the Civil Court of Appeal on 28 March 2014 (see paragraph 48 above) – contained a number of details concerning both the grounds for the applicant's claim and the criminal case against A.G., a former public official known at the very least at the local level in the given region**.** In particular, that decision contained the date of the judgment convicting A.G., the domestic case number reference and, more importantly, references to all the international conventions and domestic law provisions on which the applicant's claim had been based (ibid.). Those notably included references to Articles 19 and 23 of the UN

Convention on the Rights of the Child and Article 16 of the UN Convention on the Rights of Persons with Disabilities (see paragraphs 78 and 80 above) – all of which concerned protection of children from ill-treatment (including sexual abuse), as well as the rights of children with disabilities and their protection from ill-treatment.

158. Given such circumstances, even though the impugned publication did not explicitly state that the applicant had been subjected to sexual abuse, it would be difficult to argue that, given all those details of the applicant's claim that it did contain (see paragraphs 156 and 157 above), one could not have been able to at least form the general idea that the applicant (a minor with a disability) had been subjected to some kind of ill-treatment under circumstances that potentially engaged the responsibility of the State. After all – as was argued by the applicant (see paragraph 145 above) – because of the disclosure of the information in question the applicant and her family were left in constant uncertainty as to whether someone would be able to identify the applicant as a victim of a sexual crime – something that would certainly be even more traumatising for someone who lived in a small village where traditional attitudes prevailed (see paragraph 45 above).

159. Given the above-noted factors, the Court finds that the disclosure of the applicant's identity (including her full name and address), coupled with the publication of the decision of the Civil Court of Appeal of 28 March 2014 (see paragraph 48 above) on Datalex (which is a publicly accessible online platform), amounted to an interference with the applicant's right to respect for her private life, as guaranteed by Article 8 § 1 of the Convention (see, *mutatis mutandis*, *Vicent Del Campo*, cited above, § 42).

(b) Whether the interference was justified

160. The above-mentioned interference will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with the law" and pursued one or more of the legitimate aims referred to in paragraph 2, and was "necessary in a democratic society" in order to achieve those aims.

161. The Court reiterates that the phrase "in accordance with the law" not only requires compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law (see, among many other authorities, *Taylor-Sabori v. the United Kingdom*, no. 47114/99, § 18, 22 October 2002).

162. The Court observes that the Government did not specify the legal basis for the interference in question. That being so, and since no legal basis was cited by the domestic courts either (see, in particular, the applicant's appeal on points of law raising the matter and the corresponding decision of the Court of Cassation cited in paragraphs 50 and 51 above), the Court cannot but hold that the publication of the impugned information on Datalex was not "in accordance with the law" within the meaning of Article 8 of the

Convention (see, *mutatis mutandis*, *Mockutė v. Lithuania*, no. 66490/09, § 104, 27 February 2018).

163. That being the case, the Court is not required to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued (see, *mutatis mutandis*, *Radu v. the Republic of Moldova*, no. 50073/07, § 31, 15 April 2014, and *Mockutė*, cited above, § 105).

164. There has therefore been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

165. Lastly, the applicant complained that no means of seeking compensation for non-pecuniary damage had been available to her. She relied on Article 13 of the Convention which reads as follows.

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

166. The Court notes that this complaint is linked to the applicant's complaint under Article 3 of the Convention, which was examined above, and must therefore likewise be declared admissible.

B. Merits

167. The applicant submitted that the rejection of her compensation claim against the State had been in breach of her right to an effective domestic remedy, as guaranteed under Article 13 of the Convention.

168. The Government submitted that proper redress was available to the applicant. In particular, A.G. was prosecuted and convicted for the offences that he had committed in respect of the applicant. At the same time, the domestic courts' dismissal of the applicant's claim against the State for compensation for non-pecuniary damage was in line with the state of the law at the relevant time.

169. As the Court has stated on many occasions, Article 13 of the Convention guarantees the availability at the national level of a remedy by which to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured under the domestic legal order. Article 13 thus requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13

also varies, depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see, amongst other authorities, *Aydın v. Turkey*, 25 September 1997, § 103, *Reports of Judgments and Decisions* 1997-VI).

170. Where rights of such fundamental importance as those protected under Article 3 are at stake and where an alleged failure on the part of the authorities to protect persons from the acts of others is concerned, Article 13 requires that there should be available to victims a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention and, furthermore, that compensation for the non-pecuniary damage arising from the breach should in principle be part of the range of available remedies (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V, and *Poghosyan and Baghdasaryan*, cited above, § 46).

171. The Court has already found that the respondent State has failed to fulfil its positive obligation to protect the applicant from treatment contrary to Article 3 of the Convention (see paragraph 141 above). The applicant's complaint in this regard is therefore "arguable" for the purposes of Article 13 (see, *mutatis mutandis*, and under Article 2 of the Convention, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 98, ECHR 2002-II).

172. The Court observes that the Government did not point to any available legal mechanism whereby the applicant could have established any liability of the State (see paragraph 168 above).

173. The Court further observes that in the case of *Poghosyan and Baghdasaryan* (cited above) it found that the absence of a possibility at the time in question to claim compensation for non-pecuniary damage suffered as a result of ill-treatment was contrary to the requirements of Article 13 of the Convention (ibid., §§ 47-48).

174. The Court already found that, having regard to the state of domestic law at the time when the applicant brought the proceedings at issue, it had not been clear from the outset that the compensation claim against the State would be ineffective in her case (see paragraph 98 above). However, the domestic courts, which were called to examine the applicant's civil claim against the State seeking compensation for non-pecuniary damage after the adoption by the Court of its judgment in the case of *Poghosyan and Baghdasaryan* (cited above) and the Constitutional Court's decision of 5 November 2013 (see paragraph 75 above), still refused to admit that claim for examination on the grounds that that type of compensation was not provided for by the domestic law (see paragraphs 48 and 51 above; see also paragraphs 72-74 above for a summary of the relevant domestic-law provisions).

175. Against this background, the Court considers that the legal situation at the time of the events at issue was similar to one examined in *Poghosyan*

and Baghdasaryan and accordingly does not see any reasons to depart in the present case from its finding in that judgment.

176. There has accordingly been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

177. 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

178. The applicant claimed in total 120,200 euros (EUR) in respect of non-pecuniary damage.

179. The Government contested her claim.

180. Making its assessment on an equitable basis, and in view of the specific circumstances of the case, the Court awards the applicant EUR 32,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

181. The applicant was granted legal aid by the Court (see paragraph 2 above), and she did not seek to be reimbursed for any additional costs or expenses. Consequently, the Court is not called upon to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

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

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *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 32,000 (thirty-two 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;

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

Done in English, and notified in writing on 18 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President