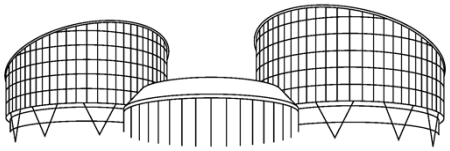

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF Z v. ICELAND

(Application no. 3538/21)

JUDGMENT

Art 8 • Positive obligations • Private life • Prosecuting authorities' failure to apply a consent-centred standard to the admitted touching of a minor reflecting an unduly narrow interpretation of the domestic statutory requirement of intent • Investigation did not secure the protection of the applicant's physical and psychological integrity
Art 14 (+ Art 8) • Discrimination • Alleged gender-based discrimination in handling of sexual violence cases • Various legislative and policy measures adopted to combat sexual violence • Insufficient prima facie evidence of structural bias or disproportionate effect capable of shifting the burden of proof to the State

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 January 2026

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 Z v. Iceland,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Hugh Mercer*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 3538/21) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Icelandic national, Ms Z ("the applicant"), on 11 January 2021;

the decision to give notice to the Icelandic Government ("the Government") of the complaints concerning the alleged failure to carry out an effective investigation into sexual violence and allegations of gender-based discrimination, and to declare inadmissible the remainder of the application;

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

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

the comments submitted by the AIRE Centre which was granted leave to intervene by the President of the Section;

Having deliberated in private on 9 December 2025,

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

INTRODUCTION

1. The case concerns the alleged failure of the Icelandic authorities to conduct an effective investigation into the applicant's complaint of sexual harassment, as well as allegations of gender-based discrimination in the handling of such cases. The applicant complained under Articles 2, 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 2002. She was represented by Sigrún Ingibjörg Gísladóttir, a lawyer practising in Reykjavík.

3. The Government were represented by Guðrún Sesselja Arnardóttir, Agent.

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

I. ALLEGED SEXUAL HARASSMENT

5. On 19 June 2019 the applicant, aged 16 years, reported to the police that she had been sexually assaulted by a 23-year-old man, O., four days earlier.

6. According to her statement, on 14 June 2019 the applicant attended a festival. She was there with friends and had not met O. before the incident. In the early hours of 15 June, she withdrew to her co-worker's tent. At 6:20 a.m., she had sent a video to her friend showing that she was unwell. The footage also captured the back of O.'s head. The applicant alleged that at the time of recording, O. was groping her without her consent, though this was not visible in the video.

7. The applicant stated that she then passed out due to intoxication before waking up at approximately 8:00 a.m. with her underwear on but her trousers pulled down and her jumper lifted up to her breasts. Upon regaining consciousness, she recalled hearing a belt being loosened. O. was beside her with his jumper removed and his belt undone.

8. According to the applicant, O. was touching her breasts and genitals, both over and under her clothing. She claimed that, after fully waking, she attempted to push him away approximately three times. She stated that she told O. to stop, but he did not do so until she managed to leave the tent.

II. POLICE INVESTIGATION

9. On 15 June 2019 the applicant went to the nearby Emergency Reception Unit for Victims of Sexual Abuse ("the Emergency Reception Unit"). She declined an offer to undergo gynaecological examination but stated that she wished to be tested for sexually transmitted diseases. The Child Protection Services were notified, as the applicant was a minor.

10. The applicant gave a statement to the police upon returning home on 19 June 2019. She was interviewed by the police in the presence of a child protection worker with a legal rights protector participating by telephone. She provided the police with a copy of the video she had sent to her friend on the night of the incident.

11. O. was interviewed on 15 July 2019. He denied guilt but acknowledged that what he had done was "a little wrong", as he had acted before "asking her". He stated that he met the applicant while setting up the tent he shared with friends, and that they socialised with others that evening. He claimed that when he went into the tent to sleep, he found the applicant there, "kind of half-asleep, sleeping or something". According to him, she was cold, and they began cuddling to keep warm. He stated that she was lying on her back while he lay next to her with his arm over her. He admitted to placing his hand under her jumper and touching her breast, but claimed that the bra was between them, and that he stopped immediately when he noticed

that she was uncomfortable and "shivering". He stated that he asked if it was okay, and when she shook her head, he stopped and apologised. He maintained that this contact lasted only about five seconds. He stated that the applicant left the tent sometime after that incident. He denied touching her genitals or removing her clothing. He stated that they did not speak inside the tent and confirmed that she neither touched nor kissed him in return. When asked about his intention in touching her breast, he stated that he would not describe it as sexual, explaining that he thought it was a comfortable position. He denied any intention to have sexual relations with her, stating that he was aware that she was a minor born in 2002. When shown the video recording submitted by the applicant, he recognised himself but stated that the footage looked "very wrong", and explained that he had been trying to squeeze her.

12. The case was primarily investigated under Article 199 of the General Penal Code ("the GPC") concerning sexual harassment. Between June and August 2019, the investigators collected ten witness statements. None were direct witnesses to the incident. Multiple witnesses confirmed that the applicant had described waking up to find a man groping her while her trousers were pulled down and her jumper was lifted up. Witnesses who saw the applicant shortly after the incident described her as being in shock, traumatised and crying. One witness additionally described an incident that occurred several months later, when the applicant saw O. at another festival. This led to a panic attack, resulting in the need for an ambulance. Three witnesses reported having received messages from the applicant on the night in question via Snapchat, a messaging application in which messages are automatically deleted after viewing. According to their statements, the applicant had told them of sexual advances by a man who would not let her out of the tent and had sent photos of herself crying and of a man's head on her chest. Due to the nature of the Snapchat application, these messages were not preserved as evidence. The police, however, obtained a screenshot of a message exchange between two of these witnesses, expressing concern that something was happening to the applicant as she had stated that she was being held against her will and sent a picture of herself crying.

13. The hospital report from the Emergency Reception Unit noted that the applicant had previously been receiving psychological support at the Children's House (*Barnahús*) in relation to an earlier incident or incidents of sexual violence.

III. DECISIONS BY THE DOMESTIC AUTHORITIES

14. On 30 March 2020 the District Prosecutor discontinued the case, concluding that securing a conviction was unlikely. The reasoning referred to the applicant's limited recollection of events, which weakened the evidentiary position. The prosecutor noted that most of the witnesses were friends of the applicant and that their testimonies largely confirmed her statement that she

had awoken with her trousers lowered and her jumper raised, but added little further detail. The prosecutor also noted that the Snapchat messages allegedly indicating that O. had prevented the applicant from leaving the tent and had expressed a desire to have sexual relations with her had not been preserved. With regard to the video evidence, the prosecutor indicated that its purpose was unclear and that it did not demonstrate, as the applicant claimed, that O. had been groping her. Concerning the medical report from the applicant's visit to the Emergency Reception Unit, the prosecutor noted that it contained no information about the alleged violations. The prosecutor observed that there was little evidence supporting the allegation that O. had violated the applicant, and that for Article 199 of the GPC to apply, it would be necessary to establish an intention to sexually harass. In the present case, the benefit of the doubt was given to O., who admitted to touching the applicant's breast under her clothing, but stated that he stopped immediately upon realising that she did not consent.

15. On 7 May 2020 the applicant appealed to the State Prosecutor. She argued that O.'s admission to touching her while she was asleep was sufficient to justify an indictment for sexual harassment or violation of her sense of decency. She also sent a copy of a police record confirming that she had needed assistance in July 2019 after encountering O. at a town festival.

16. On 7 August 2020 the State Prosecutor upheld the decision of the District Prosecutor. While the State Prosecutor accepted that the witnesses corroborated parts of the applicant's testimony, it was noted that the alleged messages were unavailable. In light of O.'s denial, the evidence was not considered sufficient to make conviction likely. With respect specifically to the admitted touching of the applicant's breasts, the State Prosecutor concluded that, in view of O.'s account that he had stopped immediately upon realising that the applicant did not consent, there remained uncertainty as to his intent within the meaning of Article 199 of the GPC.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK

A. Constitution of the Republic of Iceland

17. Article 65 provides that everyone shall be equal before the law and enjoy human rights irrespective of, *inter alia*, sex. The second paragraph states that men and women shall enjoy equal rights in all respects.

B. General Penal Code No. 19/1940 (*Almenn hegningarlög*)

1. Statutory definitions

18. Article 194, which defines rape, was amended by Act No. 61/2007 and again by Act No. 16/2018. Following the 2007 amendment the first paragraph defined rape as "sexual intercourse or other sexual relations" obtained by violence, threats or other unlawful coercion, and the second paragraph stated that it also constituted rape to exploit a person's psychiatric disorder or other mental disability, or their inability, for any other reason, to resist the act or understand its significance. Since 13 April 2018, the first paragraph defines rape as "sexual intercourse or other sexual relations" without the victim's consent and provides that consent is considered to have been given if it is freely expressed. It further states that consent is not considered to have been given if violence, threats or other forms of unlawful coercion are employed. The second paragraph provides that it shall also be considered rape to use deception or exploit a person's misconception, psychiatric disorder or other mental disability, or their inability, for any other reason, to resist the act or understand its significance.

19. Article 199, as amended by Act No. 61/2007, penalises sexual harassment and reads as follows:

> "Anyone convicted of sexual harassment shall be subject to imprisonment for up to 2 years. Sexual harassment includes, among other things, stroking, pawing or groping another person's genitals or breasts inside or outside of their clothing, as well as symbolic behaviour or speech that are very hurtful, repeated or likely to cause fear".

20. Article 209 on offences against decency provides:

> "Any person who, through lewd conduct, offends people's sense of decency or causes a public scandal, shall be imprisoned for up to 4 years, or up to 6 months or fined if the offence is minor."

2. Explanatory reports

21. The Explanatory report to Act No. 61/2007 stated that the focus of sexual offences should shift from the method of commission to consent:

> "Offences under Articles 194-199, that is rape and other violations of sexual freedom, have this in common that they involve intercourse or other sexual relations against the will of the victim. What distinguishes these offences, however, is that different methods are used to achieve sexual relations, and the legislator treats them differently depending on the method employed ... However, it is debatable whether it is appropriate to make such a significant distinction between the offences according to the method used, because this creates the risk that the essential element of the offences, namely the violation of sexual freedom, will be overshadowed. The central issue in a sexual offence is the infringement of peoples' right to self-determination regarding sex, their freedom and inviolability, which is the most serious element for victims of such violations. In line with that approach, it is proposed in this bill that the current emphasis on methods of commission be reduced and that primary emphasis be placed on the fact that the

offences involve sexual relations without the victim's consent, thereby violating the right to sexual self-determination and freedom of action."

22. The Explanatory report to Act No. 16/2018 further emphasised the requirement of explicit consent in the context of Article 194:

"As regards the concept of consent in Article 1 of the bill, it is clear that consent to participation in intercourse or other sexual relations must be expressed in words or by other unambiguous means. This means that consent must be indicated, or that active participation in a particular act can be interpreted as consent by the other participant or participants. A participant will not be required to protest or show resistance to participation in a sexual act. Furthermore, complete inactivity cannot be interpreted as willingness to participate.

...

Here, it should be mentioned that [under] the second paragraph of Article 194 ... consent has no meaning since the victim is either in such a condition or in such a situation that he or she is incapable of resisting the act or understanding its significance."

23. The Explanatory report to Act No. 61/2007 clarified that Article 199 would replace the previously applicable Article 198(2) and would extend to cases of sexual harassment "against those who have not consented to such conduct". It further provided the following clarification regarding the scope of sexual harassment and offences against decency under Article 209:

"Sexual harassment is ... conduct of a sexual nature which does not amount to intercourse or other sexual relations. It consists of any form of contact with another person's body that is contrary to good manners and forms of communication. The upper limit of harassment must be identified, that is, the boundary with what is termed 'other sexual relations'. It constitutes sexual harassment to stroke, paw or grope the victim's genitals or breasts, whether inside or outside clothing ... However, such pawing or groping may reach a level of intensity or duration that renders it 'other sexual relations'. If a finger is inserted into the vagina, the behaviour has reached another level, namely 'other sexual relations'. Where pawing or groping takes place beneath clothing, it is not necessary that the genitals or breasts be touched for the conduct to amount to sexual harassment. Pawing or groping other parts of the body may constitute sexual harassment. It is further necessary to identify the lower limit of sexual harassment, namely its boundary with offences against decency. In cases involving physical contact, the conduct would be deemed sexual harassment. In light of research on sexual harassment in various contexts and its onerous effects on victims, this Bill proposes that the lower limit of the concept of sexual harassment be expanded. The concept will therefore not be confined to physical contact but may also include speech and symbolic gestures that are highly injurious, repeated or likely to cause fear. This would encompass persistent harassment approaching bullying ... Vulgar language and one-sided actions without physical contact would otherwise usually fall under Article 209 as offences against decency. This applies when there is no repeated behaviour directed at the same person."

II. COUNCIL OF EUROPE CONVENTIONS

24. For the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention"),

which entered into force for Iceland on 1 January 2013, and the related Explanatory Report, the Court refers to the Convention text available on the website of the Council of Europe Treaty Office and the specific provisions cited in *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 127-29, 2 February 2021.

25. The Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention"), which entered into force for Iceland on 1 August 2018, has, *inter alia*, the objective of "protect[ing] women against all forms of violence ... and prevent[ing], prosecut[ing] and eliminat[ing] violence against women" (Article 1 § 1 (a)). Article 36 § 1 requires Parties to criminalise the intentional conduct of (a) "engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object", and (b) "engaging in other non-consensual acts of a sexual nature with a person". Article 36 § 2 provides that consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances. Article 40 requires that any form of unwanted physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person be subject to criminal or other legal sanction.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

26. The applicant complained that the domestic authorities had failed to provide effective protection of her sexual autonomy. In her application form she relied on Articles 2 and 8 of the Convention, while the Court put questions to the parties under Articles 3 and 8.

27. The Court reiterates that, in cases concerning violence inflicted by private parties, all three provisions impose an obligation on the State to safeguard an individual's physical and psychological integrity. In that sense, they form a continuum that engages the State's duty to provide protection once it has been established that attacks on an individual's integrity were sufficiently serious to require a response (see *Hanovs v. Latvia*, no. 40861/22, § 45, 18 July 2024, with further references). Having regard to the nature and substance of the applicant's allegations, the Court considers it appropriate to examine the circumstances of the present case solely under Article 8 (see *A. v. Croatia*, no. 55164/08, § 57, 14 October 2010, and *M.A. v. Iceland*, no. 59813/19, § 62, 26 August 2025), which reads, in the relevant part, as follows:

> "Everyone has the right to respect for [their] private ... life ..."

A. Admissibility

28. The Government acknowledged that the applicant had exhausted effective remedies in the criminal proceedings by appealing to the State Prosecutor. They submitted, however, that her complaint was manifestly ill-founded.

29. The Court notes the Government's acknowledgment regarding the exhaustion of domestic remedies. It considers that the objection of the complaint being manifestly ill-founded raises issues that call for the examination on the merits rather than an admissibility assessment (see *Mehmet Çiftci v. Turkey*, no. 53208/19, § 26, 16 November 2021, and the authorities cited therein).

30. The Court therefore considers that this complaint is neither manifestly ill-founded nor inadmissible on any other ground listed in Article 35 of the Convention and must be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

31. The applicant acknowledged that the police had carried out a thorough investigation into her case but submitted that the domestic legal framework, and its application at the prosecutorial stage, had not afforded her sufficient protection against sexual abuse. She claimed that her case had only been assessed as sexual harassment under Article 199 of the General Penal Code ("the GPC") with no consideration given to whether Article 194 on rape or, alternatively, Article 209 on offences against decency might apply. In her view, the evaluation of facts under Article 199 was excessively centred on O.'s denial of intent, whereas the decisive element should have been his admission that he had touched her breasts while she was asleep or half-asleep, without her consent or participation. The applicant maintained that the witnesses had confirmed her description of the events and her state of shock after the incident, and that the case-file also included video footage and real-time communications between her friends, who had been worried about her after receiving her Snapchat communications. She submitted that the prosecutors had disregarded the fact that her account aligned with that of the perpetrator concerning the initiation of a sexual act without her prior consent.

32. The applicant maintained that, when the facts were examined in light of her age and the legislative emphasis on consent, it was impossible to presume consent where a 23-year-old man entered a tent in which a 16-year-old minor was sleeping or half-asleep and continued physical contact until she was visibly trembling and shaking her head. She argued that the prosecuting authorities' reliance on O.'s assertion that the contact had lasted only a few seconds and that he had stopped as soon as she had indicated lack

of consent ignored that the harassment began with his initial physical approach and that this interpretation imposed an impossible burden of proof on her as a victim of sexual violence.

(b) The Government

33. The Government submitted that Iceland had established an adequate legislative framework affording comprehensive protection to victims of sexual abuse, reinforced by successive reforms which placed increasing emphasis on sexual autonomy and consent. They underlined that "sexual intercourse or other sexual relations" with an intoxicated person, carried out without consent, could fall under Article 194 of the GPC. Taking advantage of a dominant position over an intoxicated victim could be considered unlawful coercion under the first paragraph of that Article. Where the person was sleeping or unconscious, this constituted a situation in which the victim was unable to resist the act within the meaning of the second paragraph, and consent could not possibly be given. The Government referred to case-law of the Supreme Court and the Court of Appeal in which perpetrators had been convicted in such circumstances. Article 199 of the GPC criminalised sexual harassment not reaching the stage of "intercourse or other sexual relations" and applied to cases involving victims of 15 years and older, thus reflecting the minimum age for sexual consent under the GPC. The applicant's case had been correctly assessed under Article 199, since her description did not refer to "sexual intercourse or other sexual relations" within the meaning of Article 194. Furthermore, Article 209 of the GPC covered lewd speech and one-sided actions without physical contact.

34. The Government contended that in the present case, the domestic authorities had conducted a comprehensive assessment. The prosecution authorities had correctly focused on O.'s intent, since under Article 199 of the GPC and the general principles of criminal law, his subjective attitude had to be proved beyond reasonable doubt. Given O.'s denial of sexual intent and the absence of supporting evidence, there remained reasonable doubt as to his intention to harass the applicant sexually, which had to be resolved in his favour. They emphasised that the investigation was thorough, that all main witnesses had been questioned, and that the decision to discontinue the case was taken solely because of the difficult evidentiary position rather than any lack of diligence or interest.

35. The Government characterised the applicant's description of events as one-sided and incomplete, arguing that she had omitted important aspects of O.'s testimony. They maintained that, according to his statement, she had been cold and they had begun "cuddling together" to keep warm, which could only be interpreted as indicating that she was awake and participating. The Government disputed the applicant's suggestion that O. admitted seeing she was afraid, clarifying that he had only said she appeared uncomfortable and that he initially thought she was simply cold. As regards the video, they

maintained that no conclusions could be drawn about the applicant's condition from the recording and that it did not demonstrate what she alleged.

(c) Third-party intervener

36. The AIRE Centre submitted that States must provide effective criminal-law provisions against rape and sexual violence and ensure investigations that are independent, impartial, prompt and thorough. The decisive element should be the absence of consent rather than proof of resistance.

2. The Court's assessment

(a) General principles

37. The Court reiterates that the concept of private life under Article 8 of the Convention includes both physical and psychological integrity (see *A and B v. Croatia*, no. 7144/15, § 106, 20 June 2019). The State authorities have a positive obligation to provide protection against interferences with the person's integrity by private parties (see *C. v. Romania*, no. 47358/20, §§ 62-63, 30 August 2022, and *Remetin v. Croatia (no. 2)*, no. 7446/12, § 70, 24 July 2014). The duty to provide protection entails positive obligations for States, firstly, to criminalise all non-consensual sexual acts (see *M.C. v. Bulgaria*, no. 39272/98, §§ 150-53, ECHR 2003-XII, and *J.L. v. Italy*, no. 5671/16, § 117, 27 May 2021), and, secondly, to enforce these legal provisions through prompt and thorough investigation and prosecution (see *Z v. Bulgaria*, no. 39257/17, § 67, 28 May 2020; *L. and Others v. France*, nos. 46949/21 and 2 others, § 193, 24 April 2025).

38. The substantive obligation includes a duty to establish a legal and institutional framework affording adequate protection against all non-consensual sexual acts. While States retain a margin of appreciation as to how to define and address such offences, the Court has affirmed that contemporary standards recognise the absence of consent as the central element of the offence, rather than the use of physical force. Any legal or prosecutorial approach that requires proof of physical resistance risks failing to protect sexual autonomy and enabling impunity. Accordingly, domestic law must ensure that all non-consensual sexual acts are criminalised and effectively prosecuted, including where the victim did not resist physically (see *M.C. v. Bulgaria*, cited above, §§ 150, 154 and 157-66; *E.G. v. the Republic of Moldova*, no. 37882/13, § 39, 13 April 2021, and *Z v. Czech Republic*, no. 37782/21, § 52, 20 June 2024).

39. The procedural obligation involves the duty of the domestic authorities to conduct an effective investigation into credible allegations of sexual assault. In order to be effective, the investigation must be capable of leading to the identification and punishment of those responsible and must be thorough, impartial and timely. The authorities must also ensure that the

proceedings are conducted in a manner that protects victims from secondary victimisation by taking appropriate measures to mitigate distress and avoiding reliance on gender stereotypes or moralising commentary (see *J.L. v. Italy*, cited above, §§ 137-41; *X v. Greece*, no. 38588/21, § 86, 13 February 2024; *X v. Cyprus*, no. 40733/22, §§ 121-23, 27 February 2025; and *L. and Others*, cited above, § 200). While direct evidence of lack of consent may not always be available, the focus of the investigation must remain on whether valid consent was given (see *M.C. v. Bulgaria*, cited above, § 181, and *M.G.C. v. Romania*, no. 61495/11, § 72, 15 March 2016).

40. Lastly, the Court reiterates that where children may have been victims of sexual abuse, the positive obligations under Article 8 require the effective implementation of children's right to have their best interest treated as a primary consideration and that their particular vulnerability and needs are adequately addressed (see *L. and Others*, cited above, § 201; *X and Others v. Bulgaria* [GC], no. 22457/16, § 192, 2 February 2021, and the case-law cited therein).

(b) Application to the present case

41. The Court observes that Icelandic law criminalises the full spectre of non-consensual sexual activities ranging in gravity from rape under Article 194 to sexual harassment under Article 199 of the GPC. Article 194 concerns "sexual intercourse or other sexual relations", while Article 199 covers conduct of a sexual nature falling short of intercourse or other sexual relations, including stroking, pawing or groping another person's genitals or breasts inside or outside clothing. The explanatory materials clarify that the upper boundary of Article 199 is reached where the intensity or duration of the touching escalates, for instance through finger penetration, which then falls under Article 194. The framework therefore penalises touching of a sexual nature which, depending on its intensity or duration, may remain within Article 199 or amount to "other sexual relations" punishable as rape under Article 194. The lower limits of sexual harassment are likewise delineated by reference to offences against decency under Article 209 which covers lewd speech or other one-sided conduct without physical contact.

42. The amendments of 2007 and 2018 to the definition of sexual offences in Icelandic criminal law reflected a legislative shift towards recognising sexual autonomy and consent as the central elements. The explanatory materials emphasised that consent had to be expressed in words or by other unambiguous means and that complete inactivity could not be interpreted as willingness to participate (see paragraphs 21-22 above). In principle, this framework was capable of affording protection to the applicant's sexual autonomy.

43. The structure of sexual-offences provisions has however remained different. Article 194 distinguishes between rape by lack of consent through violence, threats or coercion in its first paragraph, and rape through deception

or exploitation, including cases where the victim is unconscious, asleep or otherwise "unable to resist the act or understand its significance" in its second paragraph. While lack of consent is only expressly mentioned in the first paragraph, the Explanatory report clarifies that the second paragraph covers situations where the victim lacks the capacity to give consent (see paragraphs 19 and 22 above). By contrast, Article 199, although consent-centred, does not explicitly mention the requirement of consent or identify situations where the victim is considered incapable of consenting (see paragraphs 19 and 23 above).

44. It appears that, in the present case, this legislative distinction led to an unduly narrow prosecutorial approach. While the characterisation of the applicant's allegations under Article 199 appears adequate in the circumstances of the case, the authorities concluded that there was reasonable doubt as to whether O. possessed the requisite intent to harass. In doing so, they failed to carefully assess, in line with the domestic emphasis on consent and the Court's case-law on sexual autonomy, whether O. could in light of the circumstances have assumed that consent had been given.

45. The Court notes that O., an adult, admitted that he entered the tent where the applicant, a sixteen-year-old, was lying asleep or half-asleep, lay down beside her, engaged in "cuddling" and placed his hand under her jumper on her breasts, without any prior communication indicating consent. In this respect, he acknowledged that the applicant had not touched him in return and that no conversation had taken place (see paragraph 11 above). Notwithstanding these admissions, the domestic authorities accepted his assertion that the contact was not of a sexual nature and that he ceased once he perceived discomfort, and on that basis concluded that the subjective element of intent under Article 199 was not sufficiently established to sustain prosecution (see paragraphs 14 and 16 above).

46. The Court reiterates that the principal issue in the present case is whether the domestic authorities fulfilled their positive obligation to apply the legal framework in a manner capable of establishing the facts and, where appropriate, prosecuting the perpetrator. That assessment must be centred on consent. A rigorous application of this principle is necessary to guarantee effective protection against sexual violence. In the present case, the authorities focused their analysis on whether O. had formed the requisite mental state, without attaching due significance to the question whether, in view of the sequence of events he had admitted, he had any reason to assume that the applicant consented to his touching her breasts.

47. The Court considers that sexual touching initiated in circumstances such as those described by O. should be subject to the most rigorous scrutiny by the authorities in accordance with the emphasis placed on sexual autonomy and the requirement that consent be expressed unambiguously, which is reflected in the evolution of domestic law and also informs the State's positive obligations under Article 8. The crucial element was not

whether O. stopped upon perceiving discomfort, but that he had initiated sexual contact without any prior indication of consent from the applicant who, while having reached the minimum age for sexual consent, was still a minor. The failure to evaluate the admitted touching against the consent-based standard articulated in both the domestic and international legal framework (see paragraphs 24-25 and 38-39 above) meant that the investigation was not geared towards establishing whether there had been non-consensual sexual contact and thus did not secure in practice the protection of the applicant's physical and psychological integrity.

48. In view of the decisive deficiency identified above, namely the prosecuting authorities' failure to apply a consent-centred standard to the admitted touching, the Court, without expressing an opinion on O.'s guilt, concludes that there has been a violation of the procedural limb of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 8

49. The applicant complained under Article 14 of the Convention, read in conjunction with Article 8, that she had suffered discrimination as a woman in the enjoyment of her Convention rights. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex ..."

A. Admissibility

50. 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. Submissions by the parties

51. The applicant submitted that sexual violence disproportionately affected women and that systemic deficiencies in Icelandic law and practice revealed discriminatory treatment. Cases of sexual violence against women rarely reached the courts in Iceland and almost never resulted in convictions owing to systematic discrimination, with the burden of proof being almost impossible to satisfy. The interpretation of Article 199 of the GPC was "skewed" in favour of perpetrators, even where admissions had been made. Despite the reforms undertaken by the Government in recent years, the continuing lack of effective investigations leading to prosecution demonstrated, in her view, an insufficient commitment on the part of the authorities to take appropriate measures to address sexual violence against

women. The applicant further contended that violence against women was treated differently within the system from other forms of violence where the victims were male. She submitted that sexual violence was distinctive, as the evidentiary threshold was effectively impossible to meet and the authorities systematically minimised or disregarded evidence specific to such cases. Relying on statistical data from Stígamót indicating a disparity in prosecution rates between gender-based violence and other violent crimes, she submitted that these figures demonstrated a systematic and unacceptable problem whereby women who brought charges for gender-based violence were unlikely to see their cases prosecuted and were far less likely to obtain an indictment than victims of other forms of violence.

52. The Government submitted that Icelandic law and practice had long ensured equal protection against sexual and gender-based violence for all individuals, irrespective of sex, and that the provisions of the GPC were gender-neutral with identical burdens of proof. Iceland possessed an adequate legal and institutional framework supported by effective implementation, continuous review and prioritisation of sexual offence and domestic violence cases, reinforced by detailed prosecutorial instructions and gender-equality initiatives. Official data revealed no difference in indictment ratios between male and female victims, and prosecution rates reflected inherent evidentiary challenges rather than discrimination, given the nature of sexual offences compared with physical assaults. The Government pointed to significant institutional measures, including victims' rights to legal representation and access to State-funded support services, as well as senior female leadership and national policy reforms, as evidence of the absence of structural or institutional bias. They rejected the applicant's reliance on Stígamót statistics as unrepresentative and argued that the difficulties in securing convictions stemmed from evidentiary limitations common to such cases, not from gender-based discrimination.

53. The third-party intervener, the AIRE Centre, invited the Court to consider intersectional discrimination within its jurisprudence, with a view to promoting "a global and comprehensive understanding of various discrimination situations" and ensuring the effectiveness of Convention rights.

2. The Court's assessment

54. For the general principles concerning discrimination in the context of domestic and sexual violence, the Court refers to its recent judgment in *M.A. v. Iceland* (cited above, §§ 86-88).

55. Since the applicant did not allege individual discriminatory treatment, the Court must examine whether she has presented prima facie evidence of structural bias or disproportionate effect capable of shifting the burden of proof onto the Government.

56. For the reasons it previously elaborated upon (see *M.A. v. Iceland*, cited above, §§ 90-91), the Court considers that the fact that sexual violence in Iceland predominantly affects women does not, in itself, establish discriminatory policies or conduct by the authorities. The Court observes that Iceland ranks highly in international assessments of gender equality and has undertaken numerous reforms aimed at addressing sexual violence, including the legislative amendments introducing a consent-based framework (ibid., §§ 32 and 39). While such measures do not rule out the possibility of discrimination in practice, they reflect the authorities' commitment to strengthening protection against sexual violence rather than suggesting any discriminatory complacency.

57. As regards the prevailing attitudes within the police and prosecutorial authorities, the material before the Court does not suggest that police officers or prosecutors attempted to dissuade the applicant from pursuing her complaint, implied that she was at fault or displayed prejudicial attitudes towards female victims. Although the Court has found a procedural violation in the present case arising from the authorities' failure to apply a consent-centred standard to O.'s admitted conduct, this deficiency reflected an unduly narrow interpretation of the statutory requirement of intent under Article 199 of the GPC rather than gender-based stereotyping.

58. For the reasons set out in *M.A. v. Iceland* (cited above, §§ 94-98), the Court finds that the data which the applicant sought to rely upon to establish a disparity in prosecution rates must be interpreted with considerable caution. Lower prosecution rates may be explained by objective factors unrelated to discriminatory attitudes, as sexual violence cases present inherent evidentiary challenges that affect prosecution rates without necessarily reflecting discrimination. Moreover, the statistics do not establish that cases involving male victims are treated differently by the authorities. Unlike cases in which statistical disparities formed part of a broader pattern demonstrating systematic failings or stereotyped reasoning by the authorities, the material in the present case does not disclose institutional attitudes or a pattern of discriminatory decision-making and does not suffice to raise a presumption of discrimination.

59. Finally, the Court reiterates that the application of the same standard of proof to cases of sexual violence as to other violent crimes does not in itself amount to discrimination; that there is no indication that evidence specific to sexual-violence cases was systematically disregarded; and that the procedural shortcoming identified in the present case does not indicate gender bias or disproportionate effect but rather reflected an error in the legal analysis of the admitted conduct (compare *M.A. v. Iceland*, cited above, §§ 100-102). Taking also into account the various legislative and policy measures adopted by the authorities to combat sexual violence, prevent impunity and protect victims, the Court finds that the applicant has not sufficiently established a prima facie

case of structural bias or disproportionate effect, capable of shifting the burden of proof to the State (ibid., § 103).

60. There has accordingly been no violation of Article 14 of the Convention read in conjunction with Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

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

63. The Government submitted that the finding of a violation should in itself constitute sufficient just satisfaction for non-pecuniary damage sustained by the applicant. In any event, the amount claimed was excessive and was inconsistent with the Court's case-law in similar cases.

64. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

65. The applicant sought reimbursement of the costs and expenses paid on her behalf by Stígamót.

66. The Government submitted that it was for the Court to determine whether the applicant had actually incurred those expenses.

67. For the reasons set out in the case of *M.A. v. Iceland* (cited above, § 112), the Court finds that the applicant has not actually incurred those expenses and makes no 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 8 of the Convention under its procedural limb;

3. *Holds* that there has been no violation of Article 14 of the Convention, read in conjunction with Article 8;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 January 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President