



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

FIFTH SECTION

**CASE OF X AND OTHERS v. BULGARIA**

*(Application no. 22457/16)*

JUDGMENT

STRASBOURG

17 January 2019

**Referral to the Grand Chamber**

**24/06/2019**

*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 X and Others v. Bulgaria,**

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

Angelika Nußberger, *President*,

Yonko Grozev,

André Potocki,

Síofra O’Leary,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lātif Hūseynov, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 December 2018,

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

**PROCEDURE**

1. The case originated in an application (no. 22457/16) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Italian nationals (“the applicants”), on 16 April 2016. The President of the Section acceded to the applicants’ request not to have their identity disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicants, a couple and their three minor children, were represented by Mr F. Mauceri, a lawyer practising in Catania. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicants complained of the sexual abuse to which the three minor applicants had allegedly been subjected while living in an orphanage in Bulgaria, and of the lack of an effective investigation in that regard. On 5 September 2016 the Government were given notice of the complaints concerning the alleged abuse of the three minor applicants and the lack of an effective investigation in that regard. The application was declared inadmissible in respect of the complaints submitted by the parents on their own behalf, in accordance with Rule 54 § 3. Accordingly, the term “the applicants” in the present judgment will refer only to the three minor applicants.

4. The Italian Government, who were also given notice of the application under Article 36 § 1 of the Convention and Rule 44, in view of the applicants’ nationality, did not express a wish to intervene in the proceedings.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, a brother and two sisters, were born in Bulgaria and lived in a centre for children left without parental care, located in the village of Strahilovo (“the orphanage”). X (“the first applicant”) was born in 2000, Y (“the second applicant”) was born in 2002, and Z (“the third applicant”) was born in 2003. In June 2012, aged twelve, ten and nine respectively, they were adopted by an Italian couple and moved to Italy.

#### A. Reports made by the applicants’ adoptive parents

6. In October 2012, following an argument with her brother, the third applicant complained about his behaviour towards her, accusing him of abusing her sexually. Alerted by the complaint and by the behaviour of the third applicant, who had begun biting her mother, shutting herself in the bathroom and crying out, the adoptive parents had the children examined by two psychologists specialising in child abuse who worked in a relationship counselling centre.

7. The report drawn up by the psychologists does not contain a verbatim record of the applicants’ statements, but rather represents an account which also includes the psychologists’ comments. According to the report, the psychologists had conversations first with the parents and then with the children during October 2012. The conversations with the applicants, described as “therapy sessions”, were conducted using the methods recommended for children who had been victims of abuse, and were recorded. The first applicant was the first to speak to the psychologists. As the three children did not speak Italian very well at the time, the adoptive father accompanied the first applicant, at the latter’s request, and helped to explain what he was saying.

8. During this conversation the first applicant stated that one of the boys in the orphanage, D., used to enter the smallest children’s dormitory during the night and abuse some of them sexually while forcing the others to watch, and used to hit children. The first applicant did not name the children concerned, apart from D. and D.’s sister. He described the acts in question using few words, from which it transpired that D. had touched the intimate parts of some of the children and placed his penis in their mouths. The first applicant said that he had reported these events to the director of the orphanage, E., who had assured him that she would call the police if it happened again.

9. The second and third applicants spoke to the psychologists together. The part of the report concerning the second applicant stated as follows: “Y seems to have viewed it all as a game and did not attach negative

connotations to the events, saying ‘I saw M. and B. doing sex and I did it with [my brother]’. On the other hand, both sisters appear worried about [their brother], who was the victim of violence on several occasions, saying ‘X got hit more, I wasn’t hit so much’’. The report did not name the alleged perpetrator. Speaking to the psychologists, the third applicant mentioned another situation in which the children from the orphanage had allegedly been taken to a “discotheque” where they had danced and where some men had arrived and “played” with them. The third applicant stated that she was the only one who had put up a struggle, and said “I cried out loudly and hit him”.

10. During the conversation, the applicants were asked to point out the body parts in question on dolls given to them by the psychologists.

11. Other conversations were held with the children in November and December 2012. On 5 November 2012 the first applicant stated that, in the “discotheque”, some men had played sexual games with the children from the orphanage and had filmed them.

12. The children were monitored regularly. According to the psychologists’ report, the applicants subsequently refused to speak about the events in question and said that they were “sick of Bulgaria”.

13. On 16 November 2012 the children’s adoptive father sent an email to the Bulgarian State Agency for Child Protection (hereafter “the Agency”) stating that he wished to lodge a complaint concerning abuse in an orphanage. In a reply written in Bulgarian, the Agency stated that it needed further information in order to carry out a check, and in particular the name of the institution in question and the children’s Bulgarian names. The father wrote back saying that he could not understand the letter. There was no further correspondence.

14. On 22 November 2012 the applicants’ adoptive parents alerted the Italian association that had assisted them during the adoption process, and subsequently the Italian Commission for Intercountry Adoption. In their letter to the Commission they described the events referred to in the psychologists’ report, together with other information given to them by the applicants. They gave the forenames of seven men and four women, including a certain N., whom the applicants had allegedly identified as the perpetrators of the abuse. Some of the persons concerned were members of the orphanage’s staff while others were from outside. The applicants’ adoptive parents alleged that groups of children from the orphanage had been taken “on holiday” to a village where they visited a place they called a “discotheque” on a daily basis, and where they were touched and assaulted by men from outside the orphanage. The first applicant had allegedly been forced to watch his sisters being raped. It was alleged that the children, left unsupervised during the night at the orphanage, had subsequently repeated with the younger children the behaviour of which they had themselves been victims.

15. On 21 December 2012 the applicants' adoptive parents lodged a criminal complaint with the Italian police.

16. The adoptive parents also contacted an investigative journalist. At the beginning of January 2013 the weekly news magazine *L'Espresso* published an article entitled "Bulgaria, in the paedophiles' den" which reported on the allegations made by the applicants' parents but without naming them. The article stated that dozens of children from the orphanage in which the applicants had been placed in Bulgaria had been subjected to systematic sexual abuse by staff members and outsiders, in particular at a discotheque in a holiday village. The article described an organised network, with acts of paedophilia and violence, including threatening with weapons, being carried out by masked men, and stated that some scenes had been videoed. It stated that the youngest children had been the victims of one of the older children, who had entered their dormitory, and that the first applicant had reported the incidents to the director of the orphanage, who had done nothing. The author of the article said that he had travelled to Bulgaria in December 2012 and had visited the places described by the applicants, which, he said, matched their descriptions. He had made informal contact with a police officer and had passed on the information given to him by the applicants' parents. However, the police officer had later told him that his supervisors had forbidden him to take up the case.

17. On 15 January 2013 the Italian public prosecutor dealing with the case forwarded the information in his possession to the Bulgarian embassy in Rome, taking the view that it was for the Bulgarian authorities to investigate the allegations.

18. On 22 February 2013 the journalist from *L'Espresso* gave a statement to the Italian prosecutor.

### **B. The first investigative measures in Bulgaria**

19. Having learnt about the article published in the Italian press, in particular via reports broadcast on Bulgarian radio, the Agency ordered an inspection of the orphanage on 14 and 15 January 2013. The Ruse Regional Child Rights Monitoring Department was tasked with carrying out the inspection. The inspectors interviewed the mayor of Strahilovo municipality, the director of the orphanage, the general practitioner, the welfare assistant, the psychologist, the nurse and the other staff members who were on duty at the time of the inspection. The inspectors also spoke to the thirteen children who were present, aged between eight and thirteen. The staff and the children were asked to complete an anonymous questionnaire concerning possible violent incidents, the quality of life in the orphanage and the relationship between children and staff.

20. According to the report drawn up by the inspectors on 21 January 2013, the children in the orphanage were never left unsupervised, access by

outside visitors was subject to checks and there were CCTV cameras around the outside of the premises, the footage from which was viewed on a regular basis. The report stated that the children were divided into different dormitories by age and, in the case of the older children, by gender, and that the layout of the dormitories was such that the children could not move from one dormitory to another without being seen by the staff members on duty. The children's replies to the questionnaire made no mention of violence or sexual abuse, but merely referred to arguments and to sometimes being hit by other children, who had apparently been reprimanded by staff as a result. According to the psychologist who had monitored the applicants while they were living in the orphanage, they had never mentioned ill-treatment or sexual abuse and had shown no signs of it.

21. The Agency sent a team of psychologists to the orphanage from 18 to 24 January 2013. The team likewise found no cause for alarm.

22. On the basis of this report, the Agency concluded that there was no evidence that the children in the orphanage had been subjected to the treatment reported in *L'Espresso*. In view of the seriousness of the allegations, however, the Agency forwarded the file to the Veliko Tarnovo district and regional prosecutors' offices.

23. On 28 January 2013 the Veliko Tarnovo district prosecutor's office opened a preliminary investigation (*преписка*) into the reports of abuse. Taking the view that there was no evidence in these reports that a criminal offence had been committed, the prosecutor's office asked the Agency whether it had any other evidence. The Agency confirmed that the inspection carried out did not suggest that any abuse had been committed.

24. In an order of 18 November 2013 the prosecutor's office found that there were no grounds for criminal prosecution and discontinued the case.

### **C. The second investigation in Bulgaria**

25. While the first set of proceedings was pending, a second investigation was opened on 18 February 2013 by the regional prosecutor's office following a further report from the director of the Agency, which had received a report on 8 January 2013 from the Italian Association *SOS Telefono Azzuro*. The association's report gave the names and descriptions of persons allegedly implicated in abusing children from the orphanage, and was accompanied by the reports of the Italian psychologists who had spoken to the applicants. The file was transmitted to the Veliko Tarnovo district prosecutor's office, which opened a preliminary investigation on 22 February 2013. A team of investigators from the police and the local and regional healthcare, social welfare and child protection departments visited the orphanage on 25 and 26 February 2013.

26. The investigators consulted the documents available in the orphanage, including the children's medical files, and spoke to members of

staff (the director, the psychologist, two supervisors, a childcare assistant, and the driver, caretaker and heating technician), to a photographer and an electrician who occasionally worked in the institution, and to four children aged between eleven and thirteen. On 6 March 2013 a police report was drawn up describing the running of the institution and the activities and care provided to the 53 children who were living there at the time. The report stated that, in the course of the regular medical check-ups carried out by the general practitioner from outside the orphanage, no signs of physical or sexual assault had been observed on the children. It mentioned that a complaints box was available to the children, as well as a telephone which gave the number of the national helpline for children in danger, and that no incidents corresponding to the applicants' allegations had been reported by those means.

27. The report noted that only three staff members were men – the driver, the caretaker and the heating technician – and that they were not allowed to enter the dormitories unless accompanied by the director of the orphanage or by a female member of staff.

28. The report further noted that the orphanage underwent regular inspections by the local child protection department and that a police officer visited every week. It stated that security measures were in place, particularly regarding entry by outside visitors, and that no incidents of sexual abuse of children had been reported, either during the interviews with staff members in the course of the investigation or in the years preceding the investigation.

29. The report also referred to investigations conducted by the public prosecutor's office or the police into incidents occurring at the orphanage since 2002, and in particular one case of ill-treatment by an employee who had subsequently been dismissed, and one case in which some children had accidentally swallowed medication. It noted that no reports of sexual abuse had been recorded.

30. According to a second police report, dated 5 June 2013, the police also questioned the director of the orphanage, the psychologist, the welfare assistant, the photographer, and the electrician who had worked in the orphanage and the initial of whose forename was N. (see paragraph 14 above). B., one of the children from the orphanage, who had been mentioned in the documents transmitted by the Italian authorities, was also questioned with the assistance of the orphanage's psychologist. The report found that the applicants' allegations were not corroborated by the evidence gathered and, in particular, that – contrary to the applicants' assertions – the director of the orphanage was not called E., no incidents of sexual abuse had been reported to her by the applicants, and the children had not been taken to a "discotheque". The only occasion on which the children had had an opportunity to dance had been at a party during the annual class excursion organised by an association. The children had been accompanied by the

supervisors from the orphanage and the only other person present had been a disc jockey who had been invited for the evening. According to the report, the psychologist had stated that the third applicant had not displayed the symptoms referred to (crying out while she was in the bath) during her time at the orphanage, and that the first and second applicants had a tendency to manipulate other people, including adults. The witness statements indicated that D. and his sister (see paragraph 8 above) had been adopted by Italian parents in the late summer of 2011, when D. was 12 years old.

31. The Agency report on the visits to the orphanage observed that the institution largely complied with the relevant regulations and that there were no grounds to suspect sexual abuse. The report made several recommendations including improvements to the programme of activities offered to the children.

32. On conclusion of the preliminary investigation the district prosecutor's office, in an order of 28 June 2013, decided not to institute criminal proceedings and discontinued the case. According to the order, the allegations made by the applicants' parents had not been confirmed, the male staff members and the electrician N. (who had worked only occasionally in the orphanage) had not had access to the children without a female supervisor being present, and the children had not come into contact with any men on outside excursions without the female staff being present. The public prosecutor concluded that the evidence gathered in the case did not lead to the conclusion that a criminal offence had been committed.

#### **D. Follow-up to the case in Italy**

33. On 8 April 2013 the first and second applicants gave evidence to the public prosecutor at the Youth Court, with a psychologist present. However, the record of that interview was not produced before the Court. On 24 June 2013 the public prosecutor transmitted the file to the Youth Court.

34. The Youth Court appointed an expert specialising in paediatric neuropsychiatry to assess the credibility of the applicants' testimony. According to the assessment made by the expert on the basis of the written reports and the recordings of the interviews with the applicants, their allegations appeared sufficiently credible.

35. On 29 June 2013 the public prosecutor at the Youth Court proposed that the court should order a review of the applicants' psychological counselling and rule that it was unnecessary to question the applicants again as requested by the Bulgarian authorities.

36. By a decision of 13 May 2014 the Youth Court held that there were no grounds for ordering a protective measure in respect of the applicants or for reviewing their psychological counselling, and found that the ability of the adoptive parents to take care of and raise the children was not in question. However, the court noted that the conduct of the adoptive parents

had been inappropriate in so far as they should have applied to the Youth Court or another competent authority immediately rather than having recourse to a journalist. It held that it was not in the children's interests to subject them to further questioning by the courts.

#### **E. The third investigation in Bulgaria**

37. On 22 January 2014 the Italian Ministry of Justice sent an official letter to the Bulgarian authorities, forwarding the information gathered by the Italian public prosecutor's office and asking them to open an investigation into the allegations. On 14 March 2014 the public prosecutor's office at the Supreme Court of Cassation sent a translation of the Italian documents to the Veliko Tarnovo regional prosecutor's office, which in turn forwarded them to the Veliko Tarnovo district prosecutor's office. On 4 April 2014 the district prosecutor's office opened a preliminary investigation. On 15 April 2015 the prosecutor noted that three sets of proceedings had been opened concerning the same facts, and forwarded the files to the regional prosecutor's office, proposing that the proceedings be joined and that the orders made be set aside.

38. In an order of 5 June 2014 the Veliko Tarnovo regional prosecutor's office ordered the joinder of the three set of proceedings and set aside the order of 28 June 2013 on the grounds that it had been made while the first set of proceedings had been pending. The discontinuance order of 18 November 2013 thus remained in force.

39. In December 2014 and January 2015 a representative of the Italian embassy in Sofia made an official enquiry regarding the progress of the investigation. On 23 January 2015 the Bulgarian authorities informed the Italian embassy in Sofia that the criminal investigation had been closed by means of the order of 18 November 2013. A copy of the order was sent to the embassy on 28 January 2015.

40. On 19 January 2015 the Italian Ministry of Justice requested its Bulgarian counterpart to inform it of the outcome of the criminal proceedings. It received the information in a letter of 11 March 2015.

41. On 11 December 2015 the applicants' adoptive father wrote to the Italian Ministry of Justice requesting access to all the information in the file. On 1 February 2016, in response to that request, the Italian authorities sent to the adoptive parents the decisions given by the Bulgarian prosecuting authorities, translated into Italian, including the order of the Veliko Tarnovo district prosecutor's office of 18 November 2013. The order stated that it was open to appeal to the regional prosecutor's office.

42. On 7 June 2016 the Italian Ministry of Justice sent additional information concerning the case to its Bulgarian counterpart, and in particular a letter from the applicants' adoptive parents challenging the

investigation carried out and casting doubt on the independence of the Veliko Tarnovo district prosecutor's office.

43. These documents were forwarded to the Veliko Tarnovo district prosecutor's office on 1 August 2016. On 2 August 2016 the prosecutor in charge withdrew from the case, in view of the doubts raised by the applicants' parents regarding the way in which it was being handled. A different prosecutor was put in charge of the case. He forwarded the file to the regional prosecutor's office, taking the view that the letter from the adoptive parents should be treated as an appeal against the order of the district prosecutor's office of 18 November 2013.

44. In an order of 30 September 2016 the regional prosecutor's office upheld the discontinuance order of 18 November 2013. It noted that the order had been based on an inspection carried out by the Agency which had not identified any shortcomings in the running of the orphanage or any infringement of the children's rights, and that the prosecutor had concluded accordingly that the information contained in the article in the Italian weekly magazine had not been corroborated.

45. The prosecutor in charge of the case made the following observations. In the course of the second set of proceedings, opened following the report by the association *SOS Telefono Azzuro*, an investigation had been conducted by the police and the various relevant departments. In that context, evidence had been taken from the following members of the orphanage staff: the director, the psychologist, two supervisors, the driver, the heating technician, the caretaker and a childcare assistant. Some outsiders who had worked in the orphanage, namely a photographer and an electrician, had also given evidence on that occasion. The police investigators had then conducted further interviews with the director, the psychologist, the welfare assistant, and one child, and also with the electrician, the photographer and the municipality's IT officer, all of whom had carried out work in the orphanage. The investigation had shown that the children were supervised during the night and had not had any contact with individuals from outside the orphanage without being accompanied by a childcare assistant or a supervisor from the centre. The children went each summer to a holiday camp in Lyaskovets, where they were also accompanied by supervisors from the orphanage. A party was usually organised at the end of their stay, at which the only outside person present was a disc jockey.

46. The public prosecutor noted that only three men had worked in the orphanage and that they did not have access to the rooms used by the children. The outside photographer came to the orphanage only to take photographs or make videos for adoption purposes or for parties or ceremonies. There was no employee with the initial N; the only person of that name was an electrician who had come to the orphanage occasionally to repair kitchen equipment, and there had never been a director called E.

47. Hence, in the prosecutor's view, there was nothing in the evidence gathered to suggest that any offences had been committed against the three applicants.

48. The prosecutor also observed that the documents sent subsequently by the Italian authorities confirmed the information contained in those that had already been sent and did not add anything to it. He therefore concluded that there were no grounds for a criminal prosecution, and upheld the discontinuance order of 18 November 2013.

49. On 17 November 2016 that decision was upheld by the Veliko Tarnovo appellate prosecutor's office in the context of a review performed of its own motion.

50. On 27 January 2017 a prosecutor from the public prosecutor's office at the Supreme Court of Cassation reviewed the order of the appellate prosecutor's office of her own motion. She found that the investigation carried out appeared to have been comprehensive and did not reveal that the applicants had been subjected to ill-treatment in the orphanage. She noted that the applicants' initial statements to the psychologists and their replies when questioned by the prosecutor at the Italian Youth Court had been at variance with each other and that the circumstances in which they had allegedly witnessed acts of a sexual nature were not clear. She considered it likely that the applicants had witnessed touching of a sexual nature between other children and had repeated similar acts between themselves, and that in view of their adoptive parents' disapproval of such behaviour and in order to avoid upsetting them, they had made up a story in which they were victims of abuse.

#### **F. Other relevant information**

51. In addition to the inspections conducted in the orphanage following the applicants' allegations, the child protection services carried out a further check in June 2013 following a report by the association the Bulgarian Helsinki Committee concerning the quality of the educational activities, the presence of children older than the statutory maximum age, and the presence of the heating technician in rooms intended only for the children, in breach of the rules. The report of the child protection services noted, in particular, that the heating technician had not entered the rooms occupied by the children unless accompanied by a staff member. However, the director of the orphanage told the child protection services that one employee had made inappropriate remarks about adult relationships in front of the children and had been reprimanded by the director.

52. A criminal investigation was also opened in 2013 by the Veliko Tarnovo district prosecutor's office following a report by the social welfare department of a town in the region concerning complaints made by three children M., S. and Y., stating that, when they had lived in the orphanage

between 2011 and 2012, one of the childcare assistants had hit them with a stick. The public prosecutor's office ordered an inspection to be carried out by the police and the Svishtov child protection department. A further check was carried out by the Strahilovo social services, on the orders of the mayor, concerning the same report. In an order of 19 June 2013 the district prosecutor's office discontinued the case, noting that there was insufficient evidence to find that the children had been ill-treated by members of staff. It emerges from the order that the young girl M. had previously complained of sexual abuse within her family and had told the other children in the orphanage about it.

53. The orphanage was closed in July 2015 as part of a policy of deinstitutionalisation aimed at placing as many children as possible with families.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Code of Criminal Procedure

54. Under Articles 207 to 211 of the 2006 Code of Criminal Procedure, criminal proceedings are instituted by the authorities where there are legal grounds (*законен повод*) and sufficient evidence (*достатъчно данни*) pointing to the commission of a criminal offence. The legal grounds may be a report (*съобщение*) addressed to the public prosecutor or another competent body stating that an offence has been committed, a press article, statements made by the perpetrator of an offence, or direct observation by the prosecuting authorities of the commission of an offence.

55. Under Article 213 of the Code, where the public prosecutor decides not to institute criminal proceedings, he or she must inform the victim of the offence or his or her heirs, the legal entity affected and the person who made the report. Those persons may lodge an appeal against the decision to discontinue the case with the higher-ranking prosecutor, who has the power to order the opening of criminal proceedings. The higher-ranking prosecutor may also review the discontinuance decision of his or her own motion.

### B. The Child Protection Act

56. Under section 17(1) of the Child Protection Act, the Chair of the Agency is empowered, among other things, to monitor respect for children's rights by schools, healthcare establishments and social services providers such as orphanages. In the event of an infringement of these rights or of the applicable rules, he or she may issue binding instructions with a view to remedying the shortcomings identified.

57. Under section 20 of the Act, the municipal social welfare department is responsible for child protection at local level.

## THE LAW

### I. THE SCOPE OF THE CASE

58. The Court notes that the application was lodged by the adoptive parents of the three minor applicants, on the children's behalf but also on their own behalf. On 5 September 2016 the President of the Section decided to give notice to the respondent Government of the complaints of the three minor applicants relating to the sexual abuse of which they claimed to have been the victims and to the allegedly ineffective nature of the investigation in that regard. The President of the Section, sitting as a single judge (Rule 54 § 3 of the Rules of Court), also declared inadmissible the remaining complaints raised in the application, namely those made by the parents on their own behalf. Under Rule 54 § 3 of the Rules of Court, that decision is final. Accordingly, the Court will not take account of those arguments in the parties' observations which concern the complaints that were declared inadmissible.

### II. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

59. The applicants alleged that they had been the victims of sexual abuse while they were living in the orphanage and that the Bulgarian authorities had failed in their positive obligation to protect them against that treatment and in their obligation to conduct an effective investigation into the allegations. They relied on Articles 3, 6, 8 and 13 of the Convention. The Court considers that the complaints raised should be examined from the standpoint of Articles 3 and 8 of the Convention alone. The relevant parts of those Articles provide:

#### **Article 3**

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

#### **Article 8**

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

#### **A. Admissibility**

##### *1. Alleged abuse of the right of individual application*

60. The Government requested the Court to declare the application inadmissible for abuse of the right of application. They argued, firstly, that

the applicants' legal representatives had knowingly presented imaginary facts which were not corroborated by any evidence such as medical certificates, and, secondly, that they had used disrespectful and insulting language regarding the Bulgarian authorities and the individuals whom they were accusing.

61. The applicants did not comment on this issue.

62. According to the Court's case-law, an application is an abuse of the right of application if it is knowingly based on untrue facts with a view to deceiving the Court (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). In the present case, irrespective of whether the accusations of sexual abuse of the applicants are well founded, there is no basis for the Court to conclude that their representatives knowingly presented facts which they knew to be untrue.

63. An application may also be regarded as an abuse of the right of application where the applicant, in his or her correspondence with the Court, uses particularly vexatious, insulting, threatening or provocative language – whether this be against the respondent Government, its Agent, the authorities of the respondent State, the Court itself, its judges, its Registry or members thereof (see *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004). However, rejection of an application on grounds of abuse of the right of application is an exceptional measure, and the applicant must have exceeded the bounds of normal, civil and legitimate criticism (see *Di Salvo v. Italy* (dec.), no. 16098/05, 11 January 2007). In the present case the Court notes that, in their observations, the applicants' legal representatives made accusations against identified individuals, referring to them as “paedophiles”, and accused the Bulgarian authorities, including the Government Agents, of covering up criminal acts. It observes that the language used in the applicants' observations was undoubtedly disrespectful, but considers, in view of the background to the present case and the fact that it concerns the rights of under-age children who are not responsible for the remarks made by their representatives, that those remarks did not overstep acceptable limits to an extent that would justify rejecting the application on that ground.

64. In view of the foregoing, the Government's objection of an abuse of the right of individual application must be dismissed.

## 2. *Compliance with the six-month time-limit*

65. The Government further submitted that the application was out of time. The order of the district prosecutor's office of 18 November 2013 refusing the institution of criminal proceedings had been transmitted by the Bulgarian authorities to the Italian authorities on 23 January 2015. The application had been lodged over one year later, on 16 April 2016, and the applicants had not demonstrated that the Italian authorities had delayed to such an extent in notifying them of the decision.

66. The applicants replied that the Bulgarian authorities had at no stage kept them duly informed of the progress of the investigation or the decisions taken.

67. The Court notes that the order of 18 November 2013 was not formally served on the applicants' parents by the Bulgarian authorities. It emerges from the case file that the Italian Ministry of Justice sent them a copy of that document, accompanied by a translation into Italian, on 1 February 2016, and there is no indication that the parents knew of the decision prior to that date. The application was lodged within six months after the sending of that document. Moreover, the Court observes that after the present application had been lodged the order of 18 November 2013 was reviewed by the higher-ranking prosecuting authorities, who issued several fresh decisions during 2016.

68. The Government's objection of failure to comply with the six-month time-limit must therefore be dismissed.

### *3. Conclusion as to admissibility*

69. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The applicants**

70. The applicants contended that they had been the victims of sexual abuse during their time in the orphanage, when they had been under the responsibility of the Bulgarian authorities. They alleged that their accounts had been deemed credible by the psychologists who had treated them in Italy, and by the Italian public prosecutor and the Italian Youth Court. The first applicant had reported the incidents to the director of the orphanage, who had done nothing to put a stop to the acts complained of. Other children, including a young girl named M., had complained of similar abuse, a fact of which the director must have been aware. The applicants also stated that they had been in telephone contact with other Italian parents who had adopted children from the same orphanage, including D.'s parents, and that those children too had displayed symptoms typical of victims of abuse.

71. According to the applicants, the orphanage had been far from the model institution described in the Government's reports and observations. In particular, the children had not been supervised around the clock, male

workers had had access to the children, and some of the occupants had exceeded the statutory age limit for that type of institution.

72. In the applicants' submission, following the disclosures made after their adoption, the competent authorities of the respondent State had not conducted an effective investigation capable of shedding light on the events and of holding the persons involved to account.

73. First of all, the Bulgarian authorities had displayed a lack of diligence in conducting the investigation and had not kept the applicants' parents informed of the investigation's findings until January 2015, when an official request had been made by the Italian authorities.

74. Furthermore, the investigation had cut corners, with the prosecuting authorities concluding very rapidly that there had been no offence, solely on the basis of the Agency's findings. In the applicants' submission, that institution could not be considered sufficiently independent, since any problems identified would have called its own work into question. The inspection conducted by the Agency had alerted those responsible to the fact that an investigation was in progress, thereby compromising the outcome. The investigation should have been conducted discreetly, making use of measures such as telephone tapping, undercover agents and searches, and separating the children from the director and the employees involved.

75. The applicants contended that the aim of the Bulgarian authorities had been to prove that no paedophile ring existed. Similar complaints made by other children, notably by M., the young girl referred to above, had been the subject of criminal proceedings but had not been linked to the investigation in the applicants' case (see paragraph 52 above).

**(b) The Government**

76. Regarding the allegation that the applicants had been subjected to physical and sexual violence in the orphanage, the Government stated that the investigation carried out by the Bulgarian authorities had not brought to light any evidence that the acts in question had in fact occurred, whether involving the applicants or other children in the orphanage. The allegations were based solely on the applicants' statements, which had to be treated with caution given their ages and the possibility that the statements had been influenced by adults. Moreover, no medical certificate corroborating the allegations of rape had been produced.

77. The Government submitted that the necessary child safety measures had been taken in the orphanage. Under the internal rules, access to the institution by outside visitors had been subject to checks, and the children had to be accompanied by a female staff member when leaving the establishment. The staff had a responsibility to report violent incidents to the mayor or the police, and the children had available to them a telephone with the number of the national helpline for children in danger, and had access to the orphanage's psychologist.

78. In the Government's view, had the very serious allegations of violence made by the applicants been true, the general practitioner, who came from outside the orphanage, would inevitably have noticed signs of the violence when conducting check-ups.

79. As to the procedural obligations potentially flowing from Articles 3 and 8 of the Convention, the competent Bulgarian authorities had acted swiftly after being informed of the alleged incidents and had undertaken various investigative measures. The investigation had been independent, objective and thorough. In particular, the fact that the Agency had carried out an inspection in the orphanage did not cast doubt on the effectiveness of the investigation, as the Agency's role was precisely to conduct inspections, to ensure respect for the rights of children placed in institutions and to take steps to protect them.

80. The checks and the investigative measures carried out had not confirmed the applicants' statements but rather had established the inaccurate nature of some of their allegations concerning the identity of the persons who had been accused. In the absence of evidence corroborating the allegations, the prosecuting authorities had decided to discontinue the case; that fact did not call into question the effective and thorough nature of the investigation.

81. As to the information provided to the applicants, the Government submitted that the proceedings in Bulgaria had not been instituted at the request of the applicants' adoptive parents, who had therefore not been required to be formally notified of the public prosecutor's decisions. The Bulgarian authorities had kept the Italian authorities informed of the investigation whenever such information had been requested.

## 2. *The Court's assessment*

### (a) **Applicability of Article 3 and Article 8 of the Convention**

82. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *A. v. the United Kingdom*, 23 September 1998, § 20, *Reports of Judgments and Decisions* 1998-VI). In the present case the applicants, owing to their youth and their status as children left without parental care and placed in an institution, were in a particularly vulnerable situation. Against this background, the sexual abuse and violence to which they were allegedly subjected, if established, are sufficiently serious to come within the scope of application of Article 3 of the Convention.

83. The Court further reiterates that the notion of “private life” within the meaning of Article 8 of the Convention covers the physical and psychological integrity of a person (see *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91; *M.P. and Others v. Bulgaria*, no. 22457/08, § 110, 15 November 2011; and *V.C. v. Italy*, no. 54227/14, § 85, 1 February 2018). Accordingly, the abuse of which the applicants complained also falls within the sphere of protection of Article 8 of the Convention.

**(b) Applicable general principles**

84. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *A. v. the United Kingdom*, cited above, § 22, and *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII). Furthermore, the positive obligations inherent in the right to respect for private life under Article 8 of the Convention may involve the adoption of measures even in the sphere of the relations of individuals between themselves (see *M.C. v. Bulgaria*, cited above, § 150, and *V.C. v. Italy*, cited above, § 91).

85. Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *A. v. the United Kingdom*, cited above, § 22; *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V; and *M.C. v. Bulgaria*, cited above, § 150).

86. The positive obligations under Articles 3 and 8 of the Convention to protect individuals’ physical and psychological integrity necessitate in particular establishing a legislative framework to shield individuals adequately from breaches of their integrity, particularly, in the most serious cases, through the enactment of criminal-law provisions and their effective application in practice (see *M.C. v. Bulgaria*, cited above, §§ 150-53, and *S.Z. v. Bulgaria*, no. 29263/12, § 43, 3 March 2015).

87. These positive obligations may sometimes require the authorities to take reasonable practical steps to prevent ill-treatment of which they had or ought to have had knowledge, as well as effective deterrence protecting minors against such serious breaches of personal integrity (see *Z and Others v. the United Kingdom*, cited above, § 73; *M.P. and Others v. Bulgaria*, cited above, § 108; and *V.C. v. Italy*, cited above, § 89). The scope of this positive obligation must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. For a positive obligation to arise, it must be established that the authorities knew or ought to have known of the existence of a real and immediate risk of

ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Dorđević v. Croatia*, no. 41526/10, § 139, ECHR 2012, and *V.C. v. Italy*, cited above, § 90).

88. Furthermore, where an individual claims on arguable grounds to have suffered acts contrary to Article 3, that Article requires the national authorities to conduct an effective official investigation to establish the facts of the case and identify and punish those responsible. These obligations apply whatever the status of the persons charged (see *M.C. v. Bulgaria*, cited above, § 153; *S.Z. v. Bulgaria*, cited above, § 44; and *B.V. v. Belgium*, no. 61030/08, § 56, 2 May 2017). The Court has also held that the State's positive obligation under Article 8 of the Convention to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *M.C. v. Bulgaria*, cited above, § 153).

89. The obligation to conduct an effective investigation is an obligation not of result but of means. Whilst this requirement does not impose an obligation for all prosecutions to result in conviction, or indeed in a particular sentence, the national courts must not under any circumstances be prepared to allow grave attacks on physical and psychological integrity to go unpunished.

90. Generally speaking, for an investigation to be effective, the institutions and persons responsible for carrying it out must be independent from those targeted by it (see *Bouyid v. Belgium* [GC], no. 23380/09, § 118, ECHR 2015).

91. The investigation must be sufficiently thorough. The authorities must take reasonable measures available to them to obtain evidence relating to the offence in question (see *M.C. v. Bulgaria*, cited above, § 151; *S.Z. v. Bulgaria*, cited above, § 45; and *B.V. v. Belgium*, cited above, § 60). Any serious deficiency in the investigation which undermines its ability to establish the persons responsible will risk falling foul of the Convention standard. However, the Court is not concerned with allegations of errors or isolated omissions in the investigation; it cannot replace the domestic authorities in the assessment of the facts of the case, nor can it decide on the alleged perpetrators' criminal responsibility (see *M. and C. v. Romania*, no. 29032/04, § 113, 27 September 2011, and *B.V. v. Belgium*, cited above, § 61).

92. A requirement of promptness and reasonable expedition is also implicit in this context. In this connection the Court has considered it an essential requirement that investigations be promptly instituted and carried out (see *S.Z. v. Bulgaria*, cited above, § 47, and *V.C. v. Italy*, cited above, § 95).

93. Lastly, the victim should be able to participate effectively in the investigation (see *Bouyid*, cited above, § 122, and *B.V. v. Belgium*, cited above, § 59).

**(c) Application in the present case**

94. The Court observes at the outset that the applicants did not call into question the legal framework of protection established by domestic law. Rather, they complained of the inability of the Bulgarian authorities to prevent the abuse of which they claimed to have been the victims, and of the alleged ineffectiveness of the investigation into their allegations.

*(i) The effectiveness of the investigation*

95. The Court observes that an initial inspection on the premises of the orphanage was ordered by the Agency, an administrative authority specialising in child protection, as soon as it became aware through the Bulgarian media of the article published in *L'Espresso* in January 2013. It notes that the Agency informed the prosecuting authorities swiftly of the disclosures made by the Italian weekly magazine and of the findings of its inspections.

96. The Court further observes that, following the second report transmitted to the public prosecutor's office by the Agency in February 2013, a police investigation was conducted, as well as a further inspection by the child protection services. The two sets of proceedings that had been instituted were closed in November and June 2013 respectively by means of discontinuance decisions, as the district prosecutor considered that none of the evidence gathered led to the conclusion that any offences had been committed.

97. The Court also notes that, after the Bulgarian authorities had been formally approached by the Italian Ministry of Justice in January 2014, the Veliko Tarnovo regional prosecutor's office, observing that several sets of proceedings had been opened, ordered on 4 June 2014 that they be joined. The new documents and the appeal by the applicants' adoptive father forwarded in June 2016 were examined by the regional prosecutor's office, which on 30 September 2016 upheld the discontinuance order. In the following months the order was upheld by the higher-ranking prosecuting authorities in the context of a review performed of their own motion.

98. In these circumstances, the Court cannot fail to observe that the competent Bulgarian authorities acted with promptness and diligence as soon as they became aware of the allegations, despite not having received a formal complaint from the applicants. They also cooperated fully with the Italian authorities, keeping them abreast of the findings of the investigation and taking into account the new documentation sent by those authorities. Whilst delays of several months sometimes occurred in communicating with

the Italian Ministry of Justice (see paragraphs 39-41 above), these do not seem excessive in a context of intergovernmental cooperation and do not appear to have jeopardised the investigation, which had already been completed by that stage.

99. As to the Agency's alleged lack of independence and objectivity, the Court notes that this body is an administrative authority specialised in child protection and that one of its tasks is to conduct inspections in children's residential facilities (see paragraph 56 above). The Court considers that, contrary to the applicants' assertions, neither the Agency nor its employees were implicated in the case in a manner capable of casting doubt on their independence or objectivity.

100. As to whether the investigation was full and thorough, the Court notes that the competent Bulgarian authorities, namely the child protection and police services, visited the orphanage and carried out a number of investigative acts. They checked the files, including the medical files, of the children in the orphanage and questioned the staff, the children and other persons concerned such as the mayor and the persons mentioned in the applicants' statements. The children present in the orphanage were questioned by means of an anonymous questionnaire relating both to their lives in the orphanage and to possible abuse, and one of the children, who had been mentioned in the applicants' statements, was questioned by a police officer with the help of the psychologist.

101. In so far as the applicants argued that the authorities should have begun by taking more discreet investigative measures such as telephone tapping or using undercover agents, and that by omitting to do so they had undermined the effectiveness of the investigation, the Court notes that it was the applicants' parents themselves who made the case public. Hence, even before the case had come before the Bulgarian authorities, the journalist whom the parents had contacted had been in touch with the persons involved and the article published in the Italian press had been taken up by the Bulgarian media.

102. The applicants further submitted that other investigative acts, such as searches and seizures, should have been carried out. The Court reiterates in that regard that it is not concerned with allegations of errors or isolated omissions in the investigation (see paragraph 91 above). Furthermore, the applicants' representatives do not appear to have requested additional investigative acts, in particular in their appeal against the discontinuance order.

103. The Court notes that the prosecuting authorities, on the basis of the evidence gathered, took the view that the applicants' allegations had not been confirmed. It is not for the Court to draw its own conclusions from the evidence obtained by the domestic authorities or to take their place in assessing, in particular, the credibility of the various witness statements (see *M.P. and Others v. Bulgaria*, cited above, § 112). The Court notes that in

the present case the prosecuting authorities were faced with two contradictory versions: on the one hand, that of the applicants' parents, and on the other hand that of the orphanage staff and the other persons questioned in the course of the investigation, including the children living in the orphanage. While the genuineness of the applicants' testimony, which the Italian psychologists and prosecuting authorities deemed credible, cannot be called into question, the fact remains that their statements, which were the only direct evidence available to the Bulgarian authorities, were succinctly worded and contained few factual details, in particular owing to the applicants' young age and their weak command of Italian at the time the statements were taken (see paragraphs 7-11 above). The Court further notes that the Bulgarian authorities did not have an opportunity to question the applicants (see paragraph 36 above). Furthermore, the applicants' allegations of violence were not corroborated by any medical certificate. In these circumstances, the Bulgarian authorities' conclusion that the investigative measures carried out had not disclosed sufficient evidence to establish that any abuse had occurred does not appear arbitrary or unreasonable.

104. In the light of the foregoing, the Court considers that the present case does not disclose any culpable failure or lack of will on the part of the competent authorities to shed light on the events or to identify and prosecute those potentially responsible (see *Szula v. the United Kingdom* (dec.), no. 18727/06, 4 January 2007, and *M.P. and Others v. Bulgaria*, cited above, § 113).

105. Lastly, the applicants criticised the Bulgarian authorities for not keeping their legal representatives adequately informed of the progress of the investigation. In that connection the Court notes that the initial investigations conducted by the Agency and the public prosecutor's office were carried out following information published in the media, without the applicants' parents having lodged a complaint or otherwise contacted the investigating authorities; this explains the fact that they were not informed of the decisions taken. As regards the third investigation, which was opened following the request made by the Italian authorities in January 2014, the Court notes that the latter were informed of the investigation's findings. It is true that the information was transmitted after several months' delay and only after the Italian authorities had made a fresh request for information in January 2015. Nevertheless, the Court considers that this fact does not constitute grounds for finding that the applicants' parents were deprived of the possibility of participating in the investigation. It notes that, under domestic law, it was open to the parents to appeal against the discontinuance order. Moreover, the letter which they wrote and which was transmitted by the Italian Ministry of Justice was treated as an appeal and was duly examined by the higher-ranking prosecutor's office (see paragraphs 43-49 above).

106. In the light of the foregoing considerations, it cannot be concluded that the Bulgarian authorities breached their procedural obligation to conduct an effective investigation into the applicants' allegations. Accordingly, there has been no violation of Articles 3 and 8 of the Convention in this regard.

*(ii) The duty to take measures to protect the applicants*

107. As regards the applicants' allegation that the Bulgarian authorities had failed to protect them from the alleged abuse although they had been under the responsibility of those authorities, the Court observes that the reports drawn up by the competent departments which carried out checks at the Strahilovo orphanage show that a number of general measures were taken to ensure the safety of the children living there. In particular, the reports noted that access to the orphanage by outside visitors was subject to checks; that outsiders and male employees could enter the parts of the premises reserved for the children only where necessary and when accompanied by a female member of staff; that the children were seen regularly by an outside general practitioner and by the orphanage's psychologist; and that they had access to a telephone and to the number of a helpline for children in danger.

108. Furthermore, as regards the authorities' duty to take steps to prevent ill-treatment in a specific case, the Court observes that the investigations carried out in the present case did not reveal that the director or any of the orphanage employees had been aware of the abuse alleged by the applicants. As regards the allegation that the first applicant had told the director and that the latter had failed to take action, the investigation established that, contrary to the applicants' statements, the director of the orphanage was not called E., and that another employee who had that forename denied having been informed of any incidents of that nature. Likewise, the children's files and the statements made by the general practitioner and the orphanage's psychologist did not disclose any evidence of such abuse. In view of the investigators' findings, the Court is not in a position to draw a different conclusion in this regard. Moreover, it is clear from the documents in the case file that, contrary to the applicants' assertions, the criminal investigation instituted following complaints made by other children from the orphanage, notably by M., did not concern similar facts to those complained of by the applicants (see paragraph 52 above). As to the situation regarding other children adopted in Italy (see paragraph 70 above *in fine*), even assuming it to be proven, there is nothing to indicate that the Bulgarian authorities were aware of any acts of abuse committed against other children at the material time.

109. Accordingly, while reiterating States' obligation to protect vulnerable persons under their exclusive authority from ill-treatment (see paragraphs 85-87 above), the Court considers, having regard to the

information available to it in the present case, that it has not been established that the Bulgarian authorities failed in their obligation to take preventive measures to protect the applicants from a risk of ill-treatment of which they had or ought to have had knowledge.

110. Accordingly, there has likewise been no violation of Articles 3 and 8 in this regard.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been no violation of Articles 3 and 8 of the Convention.

Done in French, and notified in writing on 17 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Angelika Nußberger  
President