



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

FOURTH SECTION

CASE OF M.P. AND OTHERS v. BULGARIA

(Application no. 22457/08)

JUDGMENT

STRASBOURG

15 November 2011

FINAL

15/02/2012

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

In the case of M.P. and Others v. Bulgaria,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

George Nicolaou,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 22457/08) 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 Mr M.P. (“the first applicant”), Mr M.M.P. (“the second applicant”), and Mrs M.D. (“the third applicant”), Bulgarian nationals who were born in 1974, 2003 and 1953 respectively. The first applicant is also a Greek national and lives in Greece. He is the father of the second applicant and lodged the application with the Court on his own behalf and on behalf of his son. The third applicant is the maternal grandmother of the second applicant. The second and third applicants live in Sofia.

2. The applicants were represented by Mr M. Ekimdjev and Mrs K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs M. Kotseva of the Ministry of Justice.

3. On 17 February 2011 the third applicant, Mrs M.D., died. Her daughter, Mrs D.D., expressed the wish to pursue her application before the Court.

4. The applicants alleged that the domestic authorities had failed to meet their positive obligations under Article 3 of the Convention to carry out a speedy and effective investigation into the allegations of sexual abuse of the second applicant and to remove him from the home, where he would most likely continue to be a victim of such abuse. They further complained under Article 8 of the Convention that the authorities had failed to provide them with assistance in facilitating meetings between them. They also raised complaints under Articles 13 and 14 of the Convention.

5. On 4 January 2010 the President of the Section to which the application was assigned decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1), to grant the applicants anonymity (Rule 47 § 3 of the Rules of Court) and to keep confidential the documents in which the applicants' names appear or which could otherwise easily lead to their identification (Rule 33 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. On 29 May 1998 the first applicant married V.D. On 7 January 2003 their son, the second applicant, was born.

7. In 2006 V.D. initiated divorce proceedings, of which allegedly the first applicant, who was then living in Greece, was not aware. In a judgment of 21 July 2006, which became final on 11 October 2006, the Sofia District Court granted the divorce between the first applicant and V.D. and granted the latter residence rights in respect of the second applicant. The first applicant was granted contact rights for two hours twice a month in V.D.'s presence.

8. After the divorce, V.D. and the child lived with the third applicant, V.D.'s mother. On 9 February 2006 V.D.'s partner Y.S. moved in with them. On an unspecified date at the end of 2006 or the beginning of 2007 V.D. and Y.S. had a son.

9. In the summer of 2007 V.D., Y.S. and the children moved out of the third applicant's home.

B. The alleged abuse

10. In the application to the Court the third applicant stated that during a visit to her house on 24 August 2007 the child told her that his anus hurt. He shared with her that in the evenings Y.S. would come to his bed, put his finger in his anus, and touch his anus, penis and nipples, which were painful. When he told his mother she confronted Y.S., but he replied that it had been just a game. After that Y.S. threatened the child that if he told anyone else, he would beat and punish him.

11. On the evening of 26 August 2007 the child again complained to his grandmother, the third applicant, that his anus hurt and asked her to take him to a doctor.

12. The same evening the third applicant, in a telephone conversation, informed the second applicant's doctor about the situation. Apparently, the second applicant himself told the doctor that his anus hurt because his "dad" [Y.S.] had put his finger there.

13. On the following morning the second applicant was examined by a surgeon, who established that there were injuries to his anus.

14. Meanwhile, having been informed about the situation by the third applicant, the first applicant arrived in Bulgaria on 30 August 2007.

15. On an unspecified date, the third applicant found a CD with family photos on two of which the child was naked on the toilet. During the criminal investigation (see paragraphs 16-33 below) the third applicant submitted that she found the CD in her apartment where the photos had been taken. She also alleged that Y.S. had taken the photos. During her questioning in that connection V.D. stated that she herself had taken the photos with the family camera.

C. The criminal proceedings against Y.S.

16. On 27 August 2007, following the third applicant's complaint, criminal proceedings were opened at first against an unknown perpetrator and later against Y.S. for sexual assault (блудство). On 28 August Y.S. was remanded in custody, but on 31 August 2007 was released on bail.

17. On 27 August 2007 a forensic medical examination of the child was carried out upon a prosecutor's order. The doctor found injuries to the child's anus and concluded that these injuries might have resulted from penetration with a finger. An additional medical expert opinion stated that the injuries could also have been inflicted by penetration with a finger or by constipation.

18. In an opinion of 29 August 2007, requested by the child's mother, V.D., a doctor concluded that there were no injuries to the child's anus.

19. On 31 August 2007 the police department informed social services about the alleged abuse and recommended that action be taken under the Child Protection Act.

20. In the period between 27 August 2007 and March 2008 at least eleven expert opinions and assessments were sought and a number of witnesses were questioned. Polygraph tests were conducted on Y.S. and the third applicant. The results of these tests were inconclusive.

21. In a forensic psychiatric expert opinion of 30 August 2007 two experts concluded that the second applicant's statements were unreliable and that he was easily influenced by the adults in the family.

22. In a psychological opinion of 4 September 2007 an expert held that the second applicant's story about the alleged abuse by Y.S. was tenable.

23. In another expert opinion, carried out at the request of Lozenets District Social Assistance Office ("the Lozenets SAO"), of 4 October 2007, a doctor concluded that there were no signs of abuse on the second applicant and advised that no further psychological consultations and medical tests in respect of this issue be carried out, as they could have a negative impact on him.

24. Between 13 November 2007 and February 2008 a forensic psychiatric expert assessment of Y.S.'s personality, a complex psychiatric and sexological expert assessment of Y.S., a psychological and psychiatric expert assessment of the grandmother, a forensic medical expert opinion of the child and an expert opinion on the CD with the photographs (see paragraph 15 above) were obtained. In the latter expert opinion, the expert noted that the CD contained family photos on two of which the child was sitting on the toilet naked. The expert concluded that the photographs had no pornographic content.

25. In an expert opinion of 4 February 2008 five experts concluded that the second applicant's testimony was unreliable and that he could not be credited as a witness because he lived in a world of fantasy and was easily influenced by other people.

26. In an order of 28 February 2008 a prosecutor from the Sofia district public prosecutor's office, after making an assessment of the conclusions of the expert opinions and the witness statements, discontinued the proceedings for lack of sufficient evidence that an offence had been committed.

27. On appeal by the first and third applicants, on 18 March 2008 the Sofia District Court quashed the prosecutor's order and remitted the case to the prosecution for further investigation. The District Court held, *inter alia*, that the order lacked sufficient reasoning, that the evidence was inconclusive and that the expert opinions did not exclude the possibility of abuse. It also declared the third applicant's appeal inadmissible, because as the grandmother, she did not have standing to appeal against the discontinuation order.

28. On an appeal by the prosecutor's office, in a decision of 1 July 2008 the Sofia City Court upheld the lower court's decision. The court found that the evidence in the case was inconclusive, as the parties involved had given conflicting statements and some of the expert reports had reached contradictory conclusions. The court pointed out the importance of the testimony of the second applicant's doctor, who had confirmed the telephone conversation of 26 August 2007, the words used by the child to describe what had happened, and certain contradictions in V.D.'s statements. It also mentioned the apparent conflict between the adults in the family. The City Court noted that the presence of two irreconcilable

versions of the events required a careful assessment of the statements and thorough analysis of the situation. It further gave detailed instructions as to the necessary additional actions to be taken, which included further questioning and expert opinions.

29. In accordance with the Sofia City Court's instructions on 26 August 2008 a prosecutor from the Sofia district public prosecutors' office ordered additional investigative actions to be carried out, which included questioning the child's doctor (see paragraph 12 above) and the surgeon who issued the certificate of 27 August 2007 (see paragraph 13 above), and commissioning of expert opinions on the credibility of the child's story, the grandmother's attitude towards the child and the nature of the child's injuries. He also ordered the investigator to report the case to the prosecutor every thirty days.

30. After the remittal of the case at least six more expert opinions were carried out and a large number of witnesses were questioned, thus the total number of the expert opinions and assessments in the preliminary investigation reached at least eighteen and the number of the witnesses questioned was approaching forty.

31. In an expert opinion of an unspecified date a forensic doctor, a paediatrician and a surgeon specialising in paediatrics, who had examined the second applicant on 24 September 2008, concluded that there were injuries to his anus which could have been inflicted in the way described by him and that it was unlikely that those injuries had been caused by constipation.

32. In a psychological expert opinion of 15 October 2008 two psychologists and a psychiatrist concluded that the grandmother did not have an "unnatural attachment" or an obsession with the child, but that the latter's story about the alleged abuse could have been influenced by the grandmother.

33. In an expert opinion of 12 November 2008 two child psychiatrists and three child psychologists concluded that the second applicant had reproduced previously heard phrases and was susceptible to influence and inculcation. The experts did not find any indication of sexual abuse.

34. In an order of 20 January 2009 a prosecutor from the Sofia district public prosecutor's office ordered two expert opinions to be sought on the CD with the child's photographs, and the grandmother to be questioned in that connection.

35. In an expert opinion of an unspecified date three experts concluded that the injuries on the second applicant's anus could have been inflicted by the insertion of hard objects, such as a thermometer or a fingernail when inserting the thermometer.

36. Between January and April 2009 a complex psychiatric and sexological expert assessment of Y.S. and the two expert opinions on the CD with the photographs were obtained (see paragraph 34 above). In the

latter two opinions the experts concluded that the photographs had been taken in March and April 2006 with a SAMSUNG camera, that the CD had not been tampered with and that the inscription on the CD had not been done by V.D.

37. During the proceedings at least forty witnesses were questioned. Among the witnesses were relatives, friends and acquaintances of the third applicant and V.D., as well as doctors, experts and social workers. The third applicant, V.D. and Y.S. were questioned several times. V.D. and Y.S. denied the allegations of abuse, the mother stating that the child had never complained to her about such abuse. The third applicant's mother and brother testified that initially the relations between her, V.D. and Y.S. had been good but then conflicts arose and after the couple and the children moved out of the third applicant's apartment, she wanted to keep the child with her and did everything possible to separate him from his mother and Y.S. Other witnesses, friends of the third applicant, stated that they had heard about the alleged abuse from the grandmother and that at some point V.D. had started preventing the third applicant from seeing the child. Y.S.'s former partner testified that she had never seen any signs of physical or sexual abuse in him and that he had never shown any unhealthy interest in her underage daughter, who used to live with them. The social workers testified that there was no indication of sexual abuse in respect of the second applicant.

38. On 27 April 2009 and 8, 11 and 15 September 2009 one of the father's representatives, Mrs T.Ch., was presented with the materials and findings of the preliminary investigation. She made comments and requests for further investigative actions, which were dismissed on 5 October 2009 as manifestly ill-founded and unnecessary.

39. In an order of 5 October 2009 a prosecutor from the Sofia district prosecutor's office discontinued the proceedings for lack of sufficient evidence of an offence. The prosecutor relied, *inter alia*, on the statements of the social workers who had been involved in the second applicant's case and who considered that there had been no indication of sexual abuse in respect of the second applicant, as well as on the statements of the witnesses and the conclusions of the expert opinions obtained in the course of the proceedings. He noted in particular that V.D. repeatedly denied the allegations of abuse, the social workers saw no indications of abuse, the photographs on which the child was naked in the bathroom had no pornographic content and none of the individuals questioned had actually witnessed any abuse, most of them having heard about the allegations of abuse from the grandmother.

40. On 24 November 2009 one of the father's representatives, Mrs B.B., appealed. She contested the interpretation of the evidence and the findings of the prosecutor and pointed out that the findings of the investigation had not been presented to her.

41. In a decision of 4 May 2010 the Sofia District Court, after examining the expert opinions and the evidence gathered, concluded that there was not sufficient evidence that an offence had been committed, and upheld the discontinuation, endorsing the prosecutor's reasoning. The court relied, *inter alia*, on the conclusions of the psychological expert opinion of 25 January 2009, which stated that the child was easily influenced by others and that his behaviour did not indicate sexual abuse. It also noted that all instructions for further investigative actions given by the courts and the prosecutors had been complied with.

42. Meanwhile, on 18 January 2010 the other representative of the father, Mrs T. Ch., had also appealed against the discontinuation order of 5 October 2009. Apparently, however, her appeal had not been forwarded to the Sofia District Court, which in its decision of 4 May 2010 had examined only the appeal by Mrs B.B. Following complaints by Mrs T.Ch., in a decision of 10 January 2011 the Sofia District Court quashed the discontinuation of the proceedings and ordered Mrs T.Ch.'s appeal to be heard.

43. The parties have not informed the Court about the outcome of the proceedings.

D. The proceedings under the Protection Against Domestic Violence Act

44. On 4 September 2007 the first applicant initiated proceedings under the Protection Against Domestic Violence Act ("the PADVA") requesting that the Sofia District Court impose an injunction and remove Y.S. from the family home.

45. In a decision of 5 September 2007 the Sofia District Court discontinued the proceedings, finding that Y.S. could not be the respondent in these proceedings because, as simply a cohabitant of one of the parents, he was not among the persons explicitly listed in section 3 of the PADVA in respect of whom such proceedings could be conducted.

46. On 28 September 2007 the third applicant initiated proceedings under the PADVA and requested an "order for immediate protection" to be issued and the second applicant's mother, V.D., to be obliged to take actions to protect the child from the alleged abuse, including removing him from his current home. In an order of 28 September 2007 the Sofia District Court discontinued the proceedings, finding that:

"the circumstances described in the claim do not disclose domestic violence under... the PADVA."

E. Procedures under the child protection legislation

1. Request that the Lozenets Social Assistance Office remove the second applicant from his home

47. On 29 August 2007 the third applicant requested the Lozenets SAO to issue an order to remove the child from his current home. On 31 August 2007 officials from the Lozenets SAO met the father and the grandmother. On the same day the director of the Lozenets SAO issued an order placing the second applicant with his father.

48. V.D. appealed against this order. In an order of 13 September 2007, served on the first applicant on 23 June 2008, the director of the Sofia Regional Social Assistance Office (“the RSAO”) quashed the order, finding breaches of the required form and procedure. She found, *inter alia*, that the order lacked sufficient reasoning and that the social services had failed to prepare an assessment of the effect which the removal would have on the second applicant. In conclusion, the director held that the order was not in the best interest of the child and remitted the case to the Lozenets SAO for further work.

49. On 4 July 2008 the first applicant appealed before the Sofia Administrative Court through the RSAO. He alleged that the RSAO had never forwarded his appeal to the court. It appears that he did not file it directly with the Administrative Court either.

2. Request that the Sofia district public prosecutor’s office apply section 26 (2) of the Child Protection Act

50. On 24 January 2008 the third applicant requested the Sofia district public prosecutor’s office to initiate court proceedings for removal of the second applicant from his current home under section 26 (2) of the Child Protection Act.

51. Her request was refused, by an order of 30 January 2008. On appeal, on 29 February 2008 the Sofia city public prosecutor’s office upheld the refusal. The Sofia appellate public prosecutor’s office did the same, in a final order of 30 July 2008. The prosecutors took into account the findings of the criminal proceedings against Y.S., which had not proved beyond reasonable doubt that abuse had taken place, and the opinion of the social services of 30 July 2008, that removal of the child from his current home would have a negative effect on his psychological and emotional development.

3. Court proceedings under section 26 of the Child Protection Act

52. On 17 March 2008 the first applicant initiated proceedings under section 26 of the Child Protection Act, requesting the Sofia District Court to

place the child with the grandmother. Later in the proceedings he amended his request to include his parents and the child's aunt among the families where the child could be placed.

53. In a decision of 7 July 2008, after holding a hearing, the District Court discontinued the proceedings, as the first applicant had failed to pay the additional court fee, noting that the fee had been paid under the wrong case number. The first applicant's lawyers appealed against the discontinuation, claiming that the wrong case number had been indicated in the summons sent to him in May 2008.

54. On 14 July 2008 the first applicant's lawyer requested the correction of a mistake in the transcript of the hearing of 7 July 2008, which was granted on 27 November 2008 after a hearing had been held. Thereafter the appeal procedure against the discontinuation of the proceedings continued.

55. In a decision of 24 March 2009 the Sofia City Court quashed the decision for discontinuation of the proceedings and remitted the case to the District Court for examination on the merits. The City Court held that under Article 101 of the Code of Civil Procedure it was for the court to scrutinise the carrying out of all necessary procedural actions, therefore, in the present case, instead of discontinuing the proceedings the District Court should have informed the first applicant that the court fee had been paid under the wrong case number, and ordered him to pay it under the correct number.

56. On 13 April 2009 the first applicant paid the court fee under the correct case number and the proceedings continued.

57. Hearings were held on 8 July, 10 August and 28 September 2009.

58. In a judgment of 26 November 2009 the Sofia District Court dismissed the action, holding that removing the child from his current home was a measure of last resort, which should be taken only after all other means of protecting him within his family environment had failed. In the case at hand these means had not been exhausted.

59. On an appeal by the first applicant of 8 February 2010, the Sofia City Court examined the expert opinion of 27 August 2007 and the medical certificate of 29 August 2007 (see paragraphs 17 and 18 above) and commissioned a forensic psychiatric and psychological expert opinion on the effects which abuse could have on the second applicant. It admitted to the case file materials from the criminal proceedings against Y.S., the proceedings for deprivation of parental rights (see paragraphs 82-85 below), the social services reports and conclusions given in these proceedings, and a number of other items of written evidence. It also heard as witnesses all relatives who had agreed to receive the child at their home, social workers and other specialists. On 2 and 7 July, 26 September and 23 October 2009, and 2 March and 24 April 2011 social services prepared reports on the material conditions at the child's current place of residence and on the conditions in the residences of the individuals who were ready to receive him in their homes. In these reports and at a court hearing of 7 March 2011

the social workers concluded that the material conditions in the second applicant's current home were good, that he was receiving adequate and sufficient care and attention, and that his placement with other relatives would have a negative effect on his sense of security and emotional stability.

60. In a final judgment of 17 May 2011, relying on the evidence gathered and the conclusions of the social services, the Sofia City Court upheld the previous court's judgment and refused to remove the second applicant from his current residence. The court held, *inter alia*, that it had not been proved that sexual abuse had taken place and that not all means of working with the second applicant and providing protection within his current family had been exhausted. It further noted that in similar situations the authorities should act in the best interest of the child and not in the interest of its parents or other relatives.

4. Further assistance sought from specialised state bodies for child protection

61. At the end of August 2007 the Lozenets SAO was notified of possible abuse and started working on the case (see paragraphs 19 and 47 above).

62. On 11 September 2007 the grandmother lodged a complaint with the State Child Protection Agency, which had a governing and controlling function in the field of child protection, notifying them of the allegation of abuse and requesting assistance with the interim removal of the second applicant from his current home.

63. On 15 September 2007 the latter forwarded the grandmother's request to the Lozenets SAO, instructing it to undertake certain measures in order to establish whether there was a risk to the second applicant if he remained in his current home, and also for information on the scheduled actions and the progress of the case.

64. Meanwhile, on 5 and 27 September 2007 social workers visited the child's home and met him and his mother, V.D.

65. On 27 November 2007 a social report was drafted, recommending that the second applicant and his mother have family counselling and psychological help.

66. Between 20 December 2007 and 20 February 2008 the child and V.D. received regular family counselling and psychological assistance.

67. On 18 January 2008 the director of the State Child Protection Agency sent a letter to the director of the State Social Assistance Agency ("the SSAA") in connection with the grandmother's complaint of 11 September 2007. She pointed out that the report from the Lozenets SAO did not contain an assessment of the risk of abuse and that there was not sufficient information to confirm that the second applicant was not at risk in his current home. She recommended the assignment to the case of one more

social worker from another Social Assistance Office, in order to guarantee objectivity of the work in the case.

68. In that connection, on 21 and 22 February 2008 the State Child Protection Agency carried out an inspection and gave instructions for the future handling of the case.

69. On 1 July 2008 the child and his mother were referred to an association for counselling and psychological help. During the counselling period at least two reports on the second applicant's and his mother's psychological state of health were carried out. Their conclusions showed no signs of sexual or physical abuse. The second applicant also started attending sessions with a speech therapist.

70. The child and his mother continued to be involved in a number of special programmes for counselling and psychological advice in connection with the allegations of abuse and the conflict between the members of the child's extended family.

71. Between May and October 2009 social services prepared several reports and opinions, including those requested by the domestic courts, examining the various proceedings under the Family Code and the Child Protection Act initiated by the applicants. They also held a number of meetings, which included meetings with the child and his mother, V.D., with the child's teacher, and with his doctor. On several occasions social workers paid impromptu visits to the second applicant's home, monitoring his development and the relations between him, his younger brother, V.D. and Y.S.

72. The conclusions of numerous reports prepared by the social authorities were that the environment in the child's home was "peaceful and harmonious", his development was normal, all his needs were being adequately met, the material conditions in which he lived were good, and V.D. and Y.S. were open to receiving help from the social authorities. Removing the child from his present home would negatively affect his emotional stability and his sense of security.

73. During their work with the second applicant psychologists prepared at least six reports assessing the risk of abuse in respect of this applicant. The conclusions were that there was no evidence that such a risk existed.

74. It appears that at the end of 2010 a proposal was made to discontinue the active work with the second applicant and his family as the child had overcome the stressful situation and did not need further social assistance. It is not clear whether or when the active social work was discontinued.

5. Efforts aiming at the re-establishment of contact between the applicants

75. On 21 May 2008 the first applicant complained to the Sofia RSAO that the work of the Lozenets SAO was slow and inefficient, and requested that an order be issued for the removal of the child from his current home.

76. In a letter of 10 June 2008 the director of the Sofia RSAO replied that two departments, the Lozenets SAO and the Slatina SAO, were working together on the second applicant's case; that the child protection authorities had to act in the best interest of the child, and that their efforts were concentrated on re-establishing relations between the members of the family. The director pointed out that the Sofia RSAO could remove the child from his current home only after the relevant authorities had sufficient proof that abuse had taken place. She further expressed a concern about the second applicant's psychological and emotional state, with regard to the fact that he was involved in and influenced by the conflict between the members of his family.

77. It appears that in June 2008 the first and second applicants met in the presence of social workers.

78. On 21 August 2008 the first applicant requested the Slatina SAO to give him certain information on the case, and sought assistance with the re-establishment of personal contact between him and the second applicant and between the latter and his relatives on his mother's side.

79. On 21 November 2008 the Lozenets SAO organised a meeting between the first applicant, the latter's mother, the third applicant, V.D.'s lawyer and a number of social workers. During the meeting it was established that the first applicant had not seen the second applicant since June 2008 and that V.D. did not allow such contact.

80. At the end of February 2009 the first applicant reiterated his request to the State Agency for Child Protection for assistance with scheduled contact with the second applicant.

81. The parties have not submitted information as to the steps taken in that connection after this date. From the materials in the Court's possession, however, it appears that meetings between the first and second applicants have taken place. Thus, for example, in November 2008 and the spring of 2009 they met at the second applicant's home.

F. Proceedings under the Family Code of 1985

1. The third applicant's proceedings under Article 70 of the Family Code of 1985

82. On 28 March 2008 the third applicant initiated proceedings under Article 70 (2) of the Family Code, claiming that V.D. had denied her contact with the second applicant and requesting the Sofia District Court to take measures which would allow her contact with him. In a judgment of 15 June 2009 the Sofia District Court granted the third applicant contact rights once a month for four hours. The court noted the strained relationship between the third applicant and V.D. and the fact that the third applicant had not

been in contact with the child for about two years. It is not clear whether this judgment was appealed against.

83. The parties have not submitted information as to whether contact has been re-established between the child and his grandmother since that judgment and prior to the latter's death.

2. Proceedings for deprivation of parental rights

84. On 11 September 2007 V.D. initiated proceedings to deprive the first applicant of parental rights. In a judgment of 8 June 2008 the Sofia District Court dismissed the claim as manifestly ill-founded. On appeal, on 28 April 2009 this judgment was upheld by the Sofia City Court, which held that the exercising of parental rights by both parents was of major importance for the second applicant's development. It is not clear whether the parties appealed further.

85. Meanwhile, on an unspecified date the first applicant initiated proceedings to deprive V.D. of parental rights and for full parental rights in respect of the second applicant. In a judgment of 17 March 2011 the Sofia District Court dismissed the first applicant's action. It is not clear whether this judgment was appealed against.

II. RELEVANT DOMESTIC LAW

A. The Protection Against Domestic Violence Act of 2005

86. The PADVA provides for administrative and police measures in cases of domestic violence. In particular, the relevant court may, *inter alia*, issue injunctions and remove the perpetrator from the family home, ban him from approaching the victim's home, workplace or social meeting place and temporarily remove a child from the custody of a perpetrator. Failure to comply with the measures imposed by the court may result in fines, arrest and prosecution.

87. Section 3 of the PADVA, as in force between March 2005 and December 2009, provided that protection under this Act might be granted to any person who was a victim of domestic violence perpetrated by a spouse or an ex-spouse, an intimate partner or an ex-partner with whom the victim is living or has lived, a person with whom the victim has had a child, an older relative, a descendant, a brother or a sister, an in-law, a guardian or a foster parent. In December 2009 section 3 of the PADVA was amended to include among the perpetrators, *inter alia*, members of the victim's extended family, and in particular, any person with whom the victim's parent lived.

88. Pursuant to section 12 the District Court is to examine the complaint on the day it is lodged and to schedule a hearing within thirty days. In the event it finds the complaint well-founded it issues a protection order (section 16). The District Court's judgment is subject to appeal before the Regional Court, which schedules a hearing within fourteen days of the appeal. The Regional Court's judgment is final (section 17).

89. Section 18 provides that in case of direct and imminent danger to the life or the health of the victim, the District Court issues "an order for immediate protection" no later than twenty-four hours after the lodging of the complaint.

B. The Child Protection Act

90. The Child Protection Act, which came into force on 17 June 2000, stipulates in section 1(2) that the State protects and guarantees the fundamental rights of all children in all areas of public life. It establishes a number of bodies with competencies in the field of child protection, such as the State Child Protection Agency, which has governing and controlling functions in respect of the other bodies, the SSAA and its regional (RSAO) and district offices (SAO), and so on. The Act gives the SSAA and its regional and district offices the power to, *inter alia*, order protection measures in respect of children in danger. Section 25(1) of the Act provides that a child may be removed from his family home in the event that, *inter alia*, it is a victim of domestic violence and there is a serious danger to its physical, psychological, moral, intellectual and social development.

91. Pursuant to section 26(1) the court is the competent body which can decide on the removal of the child. A request to the court can be lodged by the SSAA, a prosecutor or a parent (section 26(2)). Section 28 of the same Act provides that the District Court immediately examines the request. Its judgement is to be delivered within one month and is to be executed immediately. The judgment is subject to appeal before the Regional Court, which schedules a hearing no later than seven days following the appeal. The latter court's judgment is final. Until the court's judgment is delivered, the local SAO may temporarily remove the child from the family home.

C. The Family Code of 1985

92. Article 70(2) of the Family Code of 1985, in force until 1 October 2009, provided that grandparents were entitled to personal relations with their grandchildren. In the event that personal contact was being impeded by a parent or any other person, grandparents could request that the District Court determine measures to ensure that they had personal contact with their grandchildren.

D. Enforcement of judgments

93. Article 421 and the Code of Civil Procedure of 1952, in force until 1 March 2008, provided that when the enforcement of a judgment depended exclusively on the goodwill of the debtor, the enforcement officer, upon the request of the creditor, could impose on the debtor a fine of up to 200 Bulgarian leva (BGN), the equivalent of 102.25 euros (EUR). There was no limit to the number of times the fine could be imposed.

94. The new Code of Civil Procedure of 2008 contains a similar provision (Article 527) and expands further the enforcement of judgments for measures relating to parental rights. It provides, in Article 528, that in cases of enforcement of a judgment to hand over a child the enforcement officer may, as well as imposing a fine, request the assistance of social services and the municipal and police authorities. Moreover, the enforcement officer can take the child by force and hand it over to the entitled parent.

E. The Criminal Code

95. Article 182(2) of the Criminal Code of 1968 provides that a parent or another relative who prevents contact with a child or the enforcement of a court judgement for custody can be sentenced to probation, fined up to BGN 300 (EUR 153) and, in severe cases, sentenced to up to six months' imprisonment or to a fine of up to BGN 3,000 (EUR 1,533). Under Article 193a of the same Code, in force until April 2010, criminal proceedings against the parent preventing contact may be instituted at the request of the other parent or the person to whom contact has been granted.

THE LAW

I. THE *LOCUS STANDI* OF MRS D.D.

96. The Court must first examine whether Mrs D.D. has standing to pursue the application originally lodged by the third applicant, Mrs M.D., who died on 17 February 2011 in the course of the proceedings.

97. The Court has previously taken into account similar requests (see, for example, *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, and *Kovačić and Others v. Slovenia* [GC], nos. 44574/98 et al., §§ 189-192, ECHR 2008-...). In this connection, the Court has considered whether or not the persons wishing to pursue the proceedings were the applicant's close relatives (see *Thévenon v. France* (dec.),

no. 2476/02, ECHR 2006-III, and *Scherer v. Switzerland*, 25 March 1994, §§ 31-32, Series A no. 287) and whether the rights concerned were transferable. On the one hand, the Court has continued the examination of cases involving pecuniary claims that were transferable to the deceased applicant's heirs (see, for example, *Ahmet Sadık v. Greece*, 15 November 1996, § 26, Reports of Judgments and Decisions 1996-V; and, *mutatis mutandis*, *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX). On the other hand, the Court has found that certain other rights, such as those guaranteed by Articles 5 and 8 (see *Thévenon*, cited above) or Articles 2, 3, 5, 8, 9 and 14 (see *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI) were of an eminently personal and non-transferable nature (see, with further references, *Vääri v. Estonia* (dec.), no. 8702/04, 8 July 2008, and *Angelov and Angelova v. Bulgaria* (dec.), no. 16510/06, 7 December 2010).

98. The Court has also considered whether the case concerned involved an important question of general interest transcending the person and the interests of the applicant (see *Karner*, cited above, §§ 25-27; *Marie-Louise Loyen and Bruneel v. France*, no. 55929/00, § 29, 5 July 2005; and *Biç and Others v. Turkey*, no. 55955/00, § 23, 2 February 2006).

99. Turning to the present case, the Court observes that Mrs D.D. wished to continue the application lodged by her mother – the third applicant – as it related, *inter alia*, to her complaints concerning the authorities' attitude towards her during the investigation of the alleged abuse of the child and the alleged interference with her right to respect for her family life. Thus, the first condition of close kinship is met. However, these complaints concern issues falling under Articles 3 and 8 of the Convention, which are so closely linked to the person of the original applicant that they cannot be regarded as transferable. Therefore, the Court finds that Mrs D.D. does not have standing to continue the proceedings in the third applicant's stead.

100. Moreover, having in mind that the complaints raised by the third applicant will be examined in so far as they were also raised by the first and the second applicants, the Court considers that there exists no general interest which necessitates proceeding with the examination of the complaints raised by the third applicant. Consequently, it finds that the conditions in which these complaints may be struck out of its list, as provided in Article 37 § 1 of the Convention, are satisfied.

II. ALLEGED VIOLATION OF ARTICLES 3, 8, 13 AND 14 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

101. The first applicant, acting on behalf of his son, the second applicant, complained under Article 3 of the Convention that the State had failed to fulfil its positive obligations to protect the second applicant from inhuman and degrading treatment due to the allegedly slow and ineffective

investigation into the allegations that the second applicant had been sexually abused and especially considering the fact that he is still living with his alleged abuser. He also complained under Article 13 of a lack of effective remedies in respect of the alleged abuse of the child and under Article 14 that the second applicant was discriminated against because, having been abused by his mother's co-habitant, he had no right to initiate proceedings under the PADVA. Having regard to the nature and substance of the second applicant's complaints, the Court finds that they fall to be examined under Articles 3 and 8 of the Convention. It recalls that a similar approach was followed in the case of *M.C. v. Bulgaria* (no. 39272/98, §§ 148-153, ECHR 2003-XII).

Article 3 reads as follows:

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

Article 8 of the Convention provides as relevant:

"...Everyone has the right to respect for his private ... life, ..."

A. Admissibility

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

B. Merits

1. The parties' submissions

103. The Government argued that the criminal proceedings against Y.S. were conducted diligently and in accordance with the principles set forth in the Convention. They disputed the applicants' allegations that the authorities' reaction to the situation was slow and inadequate. They pointed out that immediately after the applicants had complained about the alleged abuse, criminal proceedings against Y.S. were opened and he was remanded in custody. The authorities carried out a thorough investigation into the allegations of sexual abuse, carefully considered the versions of the events presented by the applicants and Y.S. and the credibility of all statements, and gave well-reasoned decisions. More than forty witnesses were questioned, including friends and family of the applicants, social workers, experts and doctors. The examination of most of them was requested by the applicants. In addition, eighteen different expert opinions and assessments were sought.

104. The Government further pointed out that the social services were immediately informed about the situation and undertook social work with the second applicant and his family without delay. Periodic meetings with the child and the members of his family were carried out, his home was visited regularly and without prior notice, numerous reports, including assessments of the risk of sexual abuse, were prepared. The Government submitted, *inter alia*, a report on the progress of the work with the second applicant prepared by the social services.

105. The applicants contended that where there are two irreconcilable versions of events, as in the present case, the State's positive obligations under Articles 3 and 8 include a context-sensitive assessment of the credibility of the statements made and verification of all the surrounding circumstances. In the present case, however, the authorities fell short of Convention standards in this respect. According to them, not all relevant evidence was gathered in the criminal proceedings against Y.S., and the latter's explanations were accepted as true without criticism. In the decision to discontinue the proceedings of 5 October 2009 the prosecutor wrongly interpreted the evidence and credited expert opinions carried out later in time rather than those of the time immediately following the events; he also did not discuss the findings of some of the expert opinions and the statements of certain witnesses, and relied on expert opinions provided by several experts, one of whom was V.D.'s private therapist. This cast doubts on the independence of the experts and the veracity of the conclusions.

106. The applicants further pointed out that the efforts to remove the child from his home continued to be of no avail – the prosecuting authorities and social services refused to take actions to that end, an action under the PADVA was inadmissible and the proceedings under section 26 of the Child Protection Act were slow and ineffective. In addition, Y.S. was released from custody shortly after the incident and continued to reside with the second applicant.

107. Lastly, the applicants contested the Government's assertions that social services had had regular meetings with the second applicant and V.D., arguing that the only evidence to that effect was a report from social services.

2. *The Court's assessment*

108. 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*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI; *Z and Others v. the United Kingdom* [GC],

no. 29392/95, §§ 73-75, ECHR 2001-V; *E. and Others v. the United Kingdom*, no. 33218/96, § 88, 26 November 2002; and *M.C.*, cited above, § 149). These measures should provide effective protection, in particular of children, who are particularly vulnerable to various forms of violence, and include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity (see *Z and Others*, cited above, § 73; *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII; *X and Y v. the Netherlands*, 26 March 1985, §§ 23 and 24, Series A no. 91; *M.C.*, cited above, § 150; and *Okkaly v. Turkey*, no. 52067/99, § 70, ECHR 2006-... (extracts)). Positive obligations on the State are inherent in the right to effective respect for private life under Article 8 as well. They may involve the adoption of measures even in the sphere of the relations of individuals among themselves.

109. Further, the Court has held that the State's positive obligation under Articles 3 and 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *Osman*, cited above, § 128, and *M.C.*, cited above, § 152). That said, however, the Court notes that there is no absolute right to obtain the prosecution or conviction of any particular person (see *Szula v. the United Kingdom* (dec.), no. 18727/06, 4 January 2007).

110. In the present case, there is no doubt that the alleged abuse falls within the scope of Article 3 of the Convention and constitutes an interference with the second applicant's right to respect for physical integrity as guaranteed by Article 8, if it took place. It is also not disputed that the criminal law prohibited the sexual abuse alleged by the applicants and provided for criminal prosecution of those responsible. The primary question for the Court to address is therefore whether the authorities could be said to have carried out a speedy and effective investigation and taken all reasonable steps to prevent possible continuation of the alleged ill-treatment and to safeguard the second applicant's physical integrity.

111. The Court observes that following receipt of allegations of abuse, the authorities immediately opened criminal proceedings, questioned witnesses and obtained a number of expert opinions and medical, forensic and psychological evidence, including expert opinions on the exact injuries sustained by the second applicant, their nature and the method of their infliction (see paragraphs 17, 18, 31 and 35 above), on the existence of evidence of abuse (see paragraph 23 and 33 above) and the reliability of the second applicant's story (see paragraph 21, 22, 25, 32 and 33 above). The Court notes that after the quashing of the initial discontinuation order of 28 February 2008 by the domestic courts, all the instructions for further investigative actions given by these courts were complied with - additional expert opinions were commissioned and more witnesses were questioned.

The authorities questioned a large number of different individuals involved and assessed the credibility of their statements. Despite these efforts, however, the prosecuting authorities and the criminal courts could not find sufficient evidence that the alleged abuse had actually occurred. The Court reiterates in that connection that an obligation to investigate “is not an obligation of result, but of means”: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events (see, *mutatis mutandis*, *Maksimov v. Russia*, no. 43233/02, § 83, 18 March 2010).

112. The Court acknowledges in that respect that the authorities had to deal with two irreconcilable versions of the facts and that the results of the numerous expert opinions were inconclusive and often contradictory. Thus, while some of the expert opinions concluded that the injuries to the second applicant’s anus could have been inflicted by penetration with a finger as alleged by him (see paragraphs 17 and 31 above), others held that they were also consistent with penetration by hard objects or could have been caused by constipation (see paragraph 17 and 35 above). Similarly, while the expert opinion of 4 September 2007 concluded that the child’s story was tenable, the opinions of 30 August 2007, 4 February 2008 and 12 November 2008 reached the opposite conclusion (see paragraphs 21, 22, 25 and 33 above). Furthermore, the authorities had to face the difficulty of the alleged victim being a young child whose testimony had to be taken with the utmost caution. In addition, numerous reports from social services and testimonies of social workers held that there had been no signs of abuse and that the second applicant was living in an adequate and harmonious environment. Based on the evidence gathered up to the present day, the domestic courts concluded that no abuse had taken place. The Court, for its part, does not consider itself to be in a position to draw a conclusion on the issue, and reiterates that it cannot substitute its own findings of fact for that of the domestic courts, which are better placed to assess the evidence adduced before them and to weigh witness testimony. It should also be noted that the criminal proceedings appear to be still pending and therefore no final decision in that respect appears to have been reached.

113. In the light of the above considerations, the Court does not consider that the case at hand discloses any culpable disregard, discernible bad faith or lack of will on the part of the police or the prosecuting authorities as regards properly holding perpetrators of serious criminal offences to account under domestic law, and in particular as regards the establishment of the true facts in the case at hand and the punishment of those responsible.

114. The Court further considers that in assessing the State’s compliance with its positive obligations under Articles 3 and 8 of the Convention, considerable weight should be attached to the social services’ and child protection authorities’ efforts to handle the situation and to provide assistance and counselling to the second applicant and his immediate

family. It notes that social services started working on the case immediately after being notified of the allegation of abuse. As early as 31 August 2007 officials from the Lozenets SAO met the first and third applicants (see paragraph 47 above). On 5 and 27 September the child's home was visited by social workers, and expert opinions and reports on the possibility of abuse and the necessity of psychological assistance and family counselling were prepared in October and November 2007. Shortly thereafter the second applicant and his mother, V.D., started attending regular family counselling and receiving psychological assistance (see paragraphs 64-66 and 69-72 above). The social services continued to pay visits, including impromptu ones, to the child's home, to carry out meetings with the individuals involved, to monitor the child's development and to weigh the risk of potential abuse at least until the end of 2010 (see paragraphs 61-74 above). The Court cannot but note that the conclusions of the numerous reports on the possibility of abuse showed no indication that abuse had occurred, and that the second applicant was living in an adequate and harmonious environment (see paragraphs 73 and 74 above). The Court sees no reason to doubt the social services report on the progress of the work with the child and his mother submitted by the Government (see paragraph 104 above), and does not consider, as the applicants suggest (see paragraph 107 above), that many, or at least some, of these actions had not taken place. The submissions in the said report are supported by evidence from the criminal and civil proceedings at hand and statements from social workers and other officials in these proceedings.

115. As to the refusal to remove the second applicant from his home, which was contrary to the wishes of his father and grandmother, this circumstance cannot be construed as a failure of the authorities to take adequate measures to protect his physical integrity. The refusals to undertake such a drastic measure were given in the absence of sufficient proof that abuse had taken place, and after a careful consideration of all relevant materials. The Court acknowledges certain shortcomings, among which are the impossibility of initiating proceedings under the PADVA, the defects in the order for the second applicant's placement with the first applicant of 31 August 2007, and certain delays in the proceedings under the Child Protection Act. It notes, however, that the proceedings under the PADVA were only one among a number of other remedies provided for in the domestic legislation, such as those under section 26 of the Child Protection Act and the criminal proceedings against the alleged perpetrator. These latter remedies were used by the applicants, and the fact that they did not produce the results desired by the first applicant does not render them ineffective.

116. In respect of the first applicant's court proceedings under section 26 of the Child Protection Act for removal of the second applicant from his current home (see paragraphs 52-60 above), the Court reiterates that

undoubtedly consideration of what lies in the best interest of the child is of crucial importance in every case concerning custody and removal of a child from his home. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all those concerned and enjoy a wide margin of appreciation, in particular when assessing the necessity of taking a child into care (see, amongst other authorities, *Johansen v. Norway*, 7 August 1996, § 64, *Reports of Judgments and Decisions* 1996-III, and *T.P. and K.M. v. the United Kingdom*, no. 28945/95, [GC], ECHR 2001, § 71). The Court considers that similar standards apply to considering the necessity of removing a child from his current home and placing it with other relatives. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding such matters, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see *mutatis mutandis*, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A, and, *mutatis mutandis*, *Bronda v. Italy*, 9 June 1998, § 59, *Reports of Judgments and Decisions* 1998-IV).

117. While acknowledging that proceedings related to custody and removal of children from their current homes should be handled with maximum swiftness and caution, the Court considers that in the present case, despite the initial delays caused by certain formalities and errors on the part of the first-instance court (see paragraphs 53-55 above) and the overall length of the proceedings, the domestic courts thoroughly examined the circumstances of the case and acted with diligence, seeking to protect the best interest of the second applicant. They gathered a large amount of evidence, commissioned, *inter alia*, up-to-date social reports on the potential effects of removal and heard testimonies from the social workers involved in the case. Their findings were based on the evidence gathered, giving credence to the conclusions that removal would adversely affect the second applicant's development and confirming the principle that in such cases the best interest of the child is paramount (see paragraphs 59 and 60 above). The Court also notes that the Child Protection Act provided for the possibility of temporary removal while the proceedings were pending (see paragraph 91 above). The length of the proceedings, therefore, could not be seen as the only decisive element when assessing their effectiveness. In view of the above, the Court does not consider that in the proceedings under the Child Protection Act the domestic courts have gone beyond their margin of appreciation or have disregarded the Convention principles by failing to protect the second applicant's physical integrity.

118. The foregoing considerations are sufficient to enable the Court to conclude that the actions of the authorities in responding to the situation and ascertaining the true facts in the case did not amount to an ineffective investigation or lack of provision of adequate protection.

There has accordingly been no violation of Articles 3 and 8 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged violations of Articles 3 and 13 of the Convention with respect to the first applicant

119. The first applicant complained of a violation of Articles 3 and 13 in respect of himself.

120. The Government contended that the first applicant could not claim to be a victim of a violation of Article 3 on his own behalf, in so far as the authorities had taken timely and adequate measures in respect of the complaints of sexual abuse. While not disputing the close relationship between him and the second applicant, the Government argued that in the present case there were no special factors such as those in the cases of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (no. 13178/03, ECHR 2006-...), and *Luluyev and Others v. Russia* (no. 69480/01, ECHR 2006-... (extracts)) justifying the first applicant's victim status.

121. The first applicant argued that he could be considered a victim of a violation of Article 3 on account of the authorities' attitude towards him. In particular, he contended that he had not been provided with sufficient information about the progress of the criminal proceedings against Y.S., and was provided with information only when the findings of the investigation were presented to his representative, and not earlier. Furthermore, the whole attitude of the prosecution, the judiciary and the State administration towards him was redolent of formalism, bureaucracy and lack of interest.

122. The Court reiterates that the issue of whether a parent qualifies as a "victim" of the ill-treatment of his or her child or of a failure to investigate such will depend on the existence of special factors which give the applicant's suffering a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie and the way the authorities responded to the parent's enquiries.

123. In the present case there are close family ties between the first and the second applicants because of the special parent-child bond between them.

124. As to the authorities' reaction and attitudes to the impugned circumstances, wherein lies the essence of the alleged violation (see, *mutatis mutandis*, *Mubilanzila Mayeka and Kaniki Mitunga*, cited above, § 61; *Çakıcı v. Turkey* [GC], no. 23657/94, § 98, ECHR 1999-IV; and *Hamiyet Kaplan and Others v. Turkey*, no. 36749/97, § 67, 13 September 2005), the Court considers that the first applicant has not shown any particular

examples of inappropriate reaction or attitudes on the part of the authorities towards the situation complained of and towards him personally. On the contrary, his complaints and applications were examined and answered; social services also held a number of meetings with him and were working towards facilitating relations between him and his son. Furthermore, as the father and representative of an alleged victim of sexual abuse, he took part in the criminal proceedings against Y.S., had the right to file complaints and to appeal against the decisions of the prosecutors and the domestic courts, and his lawyers were presented with the findings of the investigation.

125. Therefore, the Court considers that the first applicant has not presented any special factors justifying his claims to be a direct victim of a violation of Article 3 of the Convention (compare and contrast *Kurt v. Turkey*, 25 May 1998, §§ 130-134, *Reports of Judgments and Decisions* 1998-III). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. Accordingly, the complaint under Article 13 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, as the applicant had no arguable claim of a breach of Article 3 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131), and must be rejected in accordance with Article 35 § 4.

B. Alleged violations of Articles 8 and 13 of the Convention

126. The first and second applicants also complained under Article 8 that the State had not done anything to secure the personal relations between them and between the second and third applicant.

The relevant part of Article 8 reads as follows:

“...Everyone has the right to respect for his private and family life, ...”

127. The Government contended that there was no violation of the applicants' rights under Article 8. As to the relations between the child and his father, they pointed out that these relations had been disrupted by the conflict within the family, for which the authorities could not be blamed. The third applicant's action under Article 70 of the Family Code was examined by the domestic courts thoroughly and with respect to the family life of the applicants, and in a judgment of 15 June 2009 the third applicant was granted contact rights.

1. The relations between the first and second applicants

128. The Court reiterates that facilitating meetings between parents and children is not an absolute obligation, and the State must take into account the rights and freedoms of all concerned. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the

child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (see, among others, *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII, and *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I). What is decisive in such cases is whether the national authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (see, among others, *Olsson v. Sweden* (no. 2), 27 November 1992, § 90, Series A no. 250 and *Nuutinen v. Finland*, no. 32842/96, §§ 123-129, ECHR 2000-VIII).

129. In the present case the Court notes at the outset that the first applicant was never deprived of parental or contact rights. The latter were granted to him by virtue of the judgment of 21 July 2006 (see paragraph 7 above). The outcome of the proceedings under the Child Protection Act also does not affect these rights.

130. In so far as the first applicant complains that he did not receive the necessary assistance to re-establish personal relations with the second applicant, the Court notes that while he actively sought the assistance of the social services and the child protection authorities to that end, at least initially, he never initiated proceedings for enforcement of the judgment of 21 July 2006 which granted him contact rights in respect of his son, as provided by the Code of Civil Procedure. Until 1 March 2008 such proceedings could result in a fine, and after that date the enforcement officer could take the child and hand it over to the entitled parent (see paragraphs 93 and 94 above). The Court cannot speculate on the outcome and effectiveness of such enforcement proceedings. Furthermore, the first applicant did not complain to the police or prosecution authorities with a view to opening criminal proceedings against the mother under Article 182 (2) of the Criminal Code (see paragraph 95 above). Lastly, the Court notes that it appears from the materials in its possession that meetings between the first and the second applicant had in fact taken place (see paragraphs 77 and 81 above).

131. It follows from the above considerations that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. Accordingly, the complaint under Article 13 is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The relations between the second and third applicants

132. The Court reiterates that relations between children and their grandparents are covered by Article 8 of the Convention as ‘family life’ (see, among others, *Bronda v. Italy*, 9 June 1998, cited above, § 51), which implies an obligation on the State to allow ties between grandparents and

grandchildren to develop normally (see, among others, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 221, ECHR 2000-VIII). Article 8 is, therefore, applicable to the relations between the second and third applicants. The Court considers that just as in the case of relations between parents and children, when facilitating meetings between grandparents and grandchildren the State must take into account the rights and freedoms of all concerned, and more particularly the best interests of the child.

133. In the present case, the Court notes that despite noting the conflict between the members of the second applicant's extended family, and in particular between his grandmother, the third applicant, and his mother, in its judgment of 15 June 2009 the Sofia District Court granted the third applicant contact rights (see paragraph 82 above). The parties have not informed the Court whether this judgment was appealed against and whether contact between the second and the third applicant was re-established after the judgment of June 2009 and before the latter's death (see paragraph 83 above). Furthermore, efforts to that effect were also made by social services (see paragraph 47 above).

134. In view of the above, the Court considers that the authorities have not failed to take the necessary steps to facilitate contact between the second and the third applicant. It follows that this complaint is manifestly ill-founded, and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. Accordingly, the complaint under Article 13 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 (see paragraph 125 above).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases under Article 37 § 1 (a) of the Convention, in so far as it has been brought by the third applicant, Mrs M.D.;
2. *Declares* the second applicant's complaints under Articles 3 and 8 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Articles 3 and 8 of the Convention in respect of the authorities' alleged failure to investigate the allegations of sexual abuse of the second applicant and to protect his physical integrity.

Done in English, and notified in writing on 15 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President