



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

THIRD SECTION

CASE OF M.M.B. v. SLOVAKIA

(Application no. 6318/17)

JUDGMENT

Art 8 • Respect for private life • Positive obligations • Lack of effective investigation into allegations of sexual abuse over young child • Authorities' failure to engage in context-sensitive assessment of conflicting evidence

STRASBOURG

26 November 2019

FINAL

26/02/2020

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

In the case of M.M.B. v. Slovakia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Paulo Pinto de Albuquerque,

Alena Poláčková,

María Elósegui,

Gilberto Felici,

Lorraine Schembri Orland, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 5 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 6318/17) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Ms M.M.B. (“the applicant”), on 13 January 2017. The President of the Section acceded to the applicant’s request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by her mother, Ms S.M.B., who instructed Ms I. Rajtáková, a lawyer practising in Košice, to act on her behalf. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that her right to an effective investigation under Article 8 of the Convention had been breached by the domestic authorities’ investigation into the allegation of abuse by her father.

4. On 20 December 2017 notice of the complaint concerning the ineffective investigation was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 2008 and lives in Košice.

A. First investigation

6. On 31 October 2012 the applicant’s mother requested that her daughter be examined by the psychologists of the Dada, Mama and Me

Private Centre for Pedagogical and Psychological Counselling and Prevention (*Súkromné centrum pedagogicko – psychologického poradenstva a prevencie Oco, Mama a Ja*) in Prešov. The applicant's mother approached the centre with a suspicion that the applicant had been sexually abused by her father. After talking to the applicant, psychologists of the centre concluded, on 9 November 2012, that she exhibited many symptoms usually displayed by children with CAN (Child Abuse and Neglect) syndrome, and that she was undergoing an internal psychological struggle. They also stated that she refused to portray her father in a picture and manifested, in organised play, sexual behaviour towards the psychologist that was not typical for her age.

7. On 7 December 2012 the applicant's mother lodged a criminal complaint (*trestné oznámenie*) against the applicant's father. She alleged, relying on the report drawn up by the above centre, that the applicant, who had been four years old at the time, had been sexually abused between July and December 2012.

8. On 12 December 2012 the applicant's father left the family home following a court preliminary measure ordering him to refrain from any contact with the applicant, with whom he has had no contact since.

9. On 18 January 2013 a criminal prosecution (*trestné stíhanie*) against an unknown perpetrator was opened by the Košice police (*Okresné riaditeľstvo Policajného zboru*).

10. Following a request by the investigator, on 10 February 2013, the psychologist L.L. confirmed that she had examined the applicant on two occasions, on 4 and 18 September 2012, without having identified any extraordinary features in the applicant's behaviour. However she could neither confirm nor exclude the fact that the applicant might have been sexually abused, and recommended a further examination.

11. On 12 February 2013 the investigator requested a report from the social-protection authority, which had been following the family since the preliminary measure of 12 December 2012. The report described the living situation of the persons concerned and gave an account of the applicant's parents' statements; no interview with the applicant was mentioned.

12. Following another request by the investigator seeking to evaluate the applicant's and her father's tendency to lie or distort the reality and to identify any traces and possible after-effects suggesting that the applicant had been sexually abused, a psychological expert opinion was produced by E.S. (hereinafter the "first expert report") on 25 March 2013. The expert found that the applicant showed no signs of sexual abuse and that neither the father nor the applicant had any tendency to lie. However, the applicant had a vivid imagination typical for children of her age. On the other hand, the applicant was also capable of reproducing her perception of past events, albeit only according to a subjective importance of such events to her; her

ability to reproduce past events was more exact in respect of recurring events.

13. Between 11 March and 16 May 2013, the investigator questioned the applicant's parents, the applicant herself (in presence of the expert E.S.) and the social-protection authority appointed as legal guardian for the applicant for the purposes of the criminal proceedings. The applicant denied any sexual interference; the legal guardian summarised the above report and mentioned the pending divorce proceedings.

14. On 17 May 2013 the criminal prosecution was discontinued pursuant to Section 215 of the Code of Criminal Procedure since no offence of sexual abuse was found to have been committed. An appeal by the applicant's mother was unsuccessful, as she had no procedural standing to challenge the decision.

B. Second investigation

15. On 13 March 2014 the applicant's mother lodged a fresh criminal complaint against the applicant's father. She alleged that the applicant, who had been attending the Centre of Pedagogical and Psychological Counselling (*Centrum pedagogicko- psychologického poradenstva*) in Košice since April 2013, had started talking about the events of 2012 and described what had happened between her and her father. The mother also provided the police with two drawings by the applicant depicting her father in a sexually explicit way. In addition, she submitted a report dated 6 March 2014 by the centre's psychologist, who stated that the applicant had revealed her past traumatic experience through drawings and had verbally described situations of abuse during their sessions.

16. By a decision of 23 April 2014, the investigator of the Košice police opened a criminal prosecution for sexual abuse. A legal guardian was appointed in respect of the applicant by a court.

17. After having questioned the applicant's parents, the investigator commissioned three expert opinions.

18. On 26 May 2014 a psychologist, V.S., was asked to assess the applicant's personality (hereinafter the "second expert report"). The expert concluded on 17 June 2014 that the applicant showed no negative emotions towards her father. She did not find the applicant's drawings unusual and noted that the applicant's description of events raised the suspicion and the suggestion that the topic had been artificially generated by people around her. The applicant had no genuine tendency to lie. Rather, she confused real memories with imagination and employed her fantasy to explain situations she could not understand. She also manifested none of the signs typical of victims of sexual abuse; rather, she exhibited signs of emotional confusion as her feelings towards her father were uncertain. The expert recommended not questioning the applicant in the presence of the prosecuting authorities.

19. After having examined the applicant's father, V.S. concluded in her expert report of 24 June 2014 (hereinafter the "third expert report") that he had no tendencies to lie, no aggressive reactions to pressurised situations, and that his personality displayed no signs of pathological symptoms.

20. On 6 June 2014 a sexologist, D.C.-Š., was asked to consider the applicant's father's sexuality (hereinafter the "fourth expert report", of 29 August 2014). The expert concluded that he was not suffering from any sexual deviation, had no sexual interest in children and manifested no signs of sexually aggressive behaviour. She excluded any sexual or other motivation (such as schizophrenia, mental disorder, alcoholism, and so forth) in respect of any alleged acts towards the applicant.

21. On 5 September 2014 a psychologist, D.H., was asked to assess the mother's personality. In her report of 8 October 2014 (hereinafter "the fifth expert report"), she concluded that the mother had a slightly heightened tendency to lie, to make assumptions and to be confused regarding reality. The mother's statements were very subjective and based on assumptions, suspiciousness and naivety, assigning sexual connotations to neutral situations. According to the expert, she might have manipulated the applicant and stimulated her sexual imagination.

22. In the meantime, the mother requested another expert opinion, which was added to the file on 23 July 2014 (hereinafter the "sixth expert report"). The psychologist, O.T., concluded that the applicant displayed symptoms of sexual abuse, and appended to the report several drawings displaying the applicant's father in a sexually explicit way.

23. On 5 November 2014, the expert V.S. was questioned by the investigator. She was asked whether the applicant had drawn pictures during her expert examination and if so, why they were not included into the report. The expert replied positively and stated that the choice of the examination methods were within her competence.

24. Given these divergent conclusions, on 1 December 2014 the investigator requested another expert opinion (hereinafter the "seventh expert report") from the Research Institute of Child Psychology and Pathopsychology (*Výskumný ústav detskej psychológie a patopsychológie*) in Bratislava. This report, dated 26 January 2015, was elaborated on the basis of the existing file, interviews with the applicant and her mother and a psychological examination of the applicant. According to its conclusions, it was highly probable that the applicant had not invented the events she had described and that she had experienced sexual abuse. The authors of the report concluded that the applicant was already able to discern reality from fantasy and did not display any personality features likely to negatively influence her statements. They reported that she had referred to her past experience verbally, non-verbally and inadvertently through gestures, which had increased the specific credibility of her statements. The experts considered that the revelation by the applicant of the details of her sexual

abuse was a process, which included stages in which she was reluctant to make any statement, when she denied any abuse and then revealed certain details, withdrew her statements and reconfirmed them again. Her drawings had also shown that there was a likelihood of her having experienced the alleged sexual abuse. Furthermore, the applicant was experiencing internal anxiety and general fear; she was also very sexually receptive and her inner stability was distorted by past inadequate sexual stimulation.

25. On 10 March 2015 the expert, D.C.-Š., was questioned by the investigator. She stated that the mere fact that the applicant's father did not suffer from any sexual deviation did not exclude sexually abusive behaviour, only excluding sexual motivation for such behaviour; he was not found to have had any psychiatric motivation, but the expert examination had not been focused on this issue. The expert stated that, in general, there might be other non-sexual motivations caused for example by psychiatric disorders or drugs, but signs of those were not manifested in the applicant's father.

C. Charges against the applicant's father

26. On 23 April 2015 the applicant's father was charged by the investigator with the offence of sexual abuse.

27. On 28 May 2015, following a complaint by the applicant's father, the Košice regional prosecutor's office (*krajská prokuratúra*) annulled the decision to press charges. The regional prosecutor considered that, bearing in mind the earlier reports, the seventh expert report lacked any express assertion as to whether or not the applicant had been sexually abused. The investigator was therefore ordered to interview the two experts who had prepared the seventh expert report, in order to obtain explicit statements as to whether the applicant had been sexually abused by her father.

28. On 24 June 2015 the two experts, E.S. and A.K., were interviewed. They were asked to answer the following question:

“Answer, in an unambiguous manner, whether [the applicant] has or has not been sexually abused by her father, providing reasons for your answer.”

29. Both experts confirmed all the conclusions reached in their report and reaffirmed that it was not their role to decide whether the crime in question had been committed; this was, rather, the investigator's role. They stated:

“... It is highly probable that this experience as such was not invented [by the applicant], there is an assumption that she must have gone through and experienced the situation.”

30. They further stated that the mother could not have provoked the applicant's sexual imagination by asking suggestive or manipulative questions since the latter had displayed specific and authentic behaviour and

emotions. They also noted that repeated questioning was not the best way of dealing with victims of sexual violence. However, they confirmed that revealing the details of the applicant's sexual abuse was an ongoing process rather than a one-off event, and that the changes in the applicant's position and behaviour formed part of that process. Also, had the applicant been subject to external influences, her statements would have lacked consistency, detail and non-verbal gestures, which had not been the case.

31. On 7 September 2015 the district prosecutor informed the regional prosecutor about the interview. He stated that given the experts' answer to the above question, the evidentiary situation was similar to the one preceding the decision of 28 May 2015 and noted that in the latter decision the regional prosecutor had rather considered that the act had not been committed. Consequently, it was not possible to decide unequivocally whether criminal charges should again be brought against the applicant's father or whether another decision should be reached.

32. In a letter of 17 September 2015 the regional prosecutor agreed that the evidentiary situation had not changed and thus referred to his decision of 28 May 2015.

33. By a decision of 28 October 2015 the investigator of the Košice police discontinued the criminal prosecution since there was no doubt that the impugned act had not been committed. After having summarised the statements of the applicant and her parents and the contents of the expert reports, the investigator noted that according to the second expert report, it could not be excluded that the applicant distorted reality and confused real memories with fantasy, and thus her statements did not appear objective; no signs indicating sexual abuse experience could be found in her personality which was still subject to developments. Referring to the third and fourth expert reports, the investigator observed that no tendencies to lie, no pathological symptoms or signs of sexual deviation or aggression had been identified in respect of the applicant's father, while the fifth expert report pointed to the subjectivity of the assertions of the applicant's mother who had a slightly heightened tendency to lie and was characterised by suspiciousness, naivety and confusion over reality. There was thus no evidence proving that the act in question had occurred. Despite the sixth and seventh expert reports having concluded that the applicant had displayed symptoms of a sexually abused child, those conclusions were not sufficient to prove that the act had really been committed, particularly in view of the expert reports assessing the personality of the applicant.

34. The applicant's mother learned about the decision when consulting the file on 9 December 2015.

D. Proceedings before the Constitutional Court

35. On 9 February 2016 the applicant lodged a constitutional complaint with the Constitutional Court (*Ústavný súd*), in which, relying on Articles 19 and 41 of the Slovak Constitution and on Articles 3 and 19 of the Convention on the Rights of the Child, she challenged the last decision of the police dated 28 October 2015.

36. On 31 May 2016 the Constitutional Court dismissed the applicant's complaint as manifestly ill-founded. It concluded that the police had proceeded in accordance with the law and without any arbitrariness. The court further stated that the function of the criminal proceedings primarily lay in the perpetrator-State relationship and in the protection of societal values, not in the protection of the individual rights of the applicant.

E. Other relevant facts

37. In the context of the applicant's parents' divorce proceedings and the determination of their access rights after the divorce, a further expert report was commissioned. In her report of 25 July 2016, L.G., a psychologist, stated that the mother might have provoked or perpetuated the applicant's interest in sexual themes. She also found that the applicant had no tendency to lie consciously or to distort reality and that she could not have invented certain stories without having experienced them in the past. In any event, the expert did not find any symptoms of sexual abuse, apart from some emotional trauma which could have been connected either to sexual abuse or to her parents' separation. However, four years had passed since the alleged sexual abuse and the applicant's memory had naturally faded, or might have been intentionally erased as a response to a possible traumatic event. The applicant had a rather ambivalent attitude towards her father. The expert also reported that the applicant's mother had tendencies to dissimulate and that the applicant's father had reached a higher level in the lying test. Both parents had been evaluated as rather neurotic personalities.

II. RELEVANT DOMESTIC LAW

A. Slovak Constitution of 1992

Article 19

“(1) Everyone shall have the right to maintain and protect his or her dignity, honour, reputation and good name.

(2) Everyone shall have the right to be free from unjustified interference in his or her private and family life.”

Article 41

“(1) Matrimony, parenthood, and family shall be protected by the law. Special protection of children and minors shall be guaranteed.”

B. Criminal Code of 2005**Sexual abuse
Section 201**

“(1) Whoever performs sex with a person less than fifteen years of age or whoever engages sexually in any way with such person shall be punished by imprisonment for three to ten years.”

C. Code of Criminal Procedure of 2005**Section 215
Discontinuation of the criminal proceedings**

“(1) A prosecutor shall discontinue the criminal proceedings, if

a) there is no doubt that the act for which criminal prosecution is being carried out did not occur, ...

(4) Discontinuation of the criminal proceedings under paragraph 1 may be done also by the investigator, as long as no charges have been brought.”

D. Public Prosecution Service Act (Law no. 153/2001 Coll.)**Section 31**

“(1) A prosecutor may examine the lawfulness of actions and decisions of bodies of public administration, prosecutors, investigators, police authorities and courts in so far provided for by statute, including following a request, and is entitled to take measures to rectify established violations, provided [such measures] do not fall within the exclusive jurisdiction of other bodies by special statute.

(2) A request is understood as a written or oral demand, proposal or other submission by an individual or a legal entity, which is aimed at a prosecutor taking a measure within [the prosecutor’s] jurisdiction, in particular lodging an application for proceedings to commence before a court, or submitting a remedy, joining existing proceedings, or taking other measures for rectification of a violation of the law, which fall within [the prosecutor’s] jurisdiction.”

...

(5) No review of the lawfulness of a decision issued in criminal proceedings or a review of the lawfulness of the criminal prosecution can be sought under this Act, including the review of the procedure of the police authority during an investigation or a shortened investigation under the Code of Criminal Procedure. This provision does not apply to a request to lodge an appeal on points of law under the Code of Criminal Procedure.” (note: (5) effective from 1 January 2016)

Section 34

“1. An applicant may demand a review of the lawfulness of how her or his request has been resolved by means of a repeat request, which shall be dealt with by a prosecutor at a higher level.”

Section 35

“1. In dealing with a request, a prosecutor is duty bound to examine all circumstances decisive for the assessment of whether there has been a violation of the law; whether the conditions have been fulfilled for lodging an application for proceedings before a court to commence or for submitting a remedy; or whether [the prosecutor] may join existing proceedings before a court or take other measures which [the prosecutor] is entitled to take under [the Public Prosecution Service Act].

2. The prosecutor assesses the petition according to its content, taking into account all the facts revealed during the investigation.

3. If the prosecutor establishes that a petition is well founded, [he or she] shall take measures for rectification of the violation of law pursuant to [the Public Prosecution Service Act] or a special statute.”

III. RELEVANT INTERNATIONAL LAW

38. The United Nations Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989, has binding force under international law on the Contracting States, including all of the member States of the Council of Europe. It was ratified by the former State Czechoslovakia on 7 January 1991, and succeeded to by Slovakia on 28 May 1993. Its relevant Articles read:

Article 3

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

(...)

Article 19

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

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

Article 34

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

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

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

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

39. On 25 October 2007 the Council of Europe, recognizing that the well-being and best interests of children are fundamental values shared by all member States, adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse urging the member States to adopt measures to protect children from any form of abuse and to put in place a system capable of punishing any such acts.

40. On 1 March 2016 the respondent State ratified that Convention which entered into force in respect of the Slovak Republic on 1 July 2016.

THE LAW**I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION**

41. The applicant complained that both the criminal authorities and the Constitutional Court had failed to meet their positive obligations under Article 8 of the Convention to protect her physical integrity and private life and to carry out an effective investigation into the allegations of sexual abuse. In particular, she alleged that the domestic authorities had discontinued the prosecution, concluding that no criminal offence had been committed, even though it had been confirmed that she had been abused. She also complained that the relevant decision of 28 October 2015 had been arbitrary and insufficiently reasoned.

42. In that connection the applicant referred to Article 8 § 1 of the Convention, the relevant part of which reads as follows:

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

43. The Court, noting that the applicant based her constitutional appeal on Articles 19 and 41 of the Slovak Constitution and on Articles 3 and 19 of the Convention on the Rights of the Child, considers that the domestic authorities’ procedural obligation as regards the applicant’s allegations of sexual abuse might arise under both Articles 3 and 8 of the Convention, under which the application has been communicated to the responding

Government. However, in order to avoid further analysis as to the issues pertinent to the threshold for the purposes of Article 3 of the Convention, the Court will analyse the circumstances of the present case only from the standpoint of Article 8 of the Convention.

A. Admissibility

44. The Government contested the admissibility of the application on the ground that the applicant had not availed herself of a request to the public prosecutor under sections 31 and 34 of the Public Prosecution Service Act, as in force until 31 December 2015. In the Government's view, that remedy must be considered to have been effective (*Zubal' v. Slovakia*, no. 44065/06, §§ 33-34, 9 November 2010). While it is true that the possibility of making requests to the public prosecutor was abolished on 1 January 2016, the applicant (her legal guardian), or anyone else (such as her mother) could still have used it and challenged the decision, rendered prior to that legislative amendment, to discontinue the criminal prosecution. However, according to a written statement of the Office of the Prosecutor General dated 23 April 2018, no such request had been lodged in the applicant's case. Also, in the Government's view, the applicant had formulated her constitutional complaint in a way that had prevented the Constitutional Court from effectively reviewing the course of the investigation, since she had not pointed out to any procedural requirements following from Articles 3 and 8 but only complained about the assessment of evidence by the investigator and the conclusions of the investigation.

45. The applicant disagreed and submitted that, in her view, the only effective remedy available to her was the constitutional complaint. The latter was rejected as being manifestly ill-founded, not as being procedurally precluded by the fact that she had not used other domestic remedies under domestic law, as had been the case in the *Zubal'* case, referred to by the Government (cited above).

46. The Court observes that the applicant in the present case lodged a constitutional complaint which the Constitutional Court did not reject as inadmissible for non-exhaustion of other remedies, namely the request to the public prosecutor. The Court is thus of the opinion that the applicant cannot be sanctioned for not having used a remedy which is placed lower in the hierarchy of the domestic remedies, as long as she availed herself of the remedy of the last resort – the constitutional complaint – and as the Constitutional Court did not consider such approach in any way problematic. It would indeed be unduly formalistic to require the applicants to lodge a remedy which even the highest court of the country had not obliged them to use (see *D.H. and Others v. the Czech Republic* [GC], 13 November 2007, § 118, ECHR 2007-IV).

47. As to the Government's argument that the applicant prevented the Constitutional Court from effectively dealing with her grievances, the Court observes that the applicant complained in her constitutional complaint of a lack of effective protection by the State authorities, and disagreed with major reasons which had led to the discontinuation of the prosecution. She could not be expected to have challenged separately each and every procedural step taken by the investigator, since those only materialised in the final decision of 28 October 2015, which she opposed.

48. Consequently, the Government's preliminary objection in this case must be rejected.

49. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

50. The applicant argued that she had not asked the Court to revisit factual findings of the investigator but rather to conclude that the domestic authorities had not made a consistent effort to establish facts by engaging in a context-sensitive analysis of the events (the applicant referred to *M.C. v. Bulgaria*, no. 39272/98, § 177, ECHR 2003-XII).

51. In her opinion, the conclusion of the investigator that there had been no doubt that the events had not occurred had been extremely arbitrary as it had contradicted one part of the evidence obtained, above all the seventh expert report and the statements of its authors. The domestic authorities had failed to make any attempt to reconcile the differences in the expert reports. The applicant claimed in this context that the experts and investigators had lacked the necessary special training in identifying the victims of child sexual abuse, symptoms of which may often be different from what the investigator (and some experts) might have expected. Nevertheless, since significant progress had been made in Slovakia in the field of child sexual abuse research, the investigator could have obtained expert reports from specialists in this domain and addressed the divergences in the existing expert reports.

52. Thus the applicant maintained that the domestic authorities had failed to carry out an effective investigation into her allegations of sexual abuse and to protect her integrity and private life.

53. The Government firstly argued that there were no shortcomings in the domestic legislation relating to the crime of sexual abuse (they contrasted this case with *E.S. and Others v. Slovakia*, no. 8227/04, 15 September 2009). They continued to assert that the applicant was solely critical of the result of the criminal proceedings, not the quality or the

conduct of the investigation itself; furthermore, she had not objected to the result of the first investigation.

54. Referring to the relevant parts of the decision of 28 October 2015, the Government contested the applicant's argument that the act of sexual abuse had been proved. They stressed that the investigator had taken into account all available evidence and that the expert opinions had diverged as to whether the applicant had displayed symptoms of sexual abuse. Moreover, the expert opinions favourable to the applicant's claims had been produced without the examination of her father. The expert V.S. had not identified any tendencies to lie on the part of the applicant's father, nor any sexually deviant or aggressive behaviour. The expert D.H., on the other hand, had pointed to possible manipulative actions on the part of the applicant's mother and to her tendency to fantasise and make assumptions.

55. Though admitting that the formulation of the questions addressed to the experts by the investigator may appear problematic, the Government were of the view that this had had no bearing on the experts' conclusions. The investigative authorities had based their decision on the expert reports, which had a prime role when a question arises as to whether equivocal and inappropriate behaviour of an adult in respect of or in the presence of a minor qualifies as sexually abusive (*B.Č. v Slovakia* (dec.), n° 11079/02, 14 March 2006).

56. The Government also drew the attention of the Court to the new expert report of 2016, produced in the course of the divorce proceedings, which did not indicate any sexual abuse.

57. They lastly reiterated that the positive obligation of effective investigation was one of means to be employed and not result to be achieved, and the Court was not concerned with determining criminal liability (*Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII (extracts)). The fact that the conclusions reached by the domestic authorities in this case had differed from the applicant's claims did not call in question the effectiveness of the investigation.

2. The Court's assessment

(a) General principles

58. The Court reiterates that the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities. However, this provision does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there are positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013, with further references).

The choice of the means calculated to secure compliance with Article 8 of the Convention in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation, whether the obligations on the State are positive or negative. There are different ways of ensuring respect for private life and the nature of the State's obligation will depend on the particular aspect of private life that is at issue. Where a particularly important facet of an individual's existence or identity is at stake, or where the activities at stake involve a most intimate aspect of private life, the margin allowed to the State is correspondingly narrowed (see *ibid.*, § 79, with further references).

59. Regarding, more specifically, serious acts such as rape and sexual abuse of children, where fundamental values and essential aspects of private life are at stake, it falls upon the member States to ensure that efficient criminal-law provisions are in place (see *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91, and *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII). This obligation stems also from other international instruments, such as, *inter alia*, Articles 19 and 34 of the United Nations Convention on the Rights of the Child and Chapter VI, "Substantive criminal law", of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (see paragraphs 38 and 39 above) (see *Söderman*, cited above, § 82).

60. The Court reiterates in this connection that sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives (see *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 64, Reports 1996-IV). States thus have a positive obligation inherent in Article 8 of the Convention to criminalise offences against the person, including attempted offences, and to reinforce the deterrent effect of criminalisation by applying criminal-law provisions in practice through effective investigation and prosecution (see, *mutatis mutandis*, *M.C. v. Bulgaria*, cited above, § 153). Where the physical and moral welfare of a child is threatened, as in the present case, such injunction assumes even greater importance (see *K.U. v. Finland*, no. 2872/02, § 46, ECHR 2008).

61. The Court also recalls that the right to human dignity and psychological integrity requires particular attention where a child is the victim of violence (see *C.A.S. and C.S. v. Romania*, no. 26692/05, § 82, 20 March 2012). The obligations incurred by the State under Articles 3 and 8 of the Convention in cases such as this, involving and affecting a child, allegedly victim of sexual abuse, require the effective implementation of children's right to have their best interests as a primary consideration and to have the child's particular vulnerability and corresponding needs adequately

addressed by the domestic authorities (see *A and B v. Croatia*, no. 7144/15, § 111, 20 June 2019).

62. Similarly, in the case of *Remetin v. Croatia (no. 2)* (no. 7446/12, § 70, 24 July 2014), the Court has considered, in the context of attacks committed by private individuals on the physical integrity of a person, that the State's protection under Article 8 should be ensured through efficient criminal-law mechanisms. The Court's role in such cases is to examine the effectiveness and the manner in which the relevant criminal-law mechanisms were implemented (see *ibid.*, §§ 96 and 103).

63. As to acts which do not attain the seriousness of those at issue in *X and Y v. the Netherlands* (cited above) and *M.C. v Bulgaria* (cited above), the Court has examined under Article 8 the State's obligation to protect, for example, a minor against malicious misrepresentation (see *K.U. v. Finland*, cited above, §§ 45-49) or under-age girls against sexual incidents affecting intimate aspects of their private lives (*A, B and C v. Latvia*, no. 30808/11, §§ 159-175, 31 March 2016). Since the acts in issue could not be considered trivial as they entailed a potential threat to the minors' physical and mental welfare, the Court has also found that an effective deterrence could be achieved only by applying criminal-law provisions in practice through the conduct of an effective investigation (see *K.U. v. Finland*, cited above, § 43, and *A, B and C v. Latvia*, cited above, § 163).

64. More generally, however, in respect of less serious acts between individuals which may nonetheless violate psychological integrity, the obligation of the State under Article 8 to maintain and implement an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (see *Söderman*, cited above, § 82).

(b) Application of the above-mentioned principles to the instant case

65. In the present case, the Court observes that the applicant's assertions about sexual abuse are supported by several expert reports. Furthermore, it is not disputed that Slovak criminal law prohibited the sexual abuse alleged by the applicant and provided for criminal prosecution of those responsible. In such circumstances, the State was required under Article 8 to enact the provisions criminalising the sexual abuse of children and to apply them in practice through effective investigation and prosecution, being thereby mindful of the particular vulnerability of the applicant, her dignity and her rights as a child and as a victim (see paragraphs 59-61 above).

66. The primary question for the Court to address is therefore whether the Slovak authorities could be said to have carried out a speedy and effective investigation in order to establish with the necessary certainty whether the serious allegations made by the applicant could be confirmed or not, and to identify the possible perpetrator.

67. The Court observes at the outset that a criminal investigation was opened immediately after the applicant's mother brought her first criminal complaint; after a discontinuation, it was opened again in April 2014 upon the applicant's mother second complaint (see paragraph 16 above). The speediness of the investigation is not at issue in the present case.

68. The Court notes that the first allegations of the applicant's possible sexual abuse were submitted by her mother in 2012. At that time, acting on the request of the mother, psychologists from a specialised centre in Prešov considered that the unusual behaviour of the applicant could be attributable to a child-abuse-and neglect syndrome. On the other hand, at approximately the same time and at the request of the investigator, the applicant was examined by another psychologist, L.L., who did not find any extraordinary features in the applicant's behaviour (see paragraph 10 above). The expert report produced in the course of the first investigation by E.S. also did not identify any signs of sexual abuse (see paragraph 12 above). However, two expert reports submitted by the applicant's mother in 2014 (see paragraphs 15 and 22 above) concluded that the applicant displayed symptoms of sexual abuse, which led to the reopening of the investigation. At the same time, the author of the second expert report admitted that she had deliberately not appended the applicant's drawings to her report (see paragraph 23 above).

69. In the context of such diverging expert reports, experts from the Research Institute of Child Psychology and Pathopsychology in Bratislava were appointed to examine the applicant. According to their conclusions, it was highly probable that the applicant had experienced sexual abuse. They observed that revealing the details of the applicant's sexual abuse was an ongoing process and that, had she been subject to external influences, her statements would have lacked consistency, detail and non-verbal gestures, which was not the case; they also attached value to the drawings produced by the applicant in the course of the investigation and her psychological treatment (see paragraph 24 above).

70. The Court also observes that, in the course of the second investigation, several expert reports were produced in order to assess the psychological profile of the applicant and her parents, who had also been questioned by the investigator. The expert V.S. reached the same conclusion as E.S. had previously with respect to the applicant, that is to say that she had no tendency to lie but could confuse reality with imagination. The authors of the seventh report concluded that the applicant was already able to discern reality from fantasy and did not display any personality features likely to negatively influence her statements. Thus, although the testimony of a young child had to be taken with the utmost caution, the Court notes that none of the experts involved suggested that the applicant might actually be lying. She was considered to be capable of reproducing her perception of the past events, in particular recurring events (see paragraph 12 above), and

her non-verbal expressions appeared to be rather conclusive (see paragraphs 15, 22 and 24 above).

71. The Court recognises that the Slovak authorities were faced with a difficult task, as they were confronted with two conflicting versions of the events, receding into the past, and little “direct” evidence. The Court does not underestimate the efforts made by the investigator and the district and regional prosecutors in their work on the case, given that all the persons involved were afforded an opportunity to give evidence and several expert reports were ordered.

72. In the Court’s opinion, the issue is consequently not so much whether there was enough evidentiary material gathered but whether the authorities adopted a consistent approach to the assessment of the evidence available (see paragraphs 74-75 below), whether their final decision was sufficiently reasoned and convincing (see paragraph 76 below) and, accordingly, whether the relevant criminal-law provisions mechanisms were implemented effectively.

73. In the framework of such review, the Court cannot but point out a number of omissions capable of undermining the reliability and effectiveness of the investigation.

74. Firstly, although the seventh expert report was ordered with a view to addressing the divergences in the prior expert reports and statements, it is apparent from the decision of 28 October 2015 that the investigator took it into account only in the last resort, considering that, in the light of the other pieces of evidence, its conclusions did not suffice to prove that an illegal act had been committed. Furthermore, no consequence was drawn from its authors’ view according to which the revelation by the applicant of the details of her sexual abuse was a process composed of stages in which the applicant would react differently, which might have explained some divergences in the previous reports. Nor was the experts’ conclusion that the credibility of the applicant’s statements was increased by the fact that her verbal account of the events was consistent with her non-verbal expression and her drawings in any way addressed. Thus the degree of importance that ought to have been attached to the applicant’s non-verbal communication was not subject to any assessment. On the other hand, the investigator tried to shift the responsibility for the decision onto the authors of the report (see paragraphs 28-29 above).

75. Secondly, there appears to be a failing in the examination of the applicant’s father by the expert D.C.-Š (see paragraphs 20 and 25 above). The latter considered that acts of sexual abuse of children could only have sexual or psychiatric motivation but ruled out any such motivation on the part of the applicant’s father, while stating that her examination had not focused on the psychiatric issue. This undoubtedly called for a clarification as to which conclusions could safely be inferred from her findings and which, on the other hand, were rather speculative.

76. Thirdly, the reasons underlying the investigator's decision to discontinue criminal prosecution in the present case were neither detailed, nor convincing. The investigator limited himself rather to extensively summarising the relevant procedural steps taken in the course of the investigation, without having comprehensively explained why he had decided not to rely on the opinion of experts from a research institute which had addressed all the relevant issues including the possible origin of the differences with and between other expert opinions previously submitted. Thus, instead of trying to eliminate gaps and contradicting opinions of the experts, the investigator discontinued the criminal proceedings on the basis of what now appears as a selective and somewhat inconsistent approach to the assessment of evidence. It is also to be noted that, although in the letter to his superior, the district prosecutor considered that the investigation had not led to an unequivocal result (see paragraph 31 above), the discontinuation decision relied on Section 215 of the Code of Criminal Procedure providing that there was no doubt that the impugned act had not been committed, which thus prevented the criminal proceedings from having continued, if appropriate, before the criminal courts.

77. Thus, while the Court does not underestimate the work made by the criminal authorities in the present case and while it cannot replace the domestic authorities in the assessment of the facts of the case nor decide on the applicant father's criminal responsibility, it is of the view that the authorities failed to convincingly weigh up the conflicting evidence and the reports ordered to address this issue, to judge the credibility of the applicant's verbal and non-verbal expressions and to establish the facts by engaging in a context-sensitive assessment (see paragraph 74 above) (see *C.A.S. and C.S. v. Romania*, cited above, § 78) and with due regard to the special psychological factors inherent to cases concerning the sexual abuse of minors (see paragraphs 59-61 above).

78. In this context, the Court reiterates that in assessing the State's compliance with its positive obligations under Article 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 individuals concerned (see *M.P. and Others v. Bulgaria*, no. 22457/08, § 114, 15 November 2011). However, it appears that in the present case, the social-protection authority, which had also been appointed as the applicant's legal guardian, did not display such efforts and did not even interview the applicant child (see paragraphs 11 and 13 above).

79. The Court concludes that the manner in which the criminal-law mechanisms were implemented in the instant case did not satisfy the respondent State's procedural obligations under Article 8 of the Convention.

80. Accordingly, there has been a violation of Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

82. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

83. The Government contested the amount sought.

84. The Court acknowledges that the applicant must have suffered hardship and distress because of the ineffective investigation and the interference with the normal course of her private life. The Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

85. The applicant also claimed EUR 1,431 (including VAT) for the costs and expenses incurred before the Constitutional Court. She also claimed EUR 1,560 (including VAT) for the costs incurred in connection with her legal representation before the Court.

86. The Government asked the Court to award the applicant adequate compensation for costs and expenses.

87. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum claimed for the costs and expenses incurred before the domestic courts, that is to say EUR 1,431. It also considers it reasonable to award the sum claimed for the representation of the applicant before it, namely EUR 1,560.

C. Default interest

88. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention;
3. *Holds*, by six votes to one,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,991 (two thousand nine hundred ninety-one euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 26 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Lemmens is annexed to this judgment.

P.L.
J.S.P.

DISSENTING OPINION OF JUDGE LEMMENS

1. To my regret I am unable to agree with the majority's view that there has been a violation of Article 8 of the Convention.

In my opinion, notwithstanding the fact that the criminal investigation against the suspect (the applicant's father) was discontinued, the investigation satisfied the requirement of effectiveness.

2. The facts in this case were very delicate. The applicant was four years old when the sexual abuse by her father allegedly took place. Her parents were engaged in bitter divorce proceedings.

Allegations of child sexual abuse must be treated with more than ordinary care. "A mistake might jeopardise a child's future or destroy a man's family life and career."¹

3. As early as September 2012 the mother had asked for an examination of the child by a psychologist. That psychologist did not identify any extraordinary features in the applicant's behaviour (see paragraph 10 of the judgment; first "private" report). In October 2012, the mother asked a psychological and counselling centre to examine the applicant again, specifically upon a suspicion that the latter had been sexually abused by her father. In November 2012, the centre's psychologists found that the applicant displayed symptoms of the "Child Abuse and Neglect" syndrome², that she refused to portray her father in a picture, and that she manifested sexual behaviour (see paragraph 6; second "private" report).

In December 2012 the mother lodged a criminal complaint against her husband, alleging that the applicant had been sexually abused by him between July and December 2012 (see paragraph 7 of the judgment). In the same month a court ordered the father to refrain from any contact with the applicant. His last contact with his daughter was on 12 December 2012 (see paragraph 8). From that date on, the applicant was under the sole care and custody of her mother.

4. A first criminal investigation took place from December 2012 until May 2013. In the framework of this investigation a psychologist was appointed as an expert. In her report of March 2013 she found that the applicant did not state anything suspicious, displayed average behaviour, and showed no signs of sexual abuse. The expert noted that it was rather the mother who focused on the issue of abuse. The applicant had a vivid imagination, and was able to give her subjective perception of past events (see paragraph 12 of the judgment; first "expert" report).

In May 2013 the criminal investigation was discontinued, on the ground that there was no evidence of sexual abuse.

1. A.H. Green, "True and False Allegations of Sexual Abuse in Child Custody Disputes", *Journal of the American Academy of Child Psychiatry*, vol. 25, 1986, at p. 449.

2. Child abuse and neglect is a broader category than child sexual abuse.

5. In March 2014 the mother lodged a fresh complaint. She alleged that the applicant, who was then around six years old, “had started talking about the events of 2012”. She submitted two drawings by her daughter, depicting the father in a sexually explicit way. She also submitted a report of March 2014 by the psychologist of a counselling centre, who stated that the applicant had revealed her past “traumatic experience” through drawings and had verbally described “situations of abuse” (see paragraph 15 of the judgment; third “private” report).

This complaint triggered a second criminal investigation.

There then followed a series of expert reports:

- a second “expert” report by a psychologist, on the applicant’s personality (June 2014): the expert found that the applicant had no negative emotions towards her father; that there was nothing unusual about her drawings; that there was a suspicion that the topic of sexual abuse had been “artificially generated by people around her”; that the applicant confused reality with imagination; and that there were no signs of “sexual abuse”, but rather signs of “emotional confusion” (see paragraph 18);

- a third “expert” report by the same psychologist, on the father’s personality (June 2014): the expert concluded that the father had no aggressive reactions and that there were no signs of pathological symptoms (see paragraph 19);

- a fourth “expert” report by a sexologist, on the father’s sexuality (August 2014): the expert concluded that the father was not suffering from any sexual deviation, and did not display any signs of paedophile preferences or sexual aggression; and that there was no sexual or other motivation for the acts allegedly committed by him (see paragraph 20);

- a report produced by a psychologist at the request of the applicant’s mother (July 2014) (fourth “private” report, described in the judgment as the sixth “expert” report): the psychologist concluded that the applicant displayed symptoms of sexual abuse and had made drawings displaying her father in a sexually explicit way (see paragraph 22);

- a fifth “expert” report by a psychologist, on the mother’s personality (October 2014): the expert concluded that the mother made assumptions and was confused regarding reality; that her statements were very subjective and “based on assumptions, suspiciousness and naivety, assigning sexual connotations to neutral situations”; and that “she might have manipulated the applicant and stimulated her sexual imagination” (see paragraph 21).

6. What was the situation at that point?

The experts appointed by the investigator had found (admittedly, this is a subjective summary):

- that there was nothing unusual about the applicant; that she had a vivid imagination; that there were no signs of sexual abuse;

- that the mother was obsessed by the idea of sexual abuse; that there was a risk that she had stimulated the applicant's imagination in that direction³;
- that the father displayed no pathological symptoms, and there was no sexual or other motivation for the alleged sexual abuse of his daughter.

In contrast, the psychologists consulted by the mother had found that the applicant displayed symptoms of the "Child Abuse and Neglect" syndrome; that she had gone through a "traumatic experience"; and that she displayed "symptoms" of sexual abuse.

It seems to me that the picture drawn by the experts could be described as one which suggested that there had not been any sexual abuse, but rather "symptoms" of sexual abuse, which could have been the result of suggestions by the mother, coupled with the child's vivid imagination. The investigation yielded elements which suggested that there had been a false allegation of child sexual abuse, in the sense of a claim of such abuse although such abuse in fact had never occurred.⁴ Moreover, and importantly, there was nothing noteworthy to be said about the father.

7. In this situation, the investigator found it necessary to request another expert opinion. That report, the sixth "expert" report (described in the judgment as the seventh expert report), was submitted in January 2015 by an institute specialised in research on child psychology and pathopsychology (see paragraph 24 of the judgment). It should be noted that while all previous reports had been prepared by clinicians, this report was entrusted to an institute that was focused on theoretical issues.

The report concluded that it was "highly probable" that the applicant had not invented the events, and that she had experienced sexual abuse; that she was at that time (when she was six or seven years old) able to discern reality from fantasy; that she had referred to her past experience; that the revelation of details of sexual abuse is a process; that the applicant was experiencing internal anxiety and general fear; and that her inner stability was distorted by "inadequate" (*sic*) sexual stimulation.

It strikes me that the experts mentioned sexual abuse, but did not mention the father (whom they had not met). Also, there was no discussion at all of the possibility of provocation of sexual fantasy, or of memory

3. This finding would later be confirmed in a psychologist's report, submitted in July 2016 in the framework of the divorce proceedings between the applicant's parents. According to that report, the mother had a "paranoid focus" on situations involving the daughter and father, and she attached sexual meaning also to situations where the sexual context was absent (see paragraph 37 of the judgment). One should not forget that the applicant was in the exclusive care and custody of her mother from the end of 2012 (see point 3 above) and thus exposed to the mother's "paranoid focus" on the issue of sexual abuse by the father.

4. Studies on child sexual abuse allegations suggest that most of such allegations are true, but also that false allegations do occur, at a non-negligible rate, especially in cases where the parents are in conflict with each other (see W. O'Donohue, C. Cummings and B. Willis, "The Frequency of False Allegations of Child Sexual Abuse: A Critical Review", *Journal of Child Sexual Abuse*, vol. 27, 2018, p. 459, at pp. 470-471).

contamination⁵; the experts found that there had been sexual stimulation, but they did not explore who could have been responsible for that stimulation and what form it could have taken. They seem to have avoided paying attention to the mother's role.

In fact, these experts did not seem to engage with the previous reports. Their report did not discuss some of the crucial elements revealed by the other reports.

When asked by the investigator to specify whether in their opinion the applicant had been sexually abused by her father, the experts gave an evasive answer (see paragraph 29). Furthermore, when asked about the mother's role they stated that the mother could not have provoked the applicant's sexual imagination by asking suggestive or manipulative questions, "since the latter had displayed specific and authentic behaviour and emotions" (see paragraph 30). Was this based on the applicant's conduct when she was seen by the experts? To what extent did the experts take into account the fact that the child had already been questioned in 2012, at a point in her development when what entered her memory did not necessarily distinguish between reality and imagination?

8. I am not surprised that the investigator closed the investigation, referring primarily to the findings of the earlier reports and concluding that there was no doubt that the impugned act had not been committed (see paragraph 33 of the judgment). This was indeed the logical conclusion that could be drawn from these reports. The earlier experts had studied the three

5. From my brief consultation of sources on the internet, it would appear that memory contamination is a well-known phenomenon. It has to do with the way how the memory of young children develops: "...younger children are more susceptible to suggestion concerning the details of what they recall. One likely reason for this susceptibility is the child's inability to accurately distinguish among different sources of memories. Not all memories arise from actual experiences, and while an adult might readily recognise that a certain memory must clearly have its source in dream or fantasy, this recognition might not be so easy for a child. Children do not confuse all sources of memory. Rather, there is a recognisable pattern. Research indicates that children tend to have relatively little difficulty distinguishing memories of something they actually said from something someone else said, or memories of one actual event from memories of another actual event. However, young children may have considerable difficulty distinguishing memories of things they themselves have actually said or done from memories of things they have only imagined themselves saying or doing. It follows that there is a fairly low risk that children will confuse different events or take an interviewer's words as ones they themselves have spoken. However, there may be a substantial danger that, if an interviewer's words or procedures move the child to imagine some event or some of its details, the child will thereafter accept the fantasy as a memory" (from J.R. Christiansen, "The Testimony of Child Witnesses: Fact, Fantasy and the Influence of Pretrial Interviews", *Washington Law Review*, vol. 62, 1987, p. 705, at pp. 709-710). Obviously, memory contamination can also be the result of questioning of a child by a parent, for example a parent who suspects sexual abuse (see, e.g., D.A. Poole and D.S. Lindsay, "Children's Eyewitness Reports After Exposure to Misinformation From Parents", *Journal of Experimental Psychology*, vol. 7, 2001, pp. 27-50).

persons involved in the allegations, namely the child, the father and the mother. The investigator included the experts' findings on each of them in his assessment.

The investigator further concluded that the last report commissioned by the mother and the last expert report had merely indicated that there had been "symptoms" of a sexually abused child, but not proven that sexual abuse had really been committed (*ibid.*). This was particularly important in the present case. "Symptoms" of sexual abuse could have been the result of suggestions; what counted was whether there were indications of *actual* sexual abuse.

9. In sum, it seems to me that the investigation was thorough. The complaint by the applicant's mother had been taken seriously. Six expert reports had been commissioned by the investigator: five of them pointed to the absence of sexual abuse, or could at least be interpreted in that sense; the sixth one stated, somewhat surprisingly, that there was a high probability of sexual abuse, but it barely considered any of the arguments against such a conclusion.

The majority attach particular importance to this last expert report (see paragraph 74 of the judgment). I fail to see what justifies such an approach. Normally, more weight should be given to reports submitted when a child was least influenced by others, that is, to the oldest reports. Moreover, for the reasons explained above (see point 6), the last report seems to me to be of a rather theoretical nature, with no intention of engaging with the previous reports.

What else could or should the investigator or the prosecutor have done? Order a new report? Send the father for trial? Why would the truth be better served by a trial? Everything that could come out of the investigation had been disclosed to the investigator.

10. It is not the Court's task to decide whether or not the allegations against the father were sufficiently credible to justify him being brought before a trial court. Rather, its task is to examine whether the domestic authorities "could be said to have carried out a speedy and effective investigation" (see paragraph 66 of the judgment). Or, more precisely, to examine whether the domestic authorities could close the criminal investigation against the father without violating the rights of the applicant, who was a young child.

In the light of the material presented to the investigator and the decision taken by him, I am unable to conclude that the investigation did not meet the requirements of Article 8 of the Convention.⁶ In my opinion, taking due account of the Court's role as a "reviewing" court, I must conclude that "the domestic authorities did everything that could have reasonably been

6. It is not the Court's task to examine whether the decision to discontinue the criminal investigation complied with domestic law, namely Article 215 of the Code of Criminal Procedure (compare paragraph 76 of the judgment).

expected from them to protect the rights of the applicant, a child allegedly victim of sexual abuse, and to act in her best interest” (see the conclusion by a majority of the Chamber in the very comparable case of *A and B v. Croatia*, no. 7144/15, § 129, 20 June 2019).

I therefore respectfully dissent.