



Investigation conducted by the Bulgarian authorities into allegations of sexual abuse in an orphanage did not breach the Convention

In today's **Chamber** judgment¹ in the case of [X and Others v. Bulgaria](#) (application no. 22457/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Articles 3 (prohibition of torture, inhuman or degrading treatment) and 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned allegations of sexual abuse perpetrated against three children in an orphanage in Bulgaria before their adoption by an Italian couple in June 2012.

The Court found that the Bulgarian authorities had acted promptly and diligently as soon as they had been apprised, through the press, of the alleged facts, even though they had not received any formal complaint from the applicants. It also noted that the applicants' parents had not been prevented from taking part in the investigation. It therefore found no blameworthy shortcomings or lack of willingness on the part of the competent authorities to shed light on the events or to identify and prosecute those potentially responsible.

The Court also ruled, on the basis of the evidence before it, that it had not been established that the Bulgarian authorities had failed in their obligation to take preventive action to protect the applicants from a risk of ill-treatment of which they had or should have had cognisance. In that connection the Court noted, in particular, that a number of general measures had been adopted to guarantee the safety of the children in the orphanage.

Principal facts

The applicants were Italian nationals living in Italy. They were a boy (X) and two girls (Y and Z) who had been placed in an orphanage in Bulgaria and adopted by an Italian couple in June 2012, when they were twelve, ten and nine years of age respectively.

A few months after their adoption, their parents reported to various Italian authorities and the Italian press that their children had suffered sexual abuse while in the orphanage in Bulgaria.

In January 2013, having been apprised of the article in the Italian press, the National Child Welfare Agency in Bulgaria ordered an inspection of the orphanage in question and informed the public prosecutor's office. The same year a police investigation was carried out, as was another inspection by the child welfare authorities. Those procedures led to the discontinuance of the case as the public prosecutor's office considered that none of the evidence pointed to the commission of any offences. In January 2014 the Italian Ministry of Justice applied officially to the Bulgarian authorities. A further investigation was instigated, after which the regional prosecutor's office confirmed the discontinuance decision.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture, inhuman or degrading treatment), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy), the applicants complained that they had suffered sexual abuse in the Bulgarian orphanage. They also submitted that the Bulgarian authorities had failed in their obligations to protect them from such treatment and subsequently to conduct an effective investigation. The Court decided to consider the complaints solely under Articles 3 and 8.

The application was lodged with the European Court of Human Rights on 16 April 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of torture, inhuman or degrading treatment\) and Article 8 \(right to respect for private and family life\)](#)

As regards the effectiveness of the investigation conducted by the Bulgarian authorities, the Court ruled that there had been no violation of Articles 3 and 8 of the Convention for the following reasons, inter alia:

Firstly, the Bulgarian authorities had acted promptly and diligently as soon as they had been apprised of the alleged facts via the press, despite not having received any formal complaint from the applicants. They had cooperated fully with the Italian authorities, keeping them abreast of the results of the investigation and taking into account the fresh evidence transmitted by those authorities. The police and the child welfare departments had inspected the orphanage and carried out a number of investigative measures, including checking the medical records of the children in the orphanage and interviewing staff members, children and other relevant persons.

Secondly, inasmuch as the applicants submitted that the authorities ought to have begun with more discrete investigative measures such as telephone tapping and undercover operations, and that by failing to do so they had undermined the effectiveness of the investigations, the Court noted that it was the applicants’ parents themselves who had brought the case to the attention of the public. For instance, the journalist contacted by the parents had then contacted certain individuals involved in the case and had published an article in the Italian press which had been subsequently taken up by the Bulgarian media before the case had been referred to the Bulgarian authorities.

Thirdly, the public prosecutor’s office had been confronted with two contradictory versions of events: that presented by the applicants’ parents and that defended by the orphanage staff and the other persons questioned, including children housed in the orphanage. In that connection, the applicants’ submissions, which had been the only direct evidence at the Bulgarian authorities’ disposal, had been succinctly worded and provided few factual details, and there had been no medical certificate to corroborate the allegations of violence against them. Consequently, the Bulgarian authorities’ conclusion that the investigative measures had failed to garner sufficient

evidence to establish that any abuse had been committed did not seem arbitrary or unreasonable, and the Court noted no blameworthy shortcomings or lack of willingness by the competent authorities to shed light on the events or to identify and prosecute those potentially responsible.

Fourthly, the applicants' parents had not been prevented from taking part in the investigation, since under domestic law they had been allowed to appeal against the discontinuance decision taken following the investigation initiated at the request of the Italian authorities in January 2014. Moreover, the parents' letter, which had been forwarded by the Italian Ministry of Justice, had been considered as an appeal and had been duly examined by the higher-level prosecutor's office. Consequently, the Bulgarian authorities had not failed in their procedural obligation to carry out an effective investigation into the applicants' allegations.

As regards the respondent State's obligation to take action to protect the applicants, the Court held that there had been no violation of Articles 3 and 8 of the Convention.

According to the reports prepared by the authorities responsible for inspecting the orphanage, a number of general measures had been adopted to guarantee the safety of the children residing there. In particular, access by third persons to the orphanage was controlled, third persons and male employees only had access to the parts of the premises reserved for children where absolutely necessary and only if accompanied by a female member of staff, the children were regularly attended to by an outside general practitioner and by the orphanage psychologist, and they had access to a telephone and a hotline for children in danger. Furthermore, the investigations had not shown that the director or staff of the orphanage had been aware of the abuse complained of by the applicants. Lastly, there was no evidence of such abuse in the children's records or the submissions of the medical practitioner and the orphanage psychologist. The Court was therefore unable to reach any different conclusion from that of the investigators. Consequently, having regard to the evidence before it, the Court considered that it had not been established that the Bulgarian authorities had failed in their obligation to take preventive action to protect the applicants from a risk of undergoing ill-treatment of which they had or should have had cognisance.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.