



## Ineffective investigation into allegations of sexual abuse in a Bulgarian orphanage

In today's **Grand Chamber** judgment<sup>1</sup> in the case of [X and Others v. Bulgaria](#) (application no. 22457/16), concerning allegations of sexual abuse committed against three children in a Bulgarian orphanage prior to their adoption by an Italian couple in June 2012, the European Court of Human Rights held :

- that the applicants, owing to their young age and their status as children left without parental care and placed in an institution, had been in a particularly vulnerable situation, and that the sexual abuse and violence to which they had allegedly been subjected, if established, had been sufficiently serious to come within the scope of application of Article 3 of the Convention.

- unanimously, that there had been **no violation of the substantive limb of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights. The Court held, in particular, that it did not have sufficient information to find that the Bulgarian authorities knew or ought to have known of a real and immediate risk to the applicants of being subjected to ill-treatment, such as to give rise to an obligation to take preventive operational measures to protect them against such a risk.

- by a majority (nine votes to eight), that there had been **a violation of the procedural limb of Article 3 of the European Convention**. It considered in particular that the investigating authorities, who had not made use of the available investigation and international cooperation mechanisms, had not taken all reasonable measures to shed light on the facts of the present case and had not undertaken a full and careful analysis of the evidence before them. The omissions observed appeared sufficiently serious for it to be considered that the investigation carried out had not been effective for the purposes of Article 3 of the Convention, interpreted in the light of the other applicable international instruments and in particular the Lanzarote Convention.

### Principal facts

The applicants are Italian nationals of Bulgarian origin. They are a boy (X) and his two sisters (Y and Z) who were placed in an orphanage in Bulgaria before being adopted by an Italian couple in June 2012, when they were aged 12, 10 and 9 respectively. They currently live in Italy.

A few months after the adoption, the adoptive parents reported to various Italian authorities that their children had been subjected to serious sexual abuse while in the orphanage in Bulgaria.

On various dates in 2012 and 2013 the adoptive parents had the children examined by two Italian psychologists specialising in child-abuse cases who were based in a relational therapy centre (RTC). The psychologists conducted therapy sessions with the children, some of which were video recorded, and drew up a report. The Italian police subsequently prepared a written record based on the video recordings.

In November 2012 the applicants' father contacted the Italian helpline for children in danger, managed by Telefono Azzurro, a public-interest association. It was agreed that Telefono Azzurro

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

would report the matter to the Italian prosecuting authorities and that the father would contact the Italian Commission for Intercountry Adoption (CAI) and the Bulgarian Ministry of Justice.

Shortly afterwards, the applicants' father sent an email to the Bulgarian State Agency for Child Protection (SACP). Telefono Azzurro sent an email to the Nadja Centre, a Bulgarian foundation specialising in the protection of at-risk children. The Nadja Centre forwarded this message to the SACP, which informed the Bulgarian Ministry of Justice. The SACP subsequently asked the applicants' father, in a message written in Bulgarian, to provide it with the children's Bulgarian names so that it could carry out checks. There was no follow-up to this correspondence by either side.

The applicants' father also lodged a complaint with the Italian public prosecutor's office. Telefono Azzurro sent the public prosecutor the records of the telephone conversations with the applicants' father, a letter from him setting out the alleged facts, and the report written by the psychologists from the RTC.

In addition, the applicants' father contacted an Italian investigative journalist, who published an article in the Italian press in January 2013. After learning about the article the SACP in Bulgaria ordered an inspection of the orphanage and informed the public prosecutor's office accordingly. After the file was received from the Italian prosecuting authorities a police investigation was conducted and the child protection authorities carried out another inspection. These ended in the discontinuance of the case, as the public prosecutor's office considered that there was no evidence that any offences had been committed.

In January 2014 the Italian Ministry of Justice made a formal approach to the Bulgarian authorities. A further investigation was instigated, on conclusion of which the regional prosecutor's office in Bulgaria confirmed the discontinuance decision.

## Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of torture and inhuman or degrading treatment), 6 (right to a fair hearing), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the European Convention on Human Rights, the applicants alleged that they had been subjected to sexual abuse in the orphanage in Bulgaria. They maintained that the Bulgarian authorities had failed in their obligations to protect them against such treatment and to conduct an investigation. The Court decided to examine these complaints from the standpoint of Article 3 of the Convention.

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

In its Chamber [judgment](#) of 17 January 2019 the Court held, unanimously, that there had been no violation of Articles 3 and 8 of the Convention.

On 12 April 2019 the applicants requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber) and on 24 June 2019 the panel of the Grand Chamber accepted that request. A hearing was held on 15 January 2020.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,  
Linos-Alexandre **Sicilianos** (Greece),  
Jon Fridrik **Kjølbro** (Denmark),  
Ksenija **Turković** (Croatia),  
Paul **Lemmens** (Belgium),  
Yonko **Grozev** (Bulgaria),  
Paulo **Pinto de Albuquerque** (Portugal),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Dmitry **Dedov** (Russia),

Iulia Antoanella **Motoc** (Romania),  
Carlo **Ranzoni** (Liechtenstein),  
Georgios A. **Serghides** (Cyprus),  
Marko **Bošnjak** (Slovenia),  
Tim **Eicke** (the United Kingdom),  
Péter **Paczolay** (Hungary),  
María **Elósegui** (Spain),  
Raffaele **Sabato** (Italy),

and also Marialena **Tsirli**, *Registrar*.

## Decision of the Court

### Article 3 (prohibition of inhuman or degrading treatment): substantive limb

The Court observed that the applicants, owing to their young age and their status as children left without parental care and placed in an institution, had been in a particularly vulnerable situation. Hence, the sexual abuse and violence to which they had allegedly been subjected, if established, had been sufficiently serious to come within the scope of application of Article 3.

#### **Positive obligation to put in place an appropriate legislative and regulatory framework**

The Bulgarian Criminal Code punished sexual abuse of minors under the age of fourteen by persons over fourteen, even in the absence of force. It laid down heavier penalties where sexual assault was committed against a minor and it prescribed penalties for specific offences such as the exposure of minors to sexual acts or the distribution of pornography.

The Court found that the provisions in question appeared apt to cover the acts complained of by the applicants. It also noted that a number of mechanisms to prevent and detect ill-treatment in children's residential facilities had been put in place (in particular, the SACP was tasked with carrying out inspections of these establishments and was empowered to take the appropriate steps to protect the children). Furthermore, the Court did not have in its possession any evidence to indicate that at the time of the events in Bulgaria there had existed, as the applicants suggested, a systemic issue related to paedophile sex tourism or sexual abuse of young children in residential facilities or in schools, such as to require more stringent measures on the part of the authorities. Accordingly, it considered that it did not have sufficient information to find that the legislative and regulatory framework put in place by the Bulgarian State in order to protect children living in institutions against serious breaches of their integrity had been defective.

#### **Positive obligation to take preventive operational measures**

The Court noted, on the basis of the documents produced by the Government, that the domestic investigations had not found it established that the director of the orphanage, another member of staff or any other authority had been aware of the abuse alleged by the applicants. According to the investigators' reports, the psychologist and the general practitioner, who monitored the children in the orphanage on a regular basis, had told the investigators that they had not detected any signs leading them to suspect that the applicants or other children had been subjected to violence or sexual abuse. In these circumstances, and in the absence of evidence corroborating the assertion that the first applicant had reported abuse to the director, the Court did not have sufficient information to find that the Bulgarian authorities knew or ought to have known of a real and immediate risk to the applicants of being subjected to ill-treatment, such as to give rise to an obligation to take preventive operational measures to protect them against such a risk.

**There had therefore been no violation of the substantive limb of Article 3 of the Convention.**

### Article 3 (prohibition of inhuman or degrading treatment): procedural obligation to carry out an effective investigation into the applicants' allegations

The Court observed that the authorities had apparently neglected to pursue some lines of inquiry that might have proved relevant and to take certain investigative measures.

The Court noted that the applicants' accounts, as obtained and recorded by the psychologists from the RTC with the help of the applicants' father, and the accounts they subsequently gave to the Italian public prosecutor for minors, which were also recorded on DVD, had been deemed credible by the Italian authorities on the basis of the findings made by specialists; they had contained some precise details and had named individuals as the perpetrators of the alleged abuse. Most of the available documents had been transmitted progressively to the Bulgarian authorities in the context of several requests for the opening of criminal proceedings made by the Milan public prosecutor via diplomatic channels and later by the Italian Ministry of Justice and the CAI. If the Bulgarian authorities had had doubts as to the credibility of those allegations, in particular on account of certain contradictions observed in the applicants' successive accounts or the possibility that their parents had influenced them, they could have attempted to clarify the facts by requesting an interview with the applicants and their parents. This would have made it possible to assess the credibility of the applicants' allegations and if necessary to obtain further details concerning some of them. As professionals who had heard the children's statements, the various psychologists who had spoken with the applicants in Italy would also have been in a position to provide relevant information.

It was true that it might not have been advisable for the Bulgarian authorities to interview the applicants given the risk of exacerbating whatever trauma they may have suffered, the risk that the measure would prove unsuccessful in view of the time that had passed since their initial disclosures, and the possibility that their accounts would be tainted by overlapping memories or outside influences. Nevertheless, the Court considered that in these circumstances the Bulgarian authorities should have assessed the need to request such interviews. The decisions given by the prosecuting authorities did not, however, contain any reasoning in this regard and the possibility of questioning the applicants appeared not to have been considered, presumably for the sole reason that they had not been living in Bulgaria. Thus, the Bulgarian authorities, guided by the principles set out in the international instruments (and in particular the Lanzarote Convention), could have put measures in place to assist and support the applicants in their dual capacity as victims and witnesses, and could have travelled to Italy in the context of mutual legal assistance or requested the Italian authorities to interview the applicants again.

The Court reiterated that, according to its case-law, in transnational cases the procedural obligation to investigate might entail an obligation to seek the cooperation of other States for the purposes of investigation and prosecution. In the present case, it would have been possible for the applicants to be interviewed under the judicial cooperation mechanisms existing within the European Union in particular.

Even if they had not sought to interview the applicants directly, the Bulgarian authorities could at least have requested from their Italian counterparts the video recordings made during the applicants' conversations with the psychologists from the RTC and their interviews with the public prosecutor for minors. Because of this omission in the investigation, which could very easily have been avoided, the Bulgarian authorities had not been in a position to request professionals "trained for this purpose" to view the audiovisual material and assess the credibility of the accounts given (see Articles 34 § 1 and 35 § 1 (c) of the Lanzarote Convention).

Similarly, as the applicants had not produced medical certificates, the Bulgarian authorities could, again in the context of international judicial cooperation, have requested that they undergo a medical examination which would have enabled certain possibilities to be confirmed or ruled out, in particular the first applicant's allegations of rape.

The Court further noted that the applicants' accounts and the evidence furnished by their parents had also contained information concerning other children who had allegedly been victims of abuse and children alleged to have committed abuse. In that connection it observed that even if it was not possible to institute criminal proceedings against children under the age of criminal responsibility, some of the acts described by the applicants as having been perpetrated by other children amounted to ill-treatment. The authorities had therefore been bound by the procedural obligation to shed light on the facts alleged by the applicants. However, despite these reports, the investigations had been limited to interviewing and issuing questionnaires to a few children still living in the orphanage, in an environment liable to influence their answers. Lastly, the Bulgarian authorities had not attempted to interview all of the children named by the applicants who had left the orphanage in the meantime, whether directly or, if necessary, through recourse to international judicial cooperation mechanisms.

Furthermore, in view of the nature and seriousness of the alleged abuse, investigative measures of a more covert nature such as surveillance of the perimeter of the orphanage, telephone tapping or the interception of telephone and electronic messages, as well as the use of undercover agents, should have been considered. Covert operations of this kind were expressly provided for in Article 30 § 5 of the Lanzarote Convention and were widely used across Europe in investigations concerning child abuse. The Court reiterated that considerations relating to compliance with the guarantees contained in Article 8 of the Convention (right to respect for private and family life) could legitimately place restraints on the scope of investigative action. Nevertheless, in the present case, such measures appeared appropriate and proportionate, given the applicants' allegations that an organised ring had been involved and the fact that identifiable individuals had been named. Measures of this kind could have been implemented progressively, beginning with those having the least impact on individuals' private lives, such as external surveillance of the entrances to and exits from the orphanage, and moving on, if necessary and on the basis of the relevant judicial authorisation, to more invasive measures such as telephone tapping, so as to ensure respect for the Article 8 rights of the individuals concerned, which also had to be taken into account.

Although the Court could not speculate as to the progress and outcome of the investigation had it been conducted differently, it nevertheless regretted the fact that, following the email sent by the applicants' father to the SACP and the report made by the Nadja Centre in November 2012, the SACP had merely sent the father a letter, written in Bulgarian, requesting further information. It had been open to the SACP, within a framework guaranteeing anonymity to the potential victims, to request all the necessary details from the Nadja Centre, which had been in contact with Telefono Azzurro; this would have made it possible to identify the orphanage in question and carry out covert investigative measures even before publication of the article in *L'Espresso*.

The Court also observed that, despite the applicants' allegations that a photographer had taken photographs and made videos, the investigators had not considered searching his studio, if necessary with the relevant court order, and seizing the media on which such images might have been stored.

Furthermore, despite the fact that three investigations had been opened following the publication of the press articles and the requests from the Italian authorities, the Bulgarian authorities had confined their efforts to questioning the people present in the orphanage or in the vicinity, and had closed the case on the sole basis of that investigative method, which had been reiterated in different forms in each of the three investigations. In that connection the Court considered it unacceptable that even before the findings of the SACP's first inspection of the orphanage on 14 and 15 January 2013 – which had been very limited in terms of the investigative acts carried out – had been recorded in a written report and notified to the judicial authority, the President of the SACP, speaking on television, had accused the applicants' parents of slander, manipulation and inadequate parenting. A few days later, when the outcome of the criminal investigation was still not known, a group of MPs who had visited the orphanage had adopted a similar attitude. Such statements had

inevitably undermined the objectivity – and hence the credibility – of the inquiries conducted by the SACP.

It was undeniable that the Bulgarian authorities, by conducting the three investigations in question, had formally responded to the requests of the Italian authorities and, indirectly, to those of the applicants' parents. However, the Court stressed that, from the first statements made by the President of the SACP on 16 January 2013 until the final order issued by the public prosecutor's office at the Supreme Court of Cassation on 27 January 2016 following communication of the present application by the Court, the reasons given for the authorities' decisions were indicative of the limited nature of the investigations carried out.

The Court considered that an analysis of the information gathered and of the reasons given for the decisions revealed shortcomings which had been liable to impair the effectiveness of the investigation. The reasons given did not appear to have resulted from a careful study of the evidence obtained and appeared to show that, rather than clarifying all the relevant facts, the investigating authorities had sought to establish that the applicants' allegations were false by highlighting the inaccuracies they contained.

In the Court's view, all these considerations suggested that the investigating authorities, who had not made use, in particular, of the available investigation and international cooperation mechanisms, had not taken all reasonable measures to shed light on the facts of the present case and had not undertaken a full and careful analysis of the evidence before them. The omissions observed appeared sufficiently serious for it to be considered that the investigation carried out had not been effective for the purposes of Article 3 of the Convention, interpreted in the light of the other applicable international instruments and in particular the Lanzarote Convention.

**There had therefore been a violation of the procedural limb of Article 3 of the Convention.**

#### [Just satisfaction \(Article 41\)](#)

The Court held that Bulgaria was to pay each of the applicants 12,000 euros (EUR) in respect of non-pecuniary damage (EUR 36,000 in total).

#### Separate opinions

Judges Turković, Pinto de Albuquerque, Bošnjak and Sabato expressed a joint concurring opinion. Judge Serghides expressed a concurring opinion. Judges Spano, Kjølbrot, Lemmens, Grozev, Vehabović, Ranzoni, Eicke and Paczolay expressed a joint partly concurring, partly dissenting opinion.

These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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