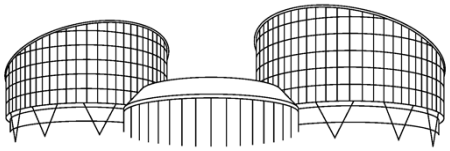

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF X AND OTHERS v. BULGARIA

(Application no. 22457/16)

JUDGMENT

Art 3 (procedural) • Effective investigation • Failure to use all reasonable investigative and international cooperation measures while examining sexual abuse in an orphanage alleged after children's adoption abroad • Procedural obligation to be interpreted in the light international instruments, and specifically the Council of Europe "Lanzarote Convention" • Failure of Bulgarian authorities to provide applicants' foreign parents with necessary information and support, leaving them unable to take active part or appeal until long after investigations concluded • Interviews with other children from the orphanage not adapted to their age and maturity and not video-recorded • Failure to assess the need to request interviews with the applicants • Failure to investigate alleged abuse of and by other children who had since left the orphanage • Failure to consider proportionate use of covert investigative measures • Authorities seeking to establish that the applicants' allegations had been false, rather than to clarify all relevant facts
Art 3 (substantive) • Positive obligations • Appropriate legislative and regulatory framework in place to fulfil State's positive duty to protect vulnerable children in care from sexual abuse, in the absence of sufficient information to the contrary • No evidence of staff or authorities' awareness of alleged abuse, which could trigger obligation to take preventive operational measures

STRASBOURG

2 February 2021

This judgment is final but it may be subject to editorial revision.

In the case of X and Others v. Bulgaria,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President,*
Linos-Alexandre Sicilianos,
Jon Fridrik Kjølbro,
Ksenija Turković,
Paul Lemmens,
Yonko Grozev,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Dmitry Dedov,
Iulia Antoanella Motoc,
Carlo Ranzoni,
Georgios A. Serghides,
Marko Bošnjak,
Tim Eicke,
Péter Paczolay,
María Elósegui,
Raffaele Sabato, *judges,*

and Marialena Tsirli, *Registrar,*

Having deliberated in private on 15 January 2020 and on 9 September 2020,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

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

2. The applicants were represented by Mr F. Mauceri, a lawyer practising in Catania. The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The five original applicants, a couple and their minor children, complained under Articles 3, 6, 8 and 13 of the Convention of the sexual abuse to which the three children had allegedly been subjected while living in an orphanage in Bulgaria, and of the lack of an effective investigation in that regard.

4. The application was assigned to the Fifth Section of the Court (Rule 52 § 1). On 5 September 2016 the Government were given notice of the complaints concerning the alleged abuse of the three minor applicants and the lack of an effective investigation in that regard. Pursuant to Rule 54 § 3, the Section President declared inadmissible the complaints raised by the parents on their own behalf. Accordingly, from that date onwards the application related only to the complaints of the three children, and the term "the applicants" in the present judgment will refer only to them.

5. In a judgment of 17 January 2019 a Chamber of the Fifth Section composed of Angelika Nußberger, President, Yonko Grozev, André Potocki, Síofra O'Leary, Mārtiņš Mits, Gabriele Kucsko-Stadlmayer and Lətif Hüseynov, judges, and Claudia Westerdiek, Section Registrar, declared the remainder of the application admissible and held, unanimously, that there had been no violation of Articles 3 and 8 of the Convention.

6. On 12 April 2019 the applicants requested that the case be referred to the Grand Chamber under Article 43 of the Convention. The Panel of the Grand Chamber granted the request on 24 June 2019.

7. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicants and the Government each filed further written observations (Rule 59 § 1). The Italian Government, who had been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 §§ 1 and 4), did not wish to avail themselves of that right.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 15 January 2020 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms R. NIKOLOVA,
Ms I. STANCHEVA-CHINOVA — *Agents*,
Ms I. SOTIROVA, Legal adviser, Ministry of Justice, — *Adviser*;

(b) *for the applicants*

Mr F. MAUCERI, lawyer, — *Counsel*,
Ms R. GALANTE,
Ms P.S. BACH, psychologists, Relational Therapy Centre, — *Advisers.*

The Court heard addresses by Mr Mauceri, Ms Nikolova and Ms Stancheva-Chinova, and also their replies to questions put by the judges. Ms Galante and Ms Bach also replied to judges' questions.

THE FACTS

I. THE BACKGROUND TO THE CASE

10. The applicants are a brother (X, "the first applicant") and his two sisters (Y, "the second applicant", and Z, "the third applicant") who were born in Bulgaria. X was born in 2000, Y was born in 2002 and Z was born in 2003. They were abandoned by their mother and were initially placed in institutions for very young children and then in a residential facility for children without parental care located in a village in the Veliko Tarnovo region ("the orphanage").

11. In 2010 they were placed on the list of children eligible for full adoption and subsequently on the list for international adoption. In 2011 an Italian couple applied to adopt them through the intermediary of a specialised association called Amici dei Bambini ("AiBi") based in Milan. The prospective adoptive parents both worked in a cooperative specialising in psychiatric and social assistance and were aged between 45 and 50 at the time. They travelled to Bulgaria in January 2012 and met the applicants there several times before going on to adopt them.

12. The adoption order was issued and in June 2012 the applicants, then aged twelve, ten and nine respectively, moved to Italy.

13. A first follow-up report on the adoption, drawn up by the association AiBi on 27 September 2012, found that the children were settling in well with the family, apart from a few incidents in which the younger girl, Z, had been aggressive to the mother, whom she had bitten. The three children had resumed their schooling and only the eldest, X, was having difficulties in school.

II. THE APPLICANTS' ALLEGATIONS OF ABUSE

A. The first disclosures by the applicants

14. On 30 September 2012, following an argument with her brother, the third applicant complained about his behaviour towards her, accusing him of touching her sexually. Alerted by this complaint and by the disclosures made to them by the three children on that occasion, the adoptive parents contacted the association AiBi. On 2 October 2012 a meeting took place with a psychologist and an educational adviser from the association. A report was drawn up on that occasion (see paragraph 53 below as regards the subsequent sending of a copy of this document to the Bulgarian authorities). The applicants' parents, who claimed that the report had been falsified, subsequently lodged a criminal complaint. The outcome of that complaint has not been specified, but a note written by the police reveals that the signatures on the report did not correspond to the sample signatures

provided by the persons designated as the document's authors, and that some paragraphs had been added. According to the report, the children had told their parents that they had engaged in certain sexual practices among themselves, which the parents had not witnessed. As they were extremely upset and traumatised by these disclosures, the parents considered sending away the first applicant, whom they considered to be responsible for the situation. The psychologist recommended instead that they seek psychological assistance. With some hesitation the parents agreed, although the father wanted the sessions to be held away from the city where they lived in order to protect their privacy. The three children, who initially met the educational adviser on their own, said that they had been "silly" because they had played a game "that [they] shouldn't have played" but which all the children in the orphanage had played. They expressed fears that the first applicant would be sent back to Bulgaria.

15. After enquiring about specialists trained to deal with this type of situation, the parents had the children examined by two psychologists specialising in child abuse cases who were based in a relational therapy centre ("the RTC") in a town more than 100 km from their home. Meetings were held between the psychologists, the parents and the children during October and November 2012, and regular counselling sessions were then arranged for the children.

B. The report of 31 October 2012 by the psychologists from the RTC

16. An initial report concerning the applicants, entitled "Psychologists' notes", was drawn up by the psychologists on 31 October 2012. The report does not contain a verbatim record of the questions asked and the applicants' statements, but rather represents a summary record which also includes the psychologists' comments (for a more detailed account of the initial conversations with the psychologists, see the police record summarised in paragraphs 23 et seq. below). According to the report, the psychologists had conversations first with the parents and then with the children on 11 and 18 October 2012. The conversations with the applicants, described as "therapy sessions", were conducted using the methods recommended for children who have been victims of abuse (see paragraph 22 below), and were videoed.

17. According to the report, the parents stated that for the first three months, until the incident of 30 September, they had had no problems with the children, although they said that the younger girl, Z, used to lock the door when she was in the bathroom and had bitten her mother.

18. The report stated that the first applicant, who talked to the psychologists next, had difficulty expressing himself in Italian and asked for his adoptive father to be present. The latter helped the child to explain what he wanted to say.

19. According to the report, the first applicant stated that at night one of the other boys in the orphanage, D., used to molest some of the younger children; the others had to watch, sitting in a circle as though in some sort of ritual. In the passages quoted from the first applicant's account, he described the acts in question using few words. He said, for example, that "[D.] made [the children] lick his bottom and feet and then hit [them]", and that "he did a wee in [their] mouths and then behind". The first applicant said that he had told the director of the orphanage, whom he called E. (as regards the confusion surrounding this name, see paragraph 32 below), about these incidents and that she had assured him that she would call the police if it happened again. He admitted having played games of a sexual nature with his sisters, even after their arrival in Italy, saying "I did a wee in Z's mouth and licked her bottom, then Y told me to touch her where she does her wee, then she did it to me, and I put my finger in her bottom". He said several times "It's my fault". He added that he had watched his sister, the second applicant, "doing sex" with a boy from the orphanage.

20. According to the report, the psychologists spoke to the second and third applicants together. In reply to a question from one of the psychologists concerning possible problems at home, Y said: "X touched my bottom and then did it to Z, and did a wee in her mouth".

21. With regard to the second applicant the report stated as follows: "Y seems to have viewed it all as a game and did not attach negative connotations to the events, saying 'I saw M. and B. doing sex and I did it with [my brother]'". However, the report mentioned that both sisters appeared worried about their brother, who had been the victim of violence on several occasions, saying "X got hit more, I wasn't hit so much". The report did not say who had hit the children. It stated that the third applicant had spoken a little later in the discussion, describing another situation in which the children from the orphanage had apparently been taken to a "discotheque" where they had danced and where some men had then arrived and "played" with them in rooms on the premises. The third applicant stated that she was the only one who had put up a struggle, and said "I cried out loud and hit him".

22. According to the report, during the conversations the applicants used dolls given to them by the psychologists to mimic the scenes they were describing. The psychologists concluded that the children were able to distinguish between fantasy and reality and between truth and lies, and that their accounts appeared credible and free from outside influence and were coherent in terms of places and times. The report stated that, as the children considered this type of behaviour to be normal or at least acceptable, the psychologists were recommending sessions of psychotherapy, together with educational support for the parents.

C. The police record of the conversations with the psychologists, based on the video recordings

23. The applicants' first conversations with the psychologists were also the subject of a written record drawn up on 25 March 2013 by the police attached to the office of the R. public prosecutor for minors, on the basis of the video recordings made by the psychologists (see paragraph 81 below). This record appears more detailed than the psychologists' report of 31 October 2012.

24. It transpires from this record that the applicants' father was present at the conversation of 11 October 2012 with the first applicant and spoke occasionally.

25. According to the record, during that conversation the first applicant said that at night one of the older boys, D., used to switch on the lights and tell the children to sit on the floor. Being unable to explain properly what had happened, the first applicant showed, using the dolls, how a girl had licked the intimate parts of a boy's body on D.'s instructions. D. had reportedly also struck the girl in the face. He had told the other children not to watch but the first applicant had nevertheless taken a look. The boy had reportedly been naked but the other children had not. The first applicant said that he had informed the director, E. (as regards the confusion surrounding this name, see paragraph 32 below), who had apparently scolded D. and threatened to call the police if it happened again. According to the first applicant's account, D. used to ill-treat all the other children but the educators did not notice anything. Thus, D. had reportedly forced a boy to lick his feet and had struck him. He had hit the first applicant, had "done a wee in [his] mouth" and "a wee in [his] bottom while [the first applicant] was asleep" and had "put his willy in [the first applicant's] bottom, which [had] hurt". D. had only done that to him and to one little girl. The first applicant said that another boy, G., had also "done a wee in [his] mouth and [his] bottom" and had hit the other children. The women from the orphanage had said that it was wrong to hit people.

26. According to the record, the first applicant said that after their arrival in Italy he had "done a wee in [his sister Z's] mouth and bottom" and that his other sister, Y, had told him to touch her intimate parts and he had told her to do the same to him. Lastly, he added that in Bulgaria G. had "done sex" with his sister, Y, against the latter's wishes.

27. The psychologists spoke next to the two sisters. It appears from the record that the father remained in the room during the conversation but did not speak. The second applicant recounted the incident of 30 September 2012. She said that she had asked her brother to "touch [her] bottom" and that he had "put his finger in [her] bottom". He had done the same thing to their little sister and had "done a wee in [her] mouth". The third applicant confirmed what her sister had said.

28. According to the record, when asked by one of the psychologists whether similar things had occurred in the orphanage in Bulgaria, the second applicant said that they had, and that she had "done sex" with her brother and other children. She mentioned two boys, D. and G., but said that she had not done anything with them. Both girls said that they had been hit but that it was mostly their brother who had been hit. The second applicant added that she had seen a boy and girl, B. and M., "doing sex" and that her brother had told her that they could do it too.

29. The record further stated that during a second conversation with the two sisters on 18 October 2012 a psychologist had asked the second applicant to share what she had said to her father about a discotheque. Y told her that she had danced with a boy, Br., in the discotheque and that her brother and sister had also danced in pairs with other children. Afterwards, there had been cake and they had gone to bed. The psychologist asked what they had done then. Y replied, using the dolls to help her, that she had "done sex" with the boy with whom she had danced, that he had been on top of her and that it had hurt. She said that she had pushed him at one point and that he had held her mouth closed. She told the psychologist that she had subsequently done the same thing with other boys and said that they had gone to the discotheque three times.

30. The third applicant said that no one had done these things with her and that she had shouted to her sister and Br. that it was wrong. Both sisters said that the other girls in the orphanage, even the youngest ones, used to do the same things.

31. The police record also made reference to a conversation held on 5 November 2012 with the first applicant in the presence of his father, to whom he had apparently made fresh disclosures. The psychologist began by reassuring the first applicant that it was not he who was naughty but rather the grown-ups who had taught him to do "certain things". The first applicant then mentioned a man, N., and another called Ma. who he said had hit his sister with a stick.

32. According to the record, the psychologist asked the child if he could remember what the "grown-ups" used to do in the orphanage. The first applicant replied that they had gone several times to a discotheque and that the grown-ups had danced with them. His sister Y had told him that N. had forced her to "do sex" in the bathroom. The first applicant said that he had told E.D., one of the welfare assistants in the orphanage (initially referred to mistakenly as the director, see paragraphs 19 and 25 above), who had spoken about it to the director. The first applicant said that N. had promised not to do these things any more but had nevertheless done them again.

33. The applicants' father then said that N., who he thought was one of the employees of the orphanage, had first abused the first applicant and then other children, and that other adults had also been involved. The first applicant then named those adults as K., Da., O. and P.

34. According to the record, the first applicant said that N. had forced him to "do sex" in the bathroom, had put his penis "in [the first applicant's] bottom" and had "done a wee in [his] mouth". He said that K. and Da. had done the same thing to him. He added that some of the "ladies" from the orphanage "used to do sex" with the children; he said that he had done it with one of them, that he had cried, and that she had hit him. Lastly, he stated that the police had come once to the orphanage and once to the school to talk to the children. However, he had not said anything as these things had not happened again.

D. The calls made by the applicants' father to Telefono Azzurro

35. On 6 November 2012 the applicants' father contacted the Italian helpline for children in danger, managed by Telefono Azzurro, a public-interest association. According to the detailed record of the conversation provided by the counsellor, the father stated that the applicants had told the psychologists with whom they were having sessions that they and all the children in the orphanage where they had lived in Bulgaria had been subjected to what the father described as serious sexual abuse. He said that the applicants had identified eight adults as the perpetrators of the alleged abuse: five men who had performed various tasks in the institution and three women who looked after the children. He reported that the applicants had also mentioned abuse and what he described as deviant sexual practices on the part of adults from outside the orphanage, which had allegedly taken place in a kind of discotheque during holidays organised by the orphanage. According to the father, the applicants had also said that violence and sexual abuse among the children, which involved the older children ill-treating the younger ones, had occurred systematically in the orphanage at night, when the children had been left unsupervised by the staff, who apparently slept one floor higher up.

36. The first applicant had reportedly said that he had been abused for the first time at the age of six and had been raped by one of the workers in the orphanage, a certain N. He said that he had complained to the director, who had apparently called the police. However, he had withdrawn his accusations when questioned by the police, as N. had threatened him and struck him in the face.

37. Again according to the record, the applicants' father sought advice as to what action to take. The possibility was raised of informing the public prosecutor's office in Milan, where the association AiBi, which had acted as an intermediary in the adoption process, was based, and contacting the Italian Commission for Intercountry Adoption (*Commissione per le Adozioni Internazionali* – "the CAI") in Rome, as the central authority designated under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The applicants' father

said that he did not wish to involve the judicial authorities at the family's place of residence, in order to preserve the children's anonymity.

38. The applicants' father called the helpline again on 15 November 2012 and said that, on the advice of a lawyer and a prosecutor whom he knew, he had decided against applying to the Italian judicial authorities since, in his view, they did not have jurisdiction to deal with the case and he did not want to interfere with the family's privacy. He said that he had reported the children's disclosures to a representative of the association AiBi in Milan, who had told him that she had never heard of such a serious case and that she would inform the "local authorities", without specifying which ones.

39. The applicants' father asked whether Telefono Azzurro could alert the media, but the counsellor drew his attention to the risk to the family's private life and added that it was important at this stage to bring the case to the authorities' attention.

40. The applicants' father called again on 20 November 2012 and said that he had tried calling a child protection helpline in Bulgaria and, following the advice given to him, had sent an email to the Bulgarian State Agency for Child Protection. However, he had received no reply (see paragraph 42 below). He said that the applicants had recounted further episodes of abuse in which children from the orphanage had allegedly been subjected to what he described as perverted sexual practices and that they had identified ten individuals – seven men and three women – as the perpetrators.

41. During a further call to the helpline on 26 November 2012 it was agreed that Telefono Azzurro would report the case to the Milan public prosecutor's office. The applicants' father would contact the Italian CAI and the Bulgarian Ministry of Justice, as the central authorities responsible for intercountry adoption in the two countries.

E. The reports made to the Bulgarian authorities

42. On 16 November 2012 the applicants' adoptive father sent an email to the Bulgarian State Agency for Child Protection ("the SACP"), asking for a telephone number to call in order to report abuse in an orphanage. He did not provide any details or even mention the name of the institution in question, but his own name featured in his email address.

43. The same day the association Telefono Azzurro sent an email to the Nadja Centre, a Bulgarian foundation specialising in the protection of at-risk children and responsible for running the national helpline, informing it that it had been contacted by an Italian national who had adopted three children in Bulgaria and who wished to lodge a complaint of serious abuse of his children. The message did not contain the applicants' names or any details by which they could be identified. On 20 November the Nadja

Centre forwarded this message to the SACP. On 23 November the latter informed the Bulgarian Ministry of Justice about the matter, stating that it could not conduct any checks as it did not have the children's names or the name of the institution in question. The SACP requested the Ministry to open an inquiry within the scope of its powers.

44. In a letter of 23 November 2012, which was written in Bulgarian and was scanned and sent by email to the applicants' father on 26 November 2012, the SACP told him that it had been informed of his report of alleged abuse but that it needed additional information in order to be able to carry out checks, and in particular the name of the institution in question and the children's Bulgarian names. The father wrote back saying that he could not understand the email and asking for it to be sent as a Word file so that he could have it translated. There was no follow-up to this correspondence by either side.

F. The complaints made to the Italian authorities

45. On 22 November 2012 the applicants' parents sent a complaint to the CAI setting out the facts referred to in the report of the psychologists from the RTC dated 31 October 2012 and those reported to Telefono Azzurro (see paragraphs 16-22 and 35-41 above). In particular, they gave the first names of seven men, including N., and four women, who they said had been named by the applicants as the abusers. Some of these individuals, they said, had been members of the orphanage staff while others had come from outside. The parents alleged that groups of children from the orphanage had been taken "on holiday" to a village where they had visited a place they called a "discotheque", and where they had been molested and sexually assaulted by individuals from outside the orphanage. The first applicant had allegedly been forced to watch his sisters being raped. The parents alleged that the children, left unsupervised during the night at the orphanage, had subsequently repeated with the younger children the behaviour of which they had themselves been victims.

46. On 1 December 2012 the association Telefono Azzurro sent the Milan public prosecutor the records of the telephone conversations with the applicants' father, a letter from him setting out the alleged facts, and the report of 31 October 2012 by the psychologists from the RTC.

47. In his letter the applicants' father alleged that all the children in the orphanage had been subjected to abuse by employees (the names of eleven employees – eight men and three women – were given), that during stays at a holiday camp the children had been taken to a "discotheque" where staff members and people from outside had forced them to submit to what he described as perverted sexual practices, that the first applicant had been forced to watch his sisters being raped, and that at night the older children had copied this behaviour and abused the younger children. The father

specified that in the orphanage the children had been left unsupervised at night and had not been segregated, and that all the staff including the director had been aware of the abuse. He maintained that the director had been alerted to the abuse but had merely scolded the children she considered to be responsible. The director and the representative of the association AiBi in Bulgaria had allegedly warned the applicants that they must not tell their prospective adoptive parents what had happened, adding that if they did so the parents might send them back to the orphanage.

48. On 21 December 2012 the applicants' father also contacted the Italian police department specialised in tackling online child pornography and informed it of the applicants' allegations, stressing that the alleged abuse had been filmed by individuals wearing balaclavas to cover their faces. He produced copies of the psychologists' report of 31 October 2012, the complaint to the CAI, a list of the Facebook profiles of the alleged abusers and a list of the supposed victims, pointing out that some of the children had been adopted in Italy. The applicants have not informed the Court of any action taken in response to this complaint.

49. On 8 January 2013 the association Telefono Azzurro sent the Milan public prosecutor additional information provided by the applicants' father concerning other instances of violence apparently reported by the children. According to these accounts, the children from the orphanage had been taken to private apartments where the men and some of the women working at the orphanage, including the aforementioned N., a photographer and the photographer's wife, had been present and where the children had allegedly been sexually abused. The adults' faces had reportedly been covered with balaclavas and the scenes had been filmed and shown on a screen. The applicants had also stated that similar abuse had taken place in the toilets of the orphanage and had likewise been filmed. The applicants' father also complained about the attitude of the association AiBi, which he criticised for not providing him with the support he had expected.

G. The article in *L'Espresso*

50. The applicants' father also contacted an Italian investigative journalist. On 11 January 2013 the weekly magazine *L'Espresso* published an article under the heading "Bulgaria, in the ogres' den" (a version of which was posted on the Internet under the title "Bulgaria, in the paedophiles' den"), reporting on the allegations made by the applicants' father but without naming the persons concerned or the orphanage. The article stated that dozens of children from the orphanage in which the applicants had been placed in Bulgaria had been subjected to systematic sexual abuse by staff members and outsiders, in particular at a discotheque in a holiday village. The article described an organised network, with acts of paedophilia and violence, including threats issued with weapons, being

committed by masked men, and added that some scenes had been videoed. It stated that the youngest children had been the victims of one of the older children, who used to enter their dormitories at night, and that the first applicant had reported these incidents to the director of the orphanage, who apparently had done nothing to put a stop to them. The author of the article added that he had travelled to Bulgaria in December 2012 and could confirm the existence of the places and people described by the applicants, which he said matched their descriptions. He mentioned that he had met with the local police, who claimed to have been unaware of the situation. The article stressed that psychologists had considered the applicants' accounts to be credible.

51. As of 12 January 2013 the article in *L'Espresso* was the subject of several articles in the Bulgarian media.

III. THE MEASURES TAKEN BY THE BULGARIAN AND ITALIAN AUTHORITIES

A. The initial inquiries and the first preliminary investigation in Bulgaria

52. Following the messages sent by the applicants' father and by the Nadja Centre (see paragraphs 42-44 above) and the publication in the Bulgarian media of the disclosures made in the article in *L'Espresso*, the SACP carried out checks which enabled it to identify the applicants.

53. In parallel, the Bulgarian Ministry of Justice contacted the association AiBi, which had been named in the press article. On 14 January 2013 the association informed the Ministry of the applicants' identity and sent it two reports, dated 27 September and 3 October 2012 (see paragraphs 13 and 14 above). The Ministry passed on that information to the SACP.

54. On 14 January 2013 the President of the SACP ordered an inspection of the orphanage. The inspection was carried out on 14 and 15 January 2013 by the regional children's rights department. According to the report drawn up by the inspectors on 21 January 2013, as sent to the Court (this document does not include any attachments and does not state whether written records were drawn up of the interviews and whether audio or video recordings were made), the inspectors checked the content of the documents and the safety of the buildings. They interviewed the mayor of the municipality, who was responsible for the running of the orphanage, the director, the general practitioner, the welfare assistant, the psychologist, the nurse and other staff members who were on duty at the time of the inspection. According to their report, the inspectors spoke to the children in groups of four or five, in the context of informal conversations which focused progressively on questions concerning possible acts of violence or unwanted

physical contact. The older children who could read and write were asked to reply to an anonymous questionnaire which – again according to the report – they could complete without any staff member present. The questionnaire, devised by the SACP as a tool for assisting inquiries concerning children in residential care, consisted of seven mainly multiple-choice questions in which the children were asked whether they had been subjected to insults or violence or if anyone had touched their bodies "in a way [they] didn't like" and if they knew who to turn to if there was a problem.

55. According to the same report, there were fifty-two children living in the orphanage at the time of the inspection: twenty-four girls and twenty-eight boys. Twenty-one of the children were aged between two and seven and thirty-one were aged between eight and thirteen. Thirty-four people worked in the institution, including three men (a caretaker, a heating technician and a driver) whose jobs did not involve contact with the children and who did not have access to their dormitories. The report stated that, according to the information gathered, the children in the orphanage were never left unsupervised, that they were accompanied by a female educator on their way to school, that access by outside visitors was subject to checks and that there were security cameras around the outside of the premises, the footage from which was viewed on a regular basis. The report further specified that the children were divided among seven dormitories by age and, in the case of the older children, by gender, and that the layout of the dormitories was such that they could not move from one dormitory to another without being seen by the staff members on duty. No reference to violence or sexual abuse was made in the replies to the questionnaire or the conversations, which merely mentioned arguments and instances of being hit by other children, mostly at school.

56. The report also stated that, according to the psychologist who prepared a quarterly review concerning the children on the register of children eligible for adoption and who had monitored the applicants among others, neither the applicants nor the other children had ever mentioned ill-treatment or sexual abuse and had shown no signs of such treatment. It also emerged from the information gathered that the children occasionally displayed aggressive behaviour towards each other, which was regarded as normal at that age. In the view of the staff members, the children had no difficulty in confiding in others. Some of the staff cited the example of one girl, M., who had apparently told the other children stories about sexual abuse in her family. The other children had immediately reported this to the staff, prompting an inquiry. According to the director, the second applicant had even told others about these events as if they had happened to her. The director conjectured that this episode could have been the source of the applicants' allegations.

57. On the basis of this report the SACP concluded that there was no evidence that children from the orphanage had been subjected to the

treatment reported in *L'Espresso*. Nevertheless, in view of the seriousness of the allegations, the SACP forwarded the file to the Veliko Tarnovo district and regional prosecutors' offices. Following the inspection the SACP sent a team of psychologists to the orphanage from 18 to 24 January 2013. The team likewise found no cause for alarm.

58. The article in the magazine *L'Espresso* aroused interest among the Bulgarian media, which sought clarification from the SACP and from the management of the orphanage. An article published on 16 January 2013 on the news website *Vesti*, entitled "The allegations of sexual abuse in an orphanage are fabricated" reported on the statements made by the President of the SACP on television in the following terms:

> "The reports in the Italian press concerning alleged violence against children in a Bulgarian orphanage are slanderous and fabricated. ...
>
> The magazine did not state where the institution is located, prompting the SACP to conduct its own inquiry.
>
> According to the SACP, the institution is the residential facility for children without parental care located in the village of ...
>
> The SACP conducted an inspection in that facility lasting less than two days. Nevertheless, it is now satisfied that these accusations are unfounded. ...
>
> The President of the SACP considers it likely that the accusations were fabricated not by the children themselves but by their new parents in Italy.
>
> [He] stated that, despite the short duration of the inspection carried out, the findings were categorical. ...
>
> ... the orphanage stressed that the Italian family's intention ... had been to adopt two girls, and that they had made a concession in taking the eleven-year-old brother as well. The new 'parents' had then wanted to send the boy back. For that reason, according to [the President of the SACP], the father had lied, saying that the boy and his sisters had been playing 'doctor'.
>
> [He stated that] 'this is most likely a case of manipulation on the part of an adoptive parent, perhaps resulting from his lack of preparedness' for dealing with three children between the ages of eight and eleven.
>
> 'I visited the children myself yesterday and I can tell you that I'm greatly reassured' he said.
>
> He added that it was out of the question that the older children could have abused the younger ones, given the young age of all the children in the orphanage. Speaking on BTV, he said: 'There are children's homes ... where sexual and physical violence goes on, but that is not the case here'."

59. On 29 January 2013 the news website *Darik News* published an article, accompanied by a photograph, stating that two members of the Bulgarian parliament had visited the orphanage with the mayor and the chair of the local council and had been received by the director. The article referred to the report in the Italian press according to which three children living in the orphanage had suffered sexual abuse, and reported on the "indignation" of the MPs, according to whom the Italian press had been

"spreading fake news". One of the MPs was quoted as saying to the educators: "We all know that this press report is slander". The article stated that at the end of the visit the villagers had also been invited into the orphanage and had "expressed outrage at the slanderous remarks".

60. On 28 January 2013 the Veliko Tarnovo district prosecutor's office opened a preliminary investigation file (*преписка*) concerning the allegations reported by the SACP, under the number 222/2013. Taking the view that there was no evidence in the SACP's report to indicate that a criminal offence had been committed, the prosecutor's office asked the SACP whether it had any other evidence. The SACP confirmed that the inspection that had been carried out did not suggest that any abuse had been committed. In an order of 18 November 2013 the public prosecutor's office decided that there were no grounds for instituting criminal proceedings and discontinued the case on the sole basis of the SACP's report, without any other investigative steps being taken. The order was worded as follows:

> "The file was opened in connection with the information sent by the SACP, which carried out a check in response to a report ... alleging that three children who were subsequently adopted in Italy in 2012 had been sexually abused. The inspection did not lead to any evidence being gathered that might have confirmed the alleged abuse or the commission of other offences.
>
> In view of the foregoing, I consider that there is insufficient evidence of the commission of an offence, for the purposes of the Code of Criminal Procedure, such as to enable criminal proceedings to be instituted. The case should therefore be closed.
>
> Consequently ...:
>
> I have decided not to commence criminal proceedings and to close case no. 222/2013 ..."

B. The visit to Bulgaria by representatives of AiBi

61. In parallel with the events described above, representatives of the association AiBi paid a visit to Bulgaria from 23 to 26 January 2013. It emerges from the report written following the visit that they met the Italian ambassador, the Bulgarian Deputy Minister of Justice and a representative of the SACP. The last two complained that they had received insufficient information from Italy and said that they had received only the – unsubstantiated – reports of abuse made by the applicants' father, who had not responded to their request for information, and the article from *L'Espresso*. They added that an inspection had nevertheless been carried out when the orphanage in question had been identified; the SACP's representative presented the inspection report, according to which no evidence to corroborate the applicants' claims had come to light (see paragraph 54 above). The representatives of AiBi also visited the orphanage, where they met the mayor (who was the administrative authority responsible for the running of the orphanage) and were shown around the

institution by the director. The report noted that the people whom the representatives met had expressed concern at the accusations, the criticisms of the Bulgarian institutions and the lack of action on the part of the Italian authorities. The report was sharply critical of the way in which the adoptive parents had handled the situation.

C. The exchanges between the Bulgarian and Italian authorities

62. In the course of correspondence between the Italian CAI and the Bulgarian Ministry of Justice, the two authorities exchanged the information in their possession. In a letter of 23 January 2013 the CAI formally requested the Bulgarian authorities to take appropriate steps to protect the children living in the orphanage. The CAI's representative wrote as follows:

> "... it appears that the following events took place in [the orphanage], involving large numbers of individuals, both staff members of the institution and people from outside, whose names and roles have been provided by the children.
>
> According to the [applicants'] accounts, the 'most deserving' children were taken periodically to the neighbouring village of L. They were taken to a discotheque where, in the beginning, they danced and enjoyed themselves. Then, after the cake, they were taken to bedrooms where some men who were already present 'played' with them.
>
> These children were subjected to violence and forced to witness violence against others.
>
> The children who were the victims of these repeated assaults later replicated them with the smallest children when they were left alone at night.
>
> In view of the above, the [CAI] requests the central authority [the Bulgarian Ministry of Justice] to take all the necessary steps to protect the children in the orphanage."

For her part, the Bulgarian Deputy Minister of Justice expressed concern for the applicants' welfare within their adoptive family, in particular regarding the risk that the parents might abandon the children. The representative of the CAI replied that the adoptive parents had raised this possibility in a moment of panic, in view of the seriousness of the facts that had been disclosed (see paragraph 14 above), but that they were now wholly committed to the children.

63. In view of the concerns expressed by the Bulgarian Ministry of Justice, the CAI applied in early February 2013 to the R. Youth Court, which had territorial jurisdiction to follow up the adoption process and take any measures required to protect the applicants. A few days earlier the association AiBi had also reported the events to the Youth Court.

64. On 21 January 2013 the applicants' father complained to the CAI about the fact that the Bulgarian press had disclosed the applicants' names, in particular in an interview given by the director of the orphanage. The complaint was forwarded to the Bulgarian Ministry of Foreign Affairs. In a *note verbale* dated 24 January 2013 the latter informed its Italian

counterpart that the SACP had taken action *vis-à-vis* the media outlets concerned. In a further *note verbale* of 27 September 2013 the Bulgarian ministry stated that the Bulgarian personal data protection commission had taken the view that the situation in question had not resulted in misuse of personal data, in so far as the use of the data had been justified in this instance by the public interest in the case and the aims pursued by journalistic activity.

D. The second preliminary investigation in Bulgaria

65. On 15 January 2013 the Milan public prosecutor's office, on an application from the association Telefono Azzurro (see paragraph 46 above), sent a request to the Bulgarian embassy in Rome containing the following passages:

> "... I am sending you copies of the documents in my possession concerning allegations of serious offences against minors ...
>
> As the Italian judicial authorities do not have jurisdiction in the present case since the alleged acts were committed abroad, by foreign nationals, I would ask you to contact the relevant local authorities with a view to assessing whether the allegations in question are well founded."

The prosecutor attached the record of the calls made by the applicants' father to Telefono Azzurro, a complaint from the father dated 28 November 2012 setting out the applicants' allegations, and the report of the psychologists from the RTC dated 31 October 2012 (see paragraphs 46-49 above).

66. The documents in question were translated and sent to the SACP, which forwarded them to the Veliko Tarnovo regional prosecutor's office. However the latter, which, following the article in *L'Espresso*, had opened an investigation into the general situation with regard to orphanages in the region, took the view that the documents implicated named individuals and that it was therefore for the district prosecutor's office to decide on possible proceedings. The file was sent to the Veliko Tarnovo district prosecutor's office, which on 22 February 2013 opened a preliminary investigation under the number 473/2013, while the first investigation (no. 222/2013) was still pending.

67. A team of representatives from the police, the local authorities and the regional healthcare, social welfare and child protection services conducted inquiries at the orphanage on 25 and 26 February 2013.

68. According to the report drawn up by the police on 6 March 2013, the team consulted the documents available in the orphanage, including the children's medical records, and spoke to members of staff (the director, the psychologist, two educators, a childcare assistant, the driver, the caretaker and the heating technician), to some individuals who occasionally worked in the institution (a photographer named D. and an electrician the diminutive

of whose forename began with N.), and to four children aged between eleven and thirteen (three boys, B., G. and A., and a girl, Bo.) whom the applicants had mentioned in their accounts. The police report described the running of the institution and the activities and care provided to the fifty-three children living there at the time. It stated that the regular medical check-ups carried out by the general practitioner from outside the orphanage had not revealed any signs of physical or sexual assault on the children. It added that a complaints box was available to the children, as well as a telephone which gave the number of the national helpline for children in danger, and that no incidents corresponding to the applicants' allegations had been reported by those means.

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

70. The report also stated that the municipal child protection service inspected the orphanage regularly and that a police officer visited every week. It stated that security measures were in place, particularly regarding entry by outside visitors, and that no instances of sexual abuse of children had been reported, either during the interviews with staff members in the course of the investigation or in the preceding years.

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

72. In a letter of 8 May 2013 the district prosecutor's office ordered the police to continue the preliminary investigation in order to establish the identity of the persons referred to and the truth or otherwise of the allegations made in the documents sent by the Italian authorities. According to a second police report, dated 5 June 2013, the police had conducted interviews in the police station on that occasion with the director of the orphanage, the psychologist, the welfare assistant, the photographer D., and the electrician N. The only child referred to by the applicants who was still living in the orphanage, B., had also been questioned by a police officer in the presence of the orphanage's psychologist. The report found that the evidence gathered did not corroborate the applicants' allegations, and noted in particular that, contrary to the applicants' assertions, the director of the orphanage was not called E. (as regards the confusion surrounding this name, see paragraphs 19 and 32 above) and that the applicants had not reported any instances of sexual abuse to her or to the welfare assistant E. The report added that the children had not been taken to any "discotheque". The only occasion on which the children had an opportunity to dance was at

a party during the annual excursion organised by an association in the village of L. According to the report, the children were accompanied to that party by the female educators from the orphanage and the only other person present was a disc jockey invited for the evening. The report also mentioned that the children had spoken in positive terms about their trip to L. The psychologist had stated that during the third applicant's time at the orphanage the child had not displayed the symptoms referred to by the adoptive parents (who claimed that she used to cry out while she was in the bath and had bitten people). The psychologist had added that, while the third applicant had been psychologically stable, the first and second applicants had been more confrontational and had a tendency to manipulate other people, including adults. She had also noted that, at the time of the initial meetings with the prospective adoptive parents, the first applicant had been annoyed because the parents had apparently paid more attention to his sisters. According to the report, the witness statements obtained also indicated that D., the boy whom the applicants had identified as the perpetrator of the alleged abuse and ill-treatment (see paragraphs 19 and 25 above), had been adopted by Italian parents as far back as the late summer of 2011, at the same time as his sister, when he was twelve years old. As to M., the girl mentioned by the applicants (see paragraph 28 above), the report of a gynaecological examination carried out in January 2012 had found that her hymen was intact.

73. Another report, drawn up on 4 March 2013 by the regional child protection services in connection with the inspection of the orphanage, essentially reiterated the information contained in the report following the SACP's inspection in January 2013 (see paragraph 54 above) and noted that the relevant regulations were largely complied with and that there were no grounds to suspect sexual abuse. The report made several recommendations including improvements to the programme of activities offered to the children.

74. On conclusion of the preliminary investigation the district prosecutor's office, in an order of 28 June 2013, decided not to institute criminal proceedings and discontinued the case. According to the order, the evidence gathered during the investigation had not confirmed the allegations made by the applicants' parents. The male staff members and the electrician N., who had worked only occasionally in the orphanage, had not had access to the children without a female educator being present; the children were always accompanied on excursions, in particular during the annual trip to L., and had not come into contact with any men without the female staff being present; the director was not called E.; the boy B. mentioned by the applicants denied having been the perpetrator or the victim of sexual touching, and the young girl M. had undergone a gynaecological examination in January 2012 which showed that her hymen was intact; lastly, D. and his sister had been adopted in Italy as early as the summer of

2011. The public prosecutor concluded that the evidence gathered did not lead to the conclusion that a criminal offence had been committed.

E. The proceedings before the Youth Court in Italy

75. Several steps were taken in the course of the proceedings opened by the public prosecutor's office at the R. Youth Court on an application by the CAI and the association AiBi (see paragraph 63 above). Under Italian law, civil proceedings of this kind in the Youth Court, with the participation of a public prosecutor for minors, are designed to follow up adoptions. In the present case the proceedings were aimed at monitoring the applicants' integration into the family in view of the events that had taken place and the risk that the adoption might be called into question.

76. On 22 February 2013 the journalist from *L'Espresso* gave a statement to a public prosecutor for minors. He explained that he had been contacted by the applicants' father, who had reported what the applicants had told him; the journalist added that he had travelled to Bulgaria from 9 to 16 December 2012 to investigate. He confirmed the existence of the places and people described by the children. In particular, he said that he had discovered the whereabouts of the photographer D.'s studio and had made contact with him on Facebook using a false name. He had noticed that many of D.'s Facebook contacts were adolescents.

77. The journalist said that he had made contact through a Bulgarian journalist with a police officer named K. to whom he had passed on the information provided by the applicants' father. However, the police officer had later told him in confidence that his supervisors had forbidden him to take up the case.

78. The documents in the file show that the man whom the journalist described as a police officer told him during an exchange of emails that he thought that the account given by the applicants' father pointed to serious offences which in his view warranted the opening of a criminal investigation. However, he considered that the account was insufficiently detailed and asked to be sent a copy of the Italian psychologists' report. The journalist subsequently provided him with a more detailed account and with the psychologists' report. There is no information in the file concerning a possible follow-up to this exchange by either party.

79. On 25 February 2013 the applicants' father was interviewed by the police attached to the R. Youth Court. He stated that the applicants had initially told him that the older boys D. and G. had abused the younger children in the orphanage. Some time later the applicants had told him about abuse allegedly committed by a workman, N., who, they said, had raped children from the orphanage over a number of years and had forced them to engage in acts which the father described as abhorrent. The applicants had subsequently related incidents which they claimed had occurred in the place

where the children were taken on holiday, where they had allegedly been assaulted and abused by members of staff and by individuals from outside the institution. The applicants had reportedly told their father that the children had been tied in handcuffs, that the adults had worn masks and that the scenes had been filmed by a photographer, D., who had also participated in the abuse. The first applicant had apparently added that he had been threatened with a gun.

80. The applicants' father also stated that he had tried to trace the individuals described by the applicants on social media, and that the applicants had recognised several of them and had identified them as the perpetrators of the acts in question. The day after the interview, the applicants' father sent the police a list of names, some of them using the diminutive form, of the persons allegedly involved in the abuse, together with the Facebook profiles that he had managed to identify (see paragraph 48 above). He stated that the children had informed S., the director, about the alleged abuse and the involvement of the orphanage's employees and that she had promised to take action, but that nothing had been done.

81. At the request of the public prosecutor for minors, the police viewed the video recordings made by the applicants' psychologists and drew up a record of the conversations that had taken place between the applicants and the psychologists on 11 and 18 October and 5 November 2012 (see paragraphs 23-34 above).

82. On 8 April 2013 the first and second applicants were interviewed by the public prosecutor for minors, in the presence of a psychologist and a female police officer. According to the written record the interviews were filmed and recorded on DVD.

83. It transpires from the full transcript of these interviews, produced before the Court, that both the children, and in particular the first applicant, still had quite a limited command of Italian and that the persons interviewing them had to explain the meaning of certain words such as "undress" and "breasts" which featured in their questions. The applicants' replies were brief and often consisted of a simple "yes" or "no" answer, or of the repetition of a suggestion made in the question.

84. The two children were first asked how they were feeling and to describe their life in the orphanage. Neither of them mentioned the allegations of sexual abuse of their own accord, but spoke about them when the prosecutor asked them questions about inappropriate behaviour on their part or matters they had mentioned to the psychologists.

85. The first applicant was initially somewhat reluctant to talk about Bulgaria and about the incidents in the orphanage. When questioned directly on the subject he said that one boy at the orphanage had licked a young girl's bottom and that another boy, D., had hit the other children. He told the interviewers that adults had come into the room at night, that N. in

particular had touched his bottom and "done a wee in [his] mouth" and in other children's mouths, and that some children had been tied up, undressed and hit. He said that his sisters had been undressed but that he had not. Neither the women who looked after the children nor the director had heard anything because they had been asleep, and the children had not said anything the next day because the men had forbidden them to do so.

86. It is clear from the transcripts that the first applicant was annoyed with the people questioning him. His account also contained a number of contradictions with regard to whether certain events had actually taken place and whether he had witnessed certain acts or had been told about them by other children.

87. Despite being asked several questions on the subject, the first applicant was unable to explain what he meant by the expression "doing sex", and finally agreed with the suggestions put to him by the interviewers. He said that "those things" had happened only in the orphanage and not during the holiday outings. He also stated several times that he had been hit in the orphanage.

88. The second applicant, who appeared to have a better grasp of Italian than her brother, spoke about her daily life in the orphanage in greater detail. When questioned by the prosecutor about the incident occurring in Italy, she said that she and her brother and sister had played a game which they should not have played and that in Bulgaria her brother had "done a wee" in the mouth of their little sister, Z. She said that the children had once seen a man doing that with a lady on the television in the orphanage. She added that both the people concerned had been dressed and that the lady had cried out. She said that she had not spoken to staff members about these events.

89. When questioned by the prosecutor about what she had said to the psychologists from the RTC, the second applicant told her that a boy from the orphanage had put his finger in a young girl's bottom and that her brother had done the same thing to her and to her sister, once in Bulgaria and once after their arrival in Italy. When asked whether she had been touched by other children she recounted several incidents, explaining that one boy from the orphanage had "played at doing sex" by lying on top of her while they were both dressed. At school, two girls had asked her to dance in her underpants, and she had also seen two older children kissing in school. She added that a certain N. had "kissed [other young girls] on the mouth and touched [them]" at night in the orphanage. However, her statements as to whether N. was an older child or an adult, and whether or not he lived in the orphanage, contradicted each other.

90. In reply to several questions on the subject, she stated that she had never seen any adult naked, that no adult had touched her, that she had never been photographed and that none of what she described had taken place on the holiday outings.

91. During the interviews the prosecutor showed several photographs to the two applicants, who identified, among other things, the holiday house in L. and the photographer D.

92. On 24 June 2013 the prosecutor sent the evidence thus obtained to the Youth Court. She noted in her conclusions that it was clear from the disclosures made by the applicants to their parents and their psychologists and repeated, if only in part, during their interviews, that the children had been the victims of repeated sexual abuse and ill-treatment. The prosecutor considered that they should not be questioned further at this stage, especially in view of the possibility that the Bulgarian authorities might wish to interview them. She proposed that the court should order the monitoring of the applicants' situation within the family and of the support they were receiving from the psychologists, and should assess the need to provide assistance to the parents.

93. On 9 July 2013 the Youth Court appointed an expert in paediatric neuropsychiatry, who was the head of child and adolescent neuropsychiatry of the regional health authority of a neighbouring region, to assess "[the applicants'] psychological and physical state, the possible existence of symptoms suggestive of sexual abuse (ill-treatment) during their time in residential care, and the dynamic between [them and their parents]". The court instructed the expert to "examine [the procedural acts and documents available at the RTC] with a possible view to interviewing the children, subject to the findings of that preliminary examination and to authorisation by the court". After examining the documents and the recordings of the interviews with the applicants and their parents, and on the basis of appropriate scientific evaluation methods (Criteria-based Content Analysis, CBCA), the expert made the following observations:

> "X and Y's accounts of the acts of which they claim to have been the victims during their time at the institution in Bulgaria appear to satisfy the criteria established by the scientific literature in order to be considered clinically credible. The relationship of the aforementioned children with their adoptive parents appears to be fundamentally sound, and the parents have succeeded in coping with a considerable emotional burden, including on a personal level."

94. In a decision of 13 May 2014 the Youth Court observed that the evidence gathered, and in particular the expert's assessment, showed that the applicants had been subjected to repeated sexual abuse and ill-treatment in the orphanage in Bulgaria. The court noted that according to the parents' statements, the applicants had revealed that they had engaged in sexual acts among themselves, that this had been common among the children in the orphanage, and that the children had also been the victims of abuse on the part of several employees who had forced them to engage in sexual acts. The court observed that the abuse had been committed in the orphanage and at a place where the children were taken on holiday, that the children had been threatened, including with a weapon, that the acts in question had been

filmed by a photographer, D., and that the children had identified some of the individuals they had mentioned, and in particular the photographer, on the photographs presented by the journalist from *L'Espresso*. The court stressed that the applicants had reiterated these allegations when interviewed by the prosecutor, albeit in less detail and with some hesitation.

95. The Youth Court, basing its findings in particular on a recent report of the psychologists from the RTC dated 21 November 2013, considered that the adoptive parents had demonstrated the patience and care that were required and that there was no reason to question their ability to take care of and raise the children. However, it noted that the parents' initial reaction had been inappropriate in so far as they should have applied to the Youth Court or another competent authority immediately instead of having recourse to a journalist. It also criticised the conduct of the association AiBi, which had delayed in contacting the competent authorities after being apprised of the situation and after noting a problem of sexual precocity with the applicants and the other children in the orphanage, and which had hastened to draw up a report criticising the parents.

96. In these circumstances the Youth Court held that there was no need to question the applicants again, to order protective measures concerning them or to review their psychological counselling; it therefore terminated the procedure for following up the adoption. The Youth Court's decision was sent to the Milan public prosecutor's office in connection with the pending criminal case concerning the same facts.

F. The third preliminary investigation in Bulgaria and the subsequent decisions of the prosecuting authorities

97. In late January 2014 the Italian Ministry of Justice sent an official letter to the Bulgarian authorities, forwarding the evidence gathered by the public prosecutor's office at the R. Youth Court (see paragraphs 75 et seq. above) and asking them to open an investigation into the allegations. The documents forwarded comprised the statement given by the applicants' father to the police, his letter containing the list of names and Facebook profiles of the persons he believed to be implicated (see paragraphs 48 and 80 above), the police written record based on the recordings of the applicants' conversations with their psychologists (see paragraphs 23-34 above), and the transcripts of the first and second applicants' interviews with the public prosecutor for minors (see paragraphs 79-91 above).

98. On 14 March 2014 the public prosecutor's office at the Bulgarian Supreme Court of Cassation sent translations of the Italian documents to the Veliko Tarnovo regional prosecutor's office, which forwarded them to the district prosecutor's office. On 4 April 2014 the district prosecutor's office opened a preliminary investigation under the number 910/14. On 15 April

2014 the district prosecutor observed that three investigations had been opened concerning the same facts and forwarded the files to the regional prosecutor's office, proposing that they be joined and that the orders already made in the case be set aside.

99. In an order of 5 June 2014 the Veliko Tarnovo regional prosecutor's office ordered the joinder of the three investigations and set aside the order of 28 June 2013 issued in case no. 473/13 (see paragraph 74 above), on the grounds that it had been made while a first investigation was still pending. The discontinuance order of 18 November 2013 in case no. 222/13 (see paragraph 60 above) thus remained in force. No fresh investigative steps were taken on the basis of the new documents received from the Italian authorities in January 2014.

100. In December 2014 and again in January 2015 a representative of the Italian embassy in Sofia made an official enquiry regarding the progress of the investigation. On 23 January 2015 the Bulgarian authorities informed the Italian embassy that the criminal investigation had been closed by means of the order of 18 November 2013 (see paragraph 60 above). A copy of the order was sent to the embassy on 28 January 2015.

101. In the meantime, on 19 January 2015, the Italian Ministry of Justice requested its Bulgarian counterpart to inform it of the outcome of the criminal case. It received the information in a letter of 11 March 2015.

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

103. On 7 June 2016 the Italian Ministry of Justice sent additional documents concerning the case to its Bulgarian counterpart. The material included a letter from the applicants' father to the Italian Justice Ministry dated 2 May 2016 in which he challenged the investigation carried out in Bulgaria and cast doubt on the independence of the Veliko Tarnovo district prosecutor's office; a list of the alleged perpetrators and of the children supposedly present in the orphanage at the time of the events; and an article from a local daily newspaper, *Borba*, dated 4 January 2013, in which a young man who claimed to have lived in several care homes during his childhood and adolescence complained of violence and precocious sexual activity in those institutions. In his letter the applicants' father referred to the Youth Court decision of 13 May 2014 (see paragraphs 94-96 above) and requested that it be sent to the Bulgarian authorities. However, the decision does not appear to have actually been sent with the correspondence from the Italian ministry.

104. These documents were forwarded to the Veliko Tarnovo district prosecutor's office on 1 August 2016. On 2 August 2016 the prosecutor in charge withdrew from the case in response to the criticism by the applicants' father of the way in which he was handling the case. A different prosecutor was appointed. The latter forwarded the file to the regional prosecutor's office, taking the view that the letter from the applicants' father should be treated as an appeal against the order of the district prosecutor's office of 18 November 2013.

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

106. The regional prosecutor went on to make the following observations. In the course of the second investigation, opened following the report by the association Telefono Azzurro, the police and the various relevant services had instituted inquiries. In that context, evidence had been taken from various members of the orphanage staff, namely the director, the psychologist, two educators, the driver, the heating technician, the caretaker and a childcare assistant, and from four children. Some outsiders who had worked in the orphanage – a photographer and an electrician – had also given evidence on that occasion. The police investigators had then interviewed the director, the psychologist, the welfare assistant and one child, and also the electrician, the photographer and a member of the municipality's IT department, all of whom had carried out work in the orphanage. The interviews had not produced any evidence that the children in the orphanage had been the victims of psychological, physical or sexual abuse. It emerged from the inquiries that the children had been supervised during the night and could not have any contact with individuals from outside without being accompanied by a childcare assistant or an educator from the centre. It further appeared that once a year, in summer, the children had gone to a holiday camp, accompanied by educators from the orphanage. A party had usually been organised at the end of their stay, in which reportedly the only outside person involved was a disc jockey.

107. The public prosecutor noted that only three of the orphanage's employees had been men and that they had not had access to the rooms set aside for the children. The outside photographer came to the orphanage only to take photographs or make videos for adoption files or for parties or ceremonies. There had been no employee with the initial N., the only person of that name had been an electrician who came to the orphanage occasionally to repair kitchen equipment, and there had never been a

director called E. (as regards the confusion surrounding this name, see paragraphs 19 and 32 above).

108. Consequently, in the prosecutor's view, there was nothing in the evidence gathered to indicate that any offences had been committed against the three applicants.

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

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

111. On 27 January 2017, after the respondent Government had been given notice of the present application, the public prosecutor's office at the Bulgarian Supreme Court of Cassation ordered an official review of the order of the appellate prosecutor's office. The review, conducted by a prosecutor at the Supreme Court of Cassation, concluded that the investigation appeared to have been thorough and had not revealed that the applicants had been ill-treated at the orphanage, with the result that there were no grounds for setting aside the order of the appellate prosecutor's office. The prosecutor found as follows:

> "Thorough checks were carried out in case no. 222/2013 of the Veliko Tarnovo district prosecutor's office, during which no evidence was found of physical or sexual abuse of the children from [the orphanage].
>
> Having consulted the documents sent by the Milan public prosecutor's office to the Bulgarian embassy containing the expert opinions prepared by a psychologist, a psychotherapist and a clinical consultant at the request of the [applicants' parents], and the report submitted to the Milan public prosecutor's office by the association Telefono Azzurro specialising in the prevention of child abuse, which was sent to the international department of the public prosecutor's office at the Supreme Court of Cassation by the Ministry of Justice; having likewise consulted the documents concerning the evidence taken from the children X and Y containing the transcripts of the interviews with the public prosecutor ..., the female police officer ... and the psychologist ..., I have concluded that those interviews provide no grounds for finding that the children were subjected to abuse by adults during their time at [the orphanage], but that the interviews indicate that the children were most likely witnesses to acts of sexual touching among children living in the orphanage, which X then copied in Italy *vis-à vis* his sisters. The children themselves give divergent accounts of the circumstances in which they allegedly witnessed acts of a sexual nature, namely whether they saw them on television or saw them being carried out by another older child.
>
> X's first account to his adoptive parents concerning the violence to which he claimed to have been subjected in Bulgaria was aimed primarily at focusing their attention on events that had not actually occurred and justifying acts he had committed towards his sisters and of which the parents had expressed strong disapproval.

> Some aspects of the initial accounts [made by the applicants] to their parents and the psychologists were not confirmed during the detailed questioning by the public prosecutor at the Italian Youth Court.
>
> As the three children were fearful of being rejected by their adoptive parents, who disapproved strongly of their immoral behaviour within their new family – within which the children receive a great deal of love and attention – they sought to inspire pity and play down their own actions by relating incidents that had not actually occurred in which they were the victims of crimes.
>
> In view of the foregoing I consider that the order of the Veliko Tarnovo appellate prosecutor's office was justified and in accordance with the law."

IV. OTHER RELEVANT INFORMATION

112. In addition to the inspections conducted in the orphanage following the applicants' allegations, the regional child protection services carried out a further check in June 2013 following a report by the association the Bulgarian Helsinki Committee casting doubt on the quality of the institution's educational activities and alleging that children older than the statutory maximum age were living in the orphanage and that the heating technician, in breach of the rules, entered rooms intended only for the children and had had a relationship with one of the female employees. The report of the child protection services noted, in particular, that the age limit was complied with and that the heating technician did not enter the rooms occupied by the children unless accompanied by a staff member. However, according to the report, the director of the orphanage had observed that one employee had made inappropriate remarks about intimate adult relations in front of the children and had been reprimanded by the director. It also transpired from the inspection carried out by social services that the nurse had not organised information sessions on health topics as she was required to do, but that the educators had given classes on sex education and medical issues.

113. In 2013 the Veliko Tarnovo district prosecutor's office also opened a criminal investigation under the number 407/2013, after the regional social welfare directorate reported complaints by several parents whose children, M., S. and Y., had been placed temporarily in the orphanage between 2011 and 2012 and had stated that one of the childcare assistants had hit them with a stick. The public prosecutor's office ordered the police and the child protection services responsible for the area to carry out checks. Following a decision by the mayor, the municipal social services carried out a further check concerning the same complaints. In an order of 19 June 2013 the district prosecutor's office discontinued the case, noting that there was insufficient evidence that the children had been ill-treated by members of staff. With regard to M., who was one of the children mentioned in the applicants' accounts (see paragraphs 21, 28, 56 and 72 *in fine* above), the order also referred to another episode in which the girl in question, on

returning to the orphanage after staying with her parents in January 2012, had complained of sexual abuse within her family and had told the other children in the orphanage about it. The director had mentioned the episode in the course of the investigations in the present case (see paragraph 56 *in fine* above) and in her statements to the press, as a possible explanation for the applicants' accounts of sexual abuse.

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

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Criminal Code

115. The relevant provisions of the Criminal Code as in force at the material time read as follows:

Article 31

"(1) Any person over the age of eighteen who commits an offence while he or she is capable of discernment shall be criminally liable.

(2) Persons between the ages of fourteen and eighteen shall be criminally liable if, at the time of the offence, they were capable of understanding the nature and consequences of their actions and of controlling them."

Article 149

"(1) Any person who engages with a minor under the age of fourteen in acts aimed at arousing or satisfying a sexual impulse without intercourse shall be sentenced to a term of imprisonment of one to six years for sexual abuse (*блудство*).

(2) Any person who commits sexual abuse using force or threats, taking advantage of the victim's vulnerability or placing the victim in a vulnerable situation, or abusing a position of dependence or authority, shall be sentenced to a term of imprisonment of two to eight years.

...

(4) The sentence shall be three to fifteen years' imprisonment:

1. if the acts are committed by two or more persons;

...

(5) The sentence shall be five to twenty years' imprisonment:

1. if the acts are committed against two or more minors.

..."

Article 151

"(1) Any person who engages in sexual intercourse with a minor under the age of fourteen, in so far as the act does not constitute the offence referred to in Article 152, shall be sentenced to a term of imprisonment of two to six years.

..."

Article 152

"(1) Any person who engages in sexual intercourse with a person of the female sex :

1. who is unable to defend herself, where she has not consented;
2. who was compelled by the use of force or threats;
3. who was reduced to a state of helplessness by the perpetrator;

shall be sentenced to a term of imprisonment of two to eight years for rape.

...

(4) The sentence for rape shall be ten to twenty years' imprisonment:

1. if the victim is under fourteen years of age;

..."

Article 155b

"Any person who incites a minor under fourteen years of age to take part in sexual acts, whether real, virtual or simulated, between persons of the same or the opposite sex, or in lascivious displays of sexual organs, sodomy, masturbation, sadism or masochism, or to observe such acts, shall be sentenced to a term of imprisonment of up to three years or to a probationary period."

Article 157

"(1) Any person who engages in an act of sexual penetration or sexual gratification with a person of the same sex using force or threats, abusing a position of dominance or authority or taking advantage of the person's helplessness, shall be sentenced to a term of imprisonment of two to eight years.

(2) Where the victim is under fourteen years of age the sentence shall be three to twenty years' imprisonment.

(3) Any person who engages in an act of sexual penetration or sexual gratification with a person of the same sex under the age of fourteen shall be sentenced to between two and six years' imprisonment.

..."

Article 159

"(1) Any person who creates, exhibits, distributes, offers, sells, rents out or otherwise propagates pornographic material shall be sentenced to up to one year's imprisonment and to a fine ranging from 1,000 to 3,000 levs [approximately 500 to 1,500 euros].

...

(4) The offences referred to in paragraphs 1 to 3 shall be punishable by a sentence of up to six years' imprisonment and a fine of up to 8,000 levs [approximately 4,000 euros] where a person who is or appears to be under the age of eighteen is employed in the production of pornographic material. ..."

B. The Code of Criminal Procedure

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

117. In order to decide whether it is necessary to institute criminal proceedings the public prosecutor opens a case file (*преписка*) and carries out a preliminary investigation (*проверка*). In that connection he or she may – either in person or by delegating powers to the competent public authorities, and in particular the police – gather all the documents, information, testimony, expert opinions and other relevant evidence (section 145 of the Judiciary Act).

118. Where the prosecutor decides not to institute criminal proceedings and discontinues the case (*отказ да се образува досъдебно производство*), he or she must inform the victim of the alleged offence or his or her heirs, any legal entity affected, and the person who made the report (Article 213 of the Code of Criminal Procedure). The higher-ranking prosecutor may, on an application from the above-mentioned persons or of his or her own motion, set aside the discontinuance order and order the opening of criminal proceedings (Article 46 § 3 and Article 213 § 2 of the Code).

119. Under Article 160 of the Code of Criminal Procedure, a search may be ordered in the context of criminal proceedings where there are reasonable grounds to consider that objects, documents or IT systems containing information that may be of relevance to the case are likely to be found at a particular location. Searches may only be conducted with judicial authorisation, except in urgent situations where an immediate search is the only means of gathering and preserving the evidence (Article 161 of the Code).

120. Under Article 172 of the Code of Criminal Procedure, the prosecuting authorities may make use of special information-gathering techniques such as telephone tapping, only in investigating serious offences including those referred to in Articles 149 to 159 of the Criminal Code, and where the relevant circumstances cannot be established using other means or it would be particularly difficult for the authorities to establish them

without using these techniques. The use of special information-gathering methods and techniques must be approved by a judge on a reasoned application by the prosecutor in charge of the investigation (Article 173).

C. The Child Protection Act

121. The Child Protection Act passed in 2000 is aimed at ensuring the protection of children and respect for their rights. Section 3 establishes the defence of the child's best interests as one of the guiding principles of child protection. Under section 11, each child is entitled to protection, in particular, against child-rearing methods that are contrary to his or her dignity and against all forms of physical, psychological and other violence.

122. The SACP is the main authority tasked with ensuring child protection, in cooperation with social services, the various ministries, mayors and the municipal social services. Under section 17a(1) of the Child Protection Act, the President of the SACP is empowered, among other things, to monitor respect for children's rights by schools, healthcare establishments and specialised institutions such as orphanages. In the event of an infringement of these rights or of the applicable rules, he or she issues binding instructions with a view to remedying the shortcomings identified. The President of the SACP, like the municipal social welfare services, has powers to report a case to the police, the prosecuting authorities or the courts where a child is at risk.

II. INTERNATIONAL LAW

A. United Nations

123. The Convention on the Rights of the Child, adopted on 20 November 1989 and ratified by almost all the member States of the United Nations, is designed to recognise and protect specific rights for children, extending to the latter the concept of human rights set out in the Universal Declaration of Human Rights.

124. The relevant provisions of that Convention read as follows:

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."

125. The Committee on the Rights of the Child monitors implementation of the Convention on the Rights of the Child. In its General Comment No. 13 of 18 April 2011, entitled "The right of the child to freedom from all forms of violence" and prompted by the "[alarming] extent and intensity of violence exerted on children", it made the following observations concerning Article 19 of that Convention:

(a) Article 19 § 1 prohibits all forms of violence, including physical bullying and hazing by adults and by other children;

(b) sexual abuse comprises any sexual activities imposed by an adult on a child, or "committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure";

(c) Article 19 § 1 prohibits "[t]he process of taking, making, permitting to take, distributing, showing, possessing or advertising indecent photographs ... and videos of children ...";

(d) Article 19 § 2 imposes an obligation to take measures to identify and report violence, to investigate and to ensure judicial involvement.

126. As regards investigations, General Comment No. 13 states as follows:

"Investigation of instances of violence, whether reported by the child, a representative or an external party, must be undertaken by qualified professionals who have received role-specific and comprehensive training, and require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures will help to ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection and criminal proceedings. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation. Towards this end, all parties are obliged to invite and give due weight to the child's views."

The General Comment specifies that judicial involvement may include criminal-law procedures "which must be strictly applied in order to abolish the widespread practice of *de jure* or *de facto* impunity, in particular of State actors."

B. Council of Europe

1. The Lanzarote Convention

127. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention"), which was adopted by the Committee of Ministers on 12 July 2007 and entered into force on 1 July 2010, is designed to prevent and combat sexual exploitation and sexual abuse of children, protect the rights of child victims of sexual exploitation and sexual abuse, and promote national and international cooperation against sexual exploitation and sexual abuse of children. It entered into force on 1 April 2012 in respect of Bulgaria and on 1 May 2013 in respect of Italy. It requires the States Parties, in particular, to criminalise all forms of sexual exploitation and sexual abuse of children (Articles 18 to 24) and to adopt measures to assist victims. The Convention also lays down certain requirements to be met as regards the investigation and prosecution of such offences. The relevant parts of this Convention provide as follows:

Chapter IV – Protective measures and assistance to victims
Article 11 – Principles

"1. Each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care.

..."

Article 12 – Reporting suspicion of sexual exploitation or sexual abuse

"...

2. Each Party shall take the necessary legislative or other measures to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

..."

Article 13 – Helplines

"Each Party shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity."

Article 14 – Assistance to victims

"...

3. When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention procedures taken in application of Article 11, paragraph 1, shall include:

– the possibility of removing the alleged perpetrator; ...”

Chapter VI - Substantive criminal law
Article 18 – Sexual abuse

“1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

(a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;

(b) engaging in sexual activities with a child where:

– use is made of coercion, force or threats; or

– abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or

– abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

...”

Article 25 – Jurisdiction

“1. Each Party shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

(a) in its territory; or

...

(d) by one of its nationals; or

(e) by a person who has his or her habitual residence in its territory.”

Article 27 – Sanctions and measures

“1. Each Party shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include penalties involving deprivation of liberty which can give rise to extradition.

...

3. Each Party shall take the necessary legislative or other measures to:

(a) provide for the seizure and confiscation of:

– goods, documents and other instrumentalities used to commit the offences, established in accordance with this Convention or to facilitate their commission;

– proceeds derived from such offences or property the value of which corresponds to such proceeds;

(b) enable the temporary or permanent closure of any establishment used to carry out any of the offences established in accordance with this Convention, without prejudice to the rights of bona fide third parties, or to deny the perpetrator,

temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed.

..."

Chapter VII – Investigation, prosecution and procedural law
Article 30 – Principles

"1. Each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child.

2. Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.

3. Each Party shall ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay.

4. Each Party shall ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

5. Each Party shall take the necessary legislative or other measures, in conformity with the fundamental principles of its internal law:

– to ensure an effective investigation and prosecution of offences established in accordance with this Convention, allowing, where appropriate, for the possibility of covert operations;

– to enable units or investigative services to identify the victims of the offences established in accordance with Article 20, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available through the use of information and communication technologies."

Article 31 – General measures of protection

"1. Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:

(a) informing them of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;

...

(c) enabling them, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;

(d) providing them with appropriate support services so that their rights and interests are duly presented and taken into account;

(e) protecting their privacy, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification;

...

2. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.

..."

Article 32 – Initiation of proceedings

"Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements."

Article 34 – Investigations

"1. Each Party shall adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. ..."

Article 35 – Interviews with the child

"1. Each Party shall take the necessary legislative or other measures to ensure that:

(a) interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child take place, where necessary, in premises designed or adapted for this purpose;

(c) interviews with the child are carried out by professionals trained for this purpose;

(d) the same persons, if possible and where appropriate, conduct all interviews with the child;

(e) the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings;

(f) the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

2. Each Party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.

..."

Article 36 – Criminal court proceedings

"1. Each Party shall take the necessary legislative or other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers. ..."

Chapter IX – International co-operation
Article 38 – General principles and measures for international co-operation

"1. The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

(a) preventing and combating sexual exploitation and sexual abuse of children;

(b) protecting and providing assistance to victims;

(c) investigations or proceedings concerning the offences established in accordance with this Convention.

2. Each Party shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.

..."

2. The Explanatory Report on the Lanzarote Convention

128. The Explanatory Report on the Lanzarote Convention stresses that Article 18, which defines the offence of sexual abuse of a child, requires that children, irrespective of their age, be protected in "situations where the persons involved abuse a relationship of trust with the child resulting from a natural, social or religious authority which enables them to control, punish or reward the child emotionally, economically, or even physically."

129. With regard to Article 30 of the Lanzarote Convention concerning the principles governing investigations, the Explanatory Report specifies as follows.

(a) According to paragraph 3 of that Article, investigations and proceedings "should be treated as priority and without unjustified delays, as the excessive length of proceedings may be understood by the child victim as a denial of his testimony or a refusal to be heard and could exacerbate the trauma which he or she has already suffered".

(b) Paragraph 5, first indent, states that "the Parties must take the necessary legislative or other measures to ensure an effective investigation and prosecution of the offences established ... It is for the Parties to decide on the methods of investigation to be used. However, States should allow, where appropriate and in conformity with the fundamental principles of their internal law, the use of covert operations."

(c) The second indent urges the Parties "to develop techniques for examining material containing pornographic images in order to make it easier to identify victims."

Regarding the recommendation to conduct covert operations where appropriate, the report specifies that "it is left to the Parties to decide on when and under which circumstances such investigative methods should be allowed, taking into account, *inter alia*, the principle of proportionality in relation to the rules of evidence and regarding the nature and seriousness of the offences under investigation."

3. Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse

130. The Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse ("the Lanzarote Committee") is tasked with monitoring the implementation of the Lanzarote Convention. To that end it is mandated, in particular, to facilitate the effective use and implementation of the Convention, including the identification of any problems, and to express an opinion on any question concerning its application (Article 41 §§ 1 and 3 of the Lanzarote Convention).

131. At its 25th meeting (15-18 October 2019) the Lanzarote Committee adopted a declaration on protecting children in out-of-home care from sexual exploitation and sexual abuse. The relevant parts of the declaration read as follows:

> "The Lanzarote Committee calls upon the States Parties to the Lanzarote Convention to:
>
> ...
>
> 2. ensure that in all types of out of home care settings there are:
>
> (i) comprehensive screening procedures for all persons taking care of children;
>
> (ii) specific measures to prevent abuse of children's increased vulnerability and dependence;
>
> (iii) adequate mechanisms for supporting children to disclose any sexual violence;
>
> (iv) protocols to ensure that, in the event of disclosure, effective follow-up is given in terms of assistance to the alleged victims and investigation of the alleged offences by the appropriate authorities;
>
> (v) clear procedures to allow for the possibility of removing the alleged perpetrator from the out of home care setting from the onset of the investigation;
>
> ...
>
> 4. provide victims of sexual abuse in out-of-home care settings with long-term assistance in terms of medical, psychological and social support, and also provide them with legal aid and compensation;
>
> ...

8. encourage research and action at national and international levels to:

(i) analyse and review the phenomenon of child sexual abuse in all types of out-of-home care, including the issue of liability of legal persons;

(ii) allow the voices of the survivors of child sexual abuse in out-of-home care to be heard and acknowledged;

(iii) identify best practices for supporting survivors of child sexual abuse that occurred in out-of-home care;

(iv) develop comprehensive planning for addressing child sexual abuse in out-of-home care by effective measures for prevention, service provision and the prosecution of offenders."

4. The European Social Charter

132. Article 7 of the European Social Charter (adopted in 1961 and revised in 1996) provides that children and young persons have the right to special protection against physical and moral danger to which they are exposed. Article 17 of the Revised Social Charter provides for the right of children and young persons to appropriate social, legal and economic protection. Sub-paragraph 1 (b) of Article 17 requires, in particular, that all appropriate and necessary measures be taken to protect children and young persons against negligence, violence or exploitation.

5. Guidelines on child-friendly justice

133. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice were adopted by the Committee of Ministers on 17 November 2010. The relevant passages read as follows:

III. Fundamental principles

A. Participation

"1. The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children's views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.

..."

B. Best interests of the child

"1. Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.

..."

D. Protection from discrimination

"...

2. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children,

unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions."

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

"1. Information and advice

1. From their first involvement with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout that process, children and their parents should be promptly and adequately informed of, *inter alia*:

a. their rights, in particular the specific rights children have with regard to judicial or non-judicial proceedings in which they are or might be involved, and the instruments available to remedy possible violations of their rights including the opportunity to have recourse to either a judicial or non-judicial proceeding or other interventions. This may include information on the likely duration of proceedings, possible access to appeals and independent complaints mechanisms;

b. the system and procedures involved, taking into consideration the particular place the child will have and the role he or she may play in it and the different procedural steps;

c. the existing support mechanisms for the child when participating in the judicial or non-judicial procedures;

d. the appropriateness and possible consequences of given in-court or out-of-court proceedings;

e. where applicable, the charges or the follow-up given to their complaint;

f. the time and place of court proceedings and other relevant events, such as hearings, if the child is personally affected;

g. the general progress and outcome of the proceedings or intervention;

...

k. the availability of the services (health, psychological, social, interpretation and translation, and other) or organisations which can provide support and the means of accessing such services along with emergency financial support, where applicable;

l. any special arrangements available in order to protect as far as possible their best interests if they are resident in another state.

2. The information and advice should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.

3. As a rule, both the child and parents or legal representatives should directly receive the information. Provision of the information to the parents should not be an alternative to communicating the information to the child.

..."

D. Child-friendly justice during judicial proceedings

"...

3. Right to be heard and to express views

44. Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard. ...

48. Children should be provided with all necessary information on how effectively to use the right to be heard. However, it should be explained to them that their right to be heard and to have their views taken into consideration may not necessarily determine the final decision.

49. Judgments and court rulings affecting children should be duly reasoned and explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed.

...

5. Organisation of the proceedings, child-friendly environment and child-friendly language

54. In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings.

...

58. Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person.

59. Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.

...

6. Evidence/statements by children

64. Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.

65. Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.

66. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.

67. The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.

68. Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.

...

70. The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.

...

73. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age."

V. Promoting other child-friendly actions

"Member states are encouraged to:

...

e. facilitate children's access to courts and complaint mechanisms and further recognise and facilitate the role of NGOs and other independent bodies or institutions such as children's ombudsmen in supporting children's effective access to courts and independent complaint mechanisms, both on a national and international level;

...

g. develop and facilitate the use by children and others acting on their behalf of universal and European human and children's rights protection mechanisms for the pursuit of justice and protection of rights when domestic remedies do not exist or have been exhausted;

...

j. set up child-friendly, multi-agency and interdisciplinary centres for child victims and witnesses where children could be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals;

k. set up specialised and accessible support and information services, such as online consultation, help lines and local community services free of charge;

..."

6. Recommendation Rec(2005)5 of the Committee of Ministers on the rights of children living in residential institutions

134. In this recommendation, adopted on 16 March 2005, the Committee of Ministers of the Council of Europe called on the governments of the member States to adopt the necessary legislative and other measures to guarantee that the principles and quality standards set out in the recommendation were observed, in particular by putting in place an efficient system of monitoring and external control of residential institutions. Under the heading of basic principles, the recommendation stated as follows:

"– any measures of control and discipline which may be used in residential institutions, including those with the aim of preventing self-inflicted harm or injury to others, should be based on public regulations and approved standards; ..."

The recommendation also set forth certain specific rights for children living in residential institutions, including:

"– the right to respect for the child's human dignity and physical integrity; in particular, the right to conditions of human and non-degrading treatment and a non-violent upbringing, including the protection against corporal punishment and all forms of abuse;

...

– the right to make complaints to an identifiable, impartial and independent body in order to assert children's fundamental rights."

C. European Union

135. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also sets out provisions designed to strengthen the prevention of this type of crime and the protection of the victims thereof. It contains provisions similar to those of the Lanzarote Convention. The time-limit for transposal of the directive was 18 December 2013, after the events of relevance to the present case.

136. Prior to Directive 2011/93/EU, Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography provided that member States should criminalise the most serious forms of sexual abuse and sexual exploitation of children by means of a comprehensive approach including effective, proportionate and dissuasive sanctions accompanied by the widest possible judicial cooperation, and provide a minimum level of assistance to victims. For its part, Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings established a set of victims' rights in criminal proceedings, including the right to protection and compensation.

137. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, which entered into force in 2005 and was applicable at the time of the events in the present case, is designed to supplement and facilitate implementation of the provisions concerning mutual legal assistance among the European Union member States.

THE LAW

I. SCOPE OF THE CASE BEFORE THE GRAND CHAMBER

138. The Court notes that the adoptive parents of the three applicants lodged the original application on the applicants' behalf and also on their own behalf. On 5 September 2016 the President of the Section decided to give notice of the complaints to the respondent Government in so far as they

related to the three minor applicants, and to declare inadmissible the complaints raised by the parents on their own behalf (see paragraph 4 above). Under Article 27 § 2 of the Convention and Rule 54 § 3, the decision to declare those complaints inadmissible is final.

139. The Chamber, in its judgment (hereafter "the Chamber judgment"), reiterated these circumstances and specified that the judgment did not concern the complaints that had been declared inadmissible (see *X and Others v. Bulgaria*, no. 22457/16, § 58, 17 January 2019).

140. In the Grand Chamber proceedings the applicants maintained that the Court should examine the complaints submitted by the parents on their own behalf. The Government disagreed, arguing that the decision to declare part of the application inadmissible was final.

141. The Court reiterates that, according to its case-law, the content and scope of the "case" referred to the Grand Chamber are delimited by the Chamber's decision on admissibility and do not include the complaints that have been declared inadmissible (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 100, 4 December 2018, and *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 84, 24 January 2017). Accordingly, the Grand Chamber will confine its examination in the present case to the complaints raised on behalf of the three minor applicants and declared admissible by the Chamber.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

142. Before the Grand Chamber, the Government reiterated the objection of inadmissibility for abuse of the right of individual application which the Chamber had dismissed in its judgment (see paragraphs 62-64 of the Chamber judgment).

143. Firstly, they argued that the applicants' legal representatives, in an attempt to mislead the Court, had knowingly presented untrue facts, and that their allegations generally were based on fantasy and not corroborated by any hard evidence such as medical certificates. Secondly, the Government complained of what they regarded as the disrespectful and insulting language used in the applicants' observations with regard to the Bulgarian authorities and individuals whom the applicants had described as paedophiles and accomplices to criminal acts.

144. The applicants did not comment on this issue.

145. The Court reiterates that, according to its case-law, an application is an abuse of the right of application if it is knowingly based on untrue facts with a view to deceiving the Court (see, among other authorities, *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). In the present case, irrespective of whether the accusations of sexual abuse committed against the applicants are well founded, there is no basis for the Court to conclude

that their representatives deliberately presented facts which they knew to be untrue.

146. An application may also be regarded as an abuse of the right of application where the applicant, in his or her correspondence, uses particularly vexatious, insulting, threatening or provocative language – whether this be against the respondent Government, its Agent, the authorities of the respondent State, the Court itself, its judges, its Registry or members thereof. Nevertheless, it is not sufficient for the applicant's language to be merely cutting, polemical or sarcastic; it must exceed "the bounds of normal, civil and legitimate criticism" in order to be regarded as abusive (see *Zafranas v. Greece*, no. 4056/08, § 26, 4 October 2011, and the case-law cited therein). In that connection, the legal professionals representing applicants before the Court must also ensure compliance with the procedural and ethical rules, including the use of appropriate language. In the present case the Court notes that, in their observations, the applicants made accusations against identified individuals, referring to them as "paedophiles", and accused the Bulgarian authorities, including the Government Agents, of covering up criminal acts. Although the language used in the applicants' observations was indeed disrespectful, the Court notes that the subject matter and the context of the present case imposed a heavy emotional burden on the parents and that two of the applicants were still minors at the time their representatives made these remarks. It therefore considers that the applicants themselves cannot be held responsible for the remarks made, and concludes that those remarks did not overstep acceptable limits to an extent that would justify rejecting the application on that ground.

147. In view of the foregoing, the Court considers that the Government's preliminary objection should be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

148. Relying on Articles 3, 6, 8 and 13 of the Convention, the applicants alleged that they had been the victims of sexual abuse while they were living in the orphanage in Bulgaria and that the Bulgarian authorities had failed in their positive obligation to protect them against that treatment and in their obligation to conduct an effective investigation into those allegations.

149. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case and that it is not bound by the characterisation given by an applicant or a government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018, and *S.M. v. Croatia* [GC], no. 60561/14, §§ 241-43, 25 June 2020). Having regard to the circumstances complained of by the applicants and the manner in which their complaints were formulated, it considers it more

appropriate to examine the complaints under Article 3 of the Convention alone (for a similar approach, see *S.Z. v. Bulgaria*, no. 29263/12, § 30, 3 March 2015).

Article 3 of the Convention reads as follows:

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

A. The Chamber judgment

150. The Chamber examined the applicants' complaints from the standpoint of Articles 3 and 8 of the Convention, which it found to be applicable in the present case. With regard to the procedural aspect of those provisions, it found that the Bulgarian authorities had conducted the investigation in a sufficiently prompt, diligent and thorough manner in the circumstances of the case, that they had responded properly to the appeal lodged by the applicants' parents and that their findings could not be considered arbitrary or unreasonable. Accordingly, it held that there had been no violation of Articles 3 and 8 in this regard (see paragraphs 98-106 of the Chamber judgment).

151. With regard to the substantive aspect of those provisions, while noting that the applicants had not called into question the legal framework of victim protection established by domestic law, the Chamber observed at the outset that a number of general measures had been taken designed to ensure the safety of the children living in the orphanage. It went on to examine whether the Bulgarian authorities had failed in a possible obligation to take concrete preventive action to protect the applicants against a risk of ill-treatment. After observing that it had not been established that the competent authorities had known or ought to have known of the existence of a real and immediate risk to the applicants, it held that the situation had not given rise to any such obligation on the part of the authorities in question. The Chamber therefore found that there had been no violation of the substantive aspect of these provisions (see paragraphs 107-10 of the Chamber judgment).

B. The parties' submissions before the Grand Chamber

1. The applicants

152. The applicants alleged that they had been the victims of sexual abuse and violence while they had been living in the orphanage in Bulgaria, in the charge of the public authorities. They submitted that their accounts had been deemed credible, on the basis of scientific methods, by their psychologists and by the Italian judicial authorities, which had requested the Bulgarian authorities to institute proceedings. They also referred to the investigative journalism giving rise to the article in *L'Espresso* and to a

report broadcast on Italian television in 2016, which, they maintained, confirmed their allegations.

153. The applicants contended that Bulgaria was a corrupt country and a destination for paedophile sex tourism. In their view, the location of the orphanage, in a small remote village, was conducive to incidents of this type.

154. According to the applicants, the orphanage was very far from being the model institution portrayed in the reports and the Government's observations. Referring in particular to the statements by another Italian adoptive family which they had found on an Internet forum, they maintained that the children had not been supervised continuously and had not slept in separate dormitories, that male workers had had contact with the children and that the orphanage had housed children who were older than the maximum age permitted for this type of institution. They also pointed out that the orphanage had been closed down a few years after the events in question.

155. The applicants asserted that other children had made complaints of sexual abuse prior to the events in the present case and that nothing had been done. They were not convinced by the explanation offered by the director, who, they said, had claimed that "group emotional transference" had occurred following the stories told by the young girl M. (see paragraph 113 *in fine* above).

156. The applicants maintained that the absence of medical certificates – the issuing of which, moreover, would have entailed invasive examinations – did not cast doubt on their statements, as sexual abuse did not always leave physical traces, and in any event such traces tended to disappear over time. Likewise, in their submission, the fact that the general practitioner had not observed signs of violence or sexual abuse did not mean that their existence should be ruled out. They asserted that it was entirely possible that children bearing signs of violence had not been sent to the doctor for examination, or that the doctor had been complicit in the abuse.

157. The applicants further contended that the Bulgarian authorities had not conducted an effective investigation capable of shedding light on the facts and identifying the persons responsible, but rather had been at pains to demonstrate that Bulgaria could not be held responsible and to call into question their parents' ability to raise them. They pointed to several purported shortcomings in the investigations carried out, and referred in particular to the analysis contained in the blog of a certain S.S., who they said was a Bulgarian expert on children's rights working in the non-governmental sector.

158. The applicants alleged firstly that the Bulgarian authorities had not acted promptly and had waited several weeks, until the publication of the article in *L'Espresso*, before ordering an investigation. In this connection they stated that the complaint submitted to the SACP on 16 November 2012

had not been anonymous since their father's name had featured in the message; furthermore, no action had been taken in response to the request for the reply, written in Bulgarian, to be translated. They further maintained that the journalist from *L'Espresso* had sent concrete evidence to the police officer K. as early as 19 December 2012, and that the Milan public prosecutor's office had also sent specific information, including the names of the persons responsible, to the Bulgarian embassy on 15 January 2013.

159. The applicants criticised the Bulgarian authorities for disclosing their identity and the name of the orphanage to the press, thereby publicising the events of the case. In their view, this had breached their right to confidentiality and had also alerted the perpetrators.

160. They criticised the manner in which the Bulgarian authorities had carried out the investigation, and in particular the fact of conducting the interviews with the children on the premises of the orphanage and in the presence of staff members who could have been the abusers, and not applying scientific methods. In the applicants' view, in order to be effective the investigations should have included measures such as telephone tapping, surveillance by undercover agents, searches of the institution and of the employees' homes, the taking of DNA samples from the children and the employees, and the temporary suspension of the director in order to prevent pressure being put on the children. In their submission, the authorities should also have filed a request to interview the applicants, their parents and other potential witnesses.

161. The applicants asserted that in acting as they did the Bulgarian authorities had also breached their obligations under the international conventions on the protection of children's rights such as the Convention on the Rights of the Child and the Lanzarote Convention. They argued in particular that Bulgaria had not enacted the general measures of protection required by the Lanzarote Convention, such as the establishment of a national register of persons convicted of paedophile offences, or orders barring such individuals from carrying on occupations involving contact with children. In the investigation in the present case the authorities had breached the victims' right under that Convention to be informed of the follow-up to their complaint, to give evidence, to receive appropriate assistance and not to have their identity disclosed.

2. The Government

162. In the Government's view, the facts of the present case did not disclose a violation of the Convention. They requested the Grand Chamber to uphold the Chamber's findings in that regard.

163. In their submission, it was beyond doubt that a legal framework existed in Bulgaria, particularly in the criminal sphere, enabling acts such as those complained of in the present case to be punished and conforming to the requirements of the relevant international instruments. Prior to 2012 the

country had already enacted a number of domestic-law provisions in order to comply with the Convention on the Rights of the Child. As to the Lanzarote Convention, it had entered into force in respect of Bulgaria on 1 April 2012 and had therefore not been applicable for most of the period during which the applicants claimed to have been subjected to abuse. Nevertheless, the majority of the substantive and procedural standards advocated by that Convention had been adopted between 2009 and 2011.

164. As to the applicants' claims that they had been subjected to physical violence and sexual abuse in the orphanage, the Government submitted that the investigations carried out by the Bulgarian authorities had not brought to light any evidence to suggest that the acts in question had in fact occurred, whether with regard to the applicants or to other children in the orphanage, still less that a systematically run criminal organisation had existed. In their view, those accusations had been based solely on the applicants' statements, which gave very little detail and contained contradictions that had been highlighted by the Bulgarian prosecuting authorities. They added that the applicants' allegations had varied even in the proceedings before the Court; the original application had mainly complained of abuse by other children, whereas the request for referral to the Grand Chamber had contained much more serious allegations concerning the existence of an organised criminal network.

165. The Government stressed the fact that the applicants had not produced any medical certificates to corroborate their allegations of rape in particular. Basing their view on an expert opinion, they maintained that the relevant examinations were not invasive or traumatic.

166. They further submitted that had the applicants' allegations of very serious violence been true the general practitioner, who was based outside the orphanage and visited twice a week, would have been bound to notice traces of the said violence when conducting his check-ups. No complaint to that effect had been reported to the psychologist or to any other member of staff. The stories told by the young girl, M., had concerned a rape allegedly committed within her family, and a medical examination had been carried out straight away in response to her allegations.

167. The Government also submitted that, contrary to the applicants' assertions, the decisions of the Italian judicial authorities, and in particular the Youth Court's decision of 13 May 2014 (see paragraphs 94-96 above), did not contain any finding to the effect that the applicants had been the victims of criminal offences. The decision in question had merely reiterated the applicants' statements and ordered the termination of the proceedings. In any event, that decision had not been sent to the Bulgarian authorities in charge of the investigation.

168. The Government maintained that the orphanage had taken the necessary measures to ensure the children's safety. The orphanage had been equipped with security cameras and access by persons from outside had

been subject to checks. In addition, the children had been able to report possible abuse, as they had had access to a telephone and to the number of the national helpline for children in danger, and to the orphanage's psychologist. The children had also attended school and, in some cases, returned home to their families periodically, with the result that they had had contact with the outside world.

169. In view of the seriousness of the applicants' allegations, a team of psychologists had been sent to the orphanage for a week following the first inspection in January 2013, in order to provide the children with the necessary support.

170. As to the possible procedural obligations arising out of the relevant provisions of the Convention, the Government maintained that the competent authorities in Bulgaria had acted swiftly after learning of the applicants' allegations through the articles in the press. It was only at that stage, when the name of the intermediary organisation AiBi had been made public, that the authorities had obtained the applicants' identity from that organisation. Prior to that date, the information provided by the applicants' father in his email and by the Nadja Centre had not been sufficiently precise to enable an investigation to be started.

171. The Government contended that the investigation carried out had been independent, thorough and full. In particular, the SACP and all the individuals involved in the investigations had had no hierarchical links with the potential abusers. The SACP had issued detailed methodological instructions for the conduct of inspections concerning respect for children's rights in schools, specialised institutions and all institutions that received children. According to those instructions, the experts conducting the inspections were required, among other things, to be objective and independent, to comply with professional ethical standards, and to ensure respect for the children's personality and dignity and the confidentiality of the personal data collected. The recommended methods for the conduct of inspections included a review of the files, interviews, a written inquiry, observation, study of best practice, group discussions and role play.

172. As to the thoroughness of the investigations, the Government argued that the obligation on the State was one of means and not one of result. In the present case the various relevant services had carried out several inspections at the orphanage and had sought explanations from the individuals who were the subject of the applicants' allegations. In order to arrive at the truth they had compared the results of those investigations and the applicants' allegations.

173. In that regard the Government raised an objection in principle to any consideration of the comments made by S.S. and reiterated by the applicants (see paragraph 157 above). In their view, S.S. had no connection with the investigation and was not qualified to express an opinion.

174. On the subject of searches, the Government explained that such measures could be taken only where criminal proceedings had been initiated and where there were reasonable grounds to consider that items of evidence were likely be found at a particular location. The carrying-out of such searches was subject to judicial authorisation except in urgent cases. In the present case the applicants' allegations and the investigations carried out had not disclosed any evidence to justify conducting searches. As to the use of covert operations, the Government stressed that the applicants had made the case public with the publication of the article in *L'Espresso*. Furthermore, the applicants had not requested at any stage that additional investigative steps be taken, including in their appeal against the order discontinuing the case.

175. Regarding the information provided to the applicants, the Government submitted that the proceedings in Bulgaria had not been instituted at the request of the adoptive parents, but of the authorities' own motion, and that the decisions taken had been notified to the Italian authorities in January 2015 at the latter's request. In the Government's submission, there had been nothing to prevent the applicants' parents from seeking more detailed information from the public prosecutor's office or requesting further investigative measures. Furthermore, the observations made by the applicants had been examined by the higher-ranking prosecutor's office.

C. The Court's assessment

1. General principles

176. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is, in the nature of things, relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 116, 25 June 2019).

177. The obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see, among other authorities, *O'Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts), and *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII). Children and

other vulnerable individuals, in particular, are entitled to effective protection (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI; *M.C. v. Bulgaria*, cited above, § 150; and *A and B v. Croatia*, no. 7144/15, § 106, 20 June 2019).

178. It emerges from the Court's case-law as set forth in the ensuing paragraphs that the authorities' positive obligations under Article 3 of the Convention comprise, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision; and thirdly, an obligation to carry out an effective investigation into arguable claims of infliction of such treatment. Generally speaking, the first two aspects of these positive obligations are classified as "substantive", while the third aspect corresponds to the State's positive "procedural" obligation.

(a) Positive obligation to put in place an appropriate legislative and regulatory framework

179. The positive obligation under Article 3 of the Convention necessitates in particular establishing a legislative and regulatory framework to shield individuals adequately from breaches of their physical and psychological integrity, particularly, in the most serious cases, through the enactment of criminal-law provisions and their effective application in practice (see *S.Z. v. Bulgaria*, cited above, § 43, and *A and B v. Croatia*, cited above, § 110). Regarding, more specifically, serious acts such as rape and sexual abuse of children, it falls upon the member States to ensure that efficient criminal-law provisions are in place (see *Söderman v. Sweden* [GC], no. 5786/08, § 82, ECHR 2013, and *M.C. v. Bulgaria*, cited above, § 150). This obligation also stems from the provisions of other international instruments, such as, in particular, Articles 18 to 24 of the Lanzarote Convention (see paragraph 127 above). In that connection the Court reiterates that the Convention must be applied in accordance with the principles of international law, in particular with those relating to the international protection of human rights (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96 and 2 others, § 90, ECHR 2001-II, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI).

180. The positive obligation of protection assumes particular importance in the context of a public service with a duty to protect the health and well-being of children, especially where those children are particularly vulnerable and are under the exclusive control of the authorities (see, in the context of primary education, *O'Keeffe*, cited above, § 145, and, in the context of a facility for disabled children and under Article 2 of the Convention, *Nencheva and Others v. Bulgaria*, no. 48609/06, §§ 106-16 and 119-20, 18 June 2013). It may, in some circumstances, require the

adoption of special measures and safeguards. Hence, the Court has specified in relation to cases of child sexual abuse, particularly where the abuser is in a position of authority over the child, that the existence of useful detection and reporting mechanisms is fundamental to the effective implementation of the relevant criminal laws (see *O'Keeffe*, cited above, § 148).

(b) Positive obligation to take operational protective measures

181. As with Article 2 of the Convention, Article 3 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of ill-treatment (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII).

182. However, this positive obligation is to be interpreted in such a way as not to impose an impossible or disproportionate burden on the authorities, bearing in mind the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every risk of ill-treatment can entail for the authorities a Convention requirement to take measures to prevent that risk from materialising. However, the required measures should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *O'Keeffe*, cited above, § 144).

183. Therefore, for a positive obligation to arise it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Đorđević v. Croatia*, no. 41526/10, § 139, ECHR 2012, and *Buturugă v. Romania*, no. 56867/15, § 61, 11 February 2020).

(c) Procedural obligation to carry out an effective investigation

184. Furthermore, where an individual claims on arguable grounds to have suffered acts contrary to Article 3, that Article requires the national authorities to conduct an effective official investigation to establish the facts of the case and identify and, if appropriate, punish those responsible. Such an obligation cannot be considered to be limited solely to cases of ill-treatment by State agents (see *S.Z. v. Bulgaria*, cited above, § 44, and *B.V. v. Belgium*, no. 61030/08, § 56, 2 May 2017).

185. In order to be effective, the investigation must be sufficiently thorough. The authorities must take reasonable measures available to them to obtain evidence relating to the offence in question (see *S.Z. v. Bulgaria*, cited above, § 45). They must always make a serious attempt to find out

what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *Bouyid v. Belgium* [GC], no. 23380/09, § 123, ECHR 2015, and *B.V. v. Belgium*, cited above, § 60). Any deficiency in the investigation which undermines its ability to establish the facts or the identity of the persons responsible will risk falling foul of this standard (see *Bouyid*, cited above, § 120, and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)).

186. However, the obligation to conduct an effective investigation is an obligation not of result but of means. There is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable (see *A, B and C v. Latvia*, no. 30808/11, § 149, 31 March 2016, and *M.G.C. v. Romania*, no. 61495/11, § 58, 15 March 2016). Furthermore, the Court is not concerned with allegations of errors or isolated omissions in the investigation: it cannot replace the domestic authorities in the assessment of the facts of the case, nor can it decide on the alleged perpetrators' criminal responsibility (see *B.V. v. Belgium*, cited above, § 61, and *M. and C. v. Romania*, no. 29032/04, § 113, 27 September 2011). Likewise, it is not the Court's task to call into question the lines of inquiry pursued by the investigators or the findings of fact made by them, unless they manifestly fail to take into account relevant elements or are arbitrary (see *S.Z. v. Bulgaria*, cited above, § 50, and *Y v. Bulgaria*, no. 41990/18, § 82, 20 February 2020). Nevertheless, a failure to pursue an obvious line of inquiry can decisively undermine the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *M.N. v. Bulgaria*, no. 3832/06, § 48, 27 November 2012, and *Y v. Bulgaria*, cited above, § 82).

187. Moreover, for an investigation to be effective, the institutions and persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of hierarchical or institutional connection but also a practical independence (see, among other authorities, *Bouyid*, cited above, § 118).

188. A requirement of promptness and reasonable expedition is also implicit in the obligation to carry out an investigation. In this connection the Court has considered it an essential requirement that investigations be promptly instituted and carried out. Regardless of the final outcome of the proceedings, the protection machinery provided for in domestic law must operate in practice within a reasonable time such as to conclude the examination on the merits of specific cases submitted to the authorities (see *W. v. Slovenia*, no. 24125/06, § 64, 23 January 2014; *S.Z. v. Bulgaria*, cited above, § 47; and *V.C. v. Italy*, no. 54227/14, § 95, 1 February 2018).

189. Moreover, the victim should be able to participate effectively in the investigation (see *Bouyid*, cited above, § 122, and *B.V. v. Belgium*, cited above, § 59). In addition, the investigation must be accessible to the victim

to the extent necessary to safeguard his or her legitimate interests (see, in an Article 2 context, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 303, ECHR 2011 (extracts)).

190. The investigation's conclusions, meanwhile, must be based on thorough, objective and impartial analysis of all relevant elements (see *A and B v. Croatia*, cited above, § 108). Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see, *mutatis mutandis*, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 234, 30 March 2016).

191. The requirement of effectiveness of the criminal investigation may in some circumstances include an obligation for the investigating authorities to cooperate with the authorities of another State, implying an obligation to seek or to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case, for instance whether the main items of evidence are located on the territory of the Contracting State concerned or whether the suspects have fled there (see, from the standpoint of Article 2 of the Convention, *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 233, 29 January 2019). This means that the States concerned must take whatever reasonable steps they can to cooperate with each other, exhausting in good faith the possibilities available to them under the applicable international instruments on mutual legal assistance and cooperation in criminal matters. Although the Court is not competent to supervise respect for international treaties or obligations other than the Convention, it normally verifies in this context whether the respondent State has used the possibilities available under these instruments (see *Güzelyurtlu and Others*, cited above, § 235, and the references cited therein).

192. Lastly, it is clear from the Court's case-law that, in cases where children may have been victims of sexual abuse, compliance with the positive obligations arising out of Article 3 requires, in the context of the domestic proceedings, 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 (see *A and B v. Croatia*, cited above, § 111, and *M.M.B. v. Slovakia*, no. 6318/17, § 61, 26 November 2019; see also *M.G.C. v. Romania*, cited above, §§ 70 and 73). These requirements are also set out in other international instruments of relevance to the present case such as the Convention on the Rights of the Child, the Lanzarote Convention and the instruments adopted within the framework of the European Union (see paragraphs 124-27 and 135-37 above). More generally, the Court considers that in cases potentially involving child sexual abuse the procedural obligation under Article 3 of the Convention to conduct an effective

investigation must be interpreted in the light of the obligations arising out of the other applicable international instruments, and more specifically the Lanzarote Convention.

2. Application to the present case

193. The Court observes that the applicants, owing to their young age and their status as children left without parental care and placed in an institution, were in a particularly vulnerable situation. Against this background, the sexual abuse and violence to which they were allegedly subjected, if established, are sufficiently serious to come within the scope of application of Article 3 of the Convention (see also paragraph 82 of the Chamber judgment). The Court will therefore examine whether the respondent State complied in the present case with its obligations under that provision.

(a) Positive obligation to put in place an appropriate legislative and regulatory framework

194. The Court notes at the outset that the applicants did not call into question the existence in the domestic law of the respondent State of criminal legislation aimed at preventing and punishing child sexual abuse. It observes in that regard that the Bulgarian Criminal Code punishes sexual abuse of minors under the age of fourteen by persons over fourteen, even in the absence of force; that it lays down heavier penalties where sexual assault is committed against a minor; and that it prescribes penalties for specific offences such as the exposure of minors to sexual acts or the distribution of pornography (see paragraph 115 above). The provisions in question appear apt to cover the acts complained of by the applicants in the present case.

195. The Court further reiterates, in the light of the principles established in the judgments in *O'Keeffe* and *Nencheva and Others* (see paragraph 180 above), that States have a heightened duty of protection towards children who, like the applicants in the present case, are deprived of parental care and have been placed in the care of a public institution which is responsible for ensuring their safety and well-being, and who are therefore in a particularly vulnerable situation. The Court observes in that regard that the respondent State maintained that a number of mechanisms to prevent and detect ill-treatment in children's facilities had been put in place. In their respective reports, the competent services which carried out checks at the orphanage in question stated that, pursuant to the rules in force, a number of measures had been taken to ensure the safety of the children living there. According to those reports, access to the institution by persons from outside was monitored by a caretaker and by security cameras and the children were in principle not left unsupervised by staff, in particular during the night and on trips outside the orphanage. The reports also stated that the

children were seen regularly by an outside doctor and by the orphanage's psychologist and that they had access to a telephone and to the number of the helpline for children in danger. Lastly, the Court notes that the respondent State had created a specialised institution, the State Agency for Child Protection ("the SACP"). This body was tasked, among other things, with carrying out inspections of children's residential facilities on a periodic basis and in response to reports, and was empowered to take the appropriate steps to protect the children, or to apply to the competent authorities for the purpose of engaging the disciplinary or criminal responsibility of the persons involved (see paragraph 122 above).

196. The Court notes that the applicants contest the actual existence and the effectiveness of some of these measures and mechanisms. However, it observes that the information in the case file does not enable it to confirm or refute the factual findings contained in the reports of the relevant services which inspected the orphanage as regards the implementation of these measures. Moreover, the Court does not have in its possession any evidence to indicate that at the time of the events in Bulgaria there existed, as the applicants have 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 (compare with the *O'Keeffe* judgment, in which the Court found that the respondent State had had knowledge of a large number of cases of sexual abuse in primary schools and had not taken measures to prevent the risk of such abuse occurring (see *O'Keeffe*, cited above, §§ 157-69)). In view of the foregoing, the Court does not have sufficient information to find that the legislative and regulatory framework put in place by the respondent State in order to protect children living in institutions against serious breaches of their integrity was defective and thus in breach of the obligations arising out of Article 3 of the Convention in that regard.

(b) Positive obligation to take preventive operational measures

197. As the Court observed above, the applicants in the present case were in a particularly vulnerable situation and had been placed in the sole charge of the public authorities. The management of the orphanage had an ongoing duty to ensure the safety, health and well-being of the children in their care, including the applicants. In these circumstances the Court considers that the obligation imposed on the authorities by Article 3 of the Convention to take preventive operational measures where they have, or ought to have, knowledge of a risk that a child may be subjected to ill-treatment, was heightened in the present case and required the authorities in question to exercise particular vigilance. It must therefore ascertain whether, in the particular case, the authorities of the respondent State knew or ought to have known at the time of the existence of a real and immediate risk to the applicants of being subjected to treatment contrary to Article 3

and, if so, whether they took all the measures that could be reasonably expected of them to avoid that risk (see, *mutatis mutandis*, *Osman*, cited above, § 116).

198. The Court notes, on the basis of the documents produced by the Government, that the domestic investigations did not find 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, 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. As to the case of the young girl M., referred to by the applicants, the evidence in the file shows that it did not concern abuse committed in the orphanage (see paragraphs 56 and 113 above *in fine*). In these circumstances, and in the absence of evidence corroborating the assertion that the first applicant had reported abuse to the director, the Court does 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 (see, conversely, *Đorđević*, cited above, §§ 144-46; *V.C. v. Italy*, cited above, §§ 99-102; and *Talpis v. Italy*, no. 41237/14, § 111, 2 March 2017).

199. In view of the foregoing considerations (see paragraphs 194-96 and 197-98 above), the Court finds that there has been no violation of the substantive limb of Article 3 of the Convention.

(c) Procedural obligation to carry out an effective investigation

200. The Court observes that, leaving aside the question whether the first reports made to the Bulgarian authorities were sufficiently detailed, the fact is that, as early as February 2013, those authorities had received more detailed information from the Milan public prosecutor's office concerning the applicants' allegations that they had been subjected to sexual abuse in the orphanage in which they had been placed, perpetrated by other children but also by several adults, both members of staff and persons from outside (see paragraph 65 above). This information showed, firstly, that the applicants' psychologists had deemed their allegations to be credible and, secondly, that the specialised association Telefono Azzurro, the Italian CAI and the Milan public prosecutor's office had considered them sufficiently serious to warrant an investigation (see paragraphs 22, 62 and 65 above).

201. Accordingly, the Court considers that the Bulgarian authorities were faced with "arguable" claims, for the purposes of the case-law, of serious abuse of children in their charge, and that they had a duty under Article 3 of the Convention to take the necessary measures without delay to assess the credibility of the claims, clarify the circumstances of the case and

identify those responsible (see *M.M.B. v. Slovakia*, cited above, § 66, and *B.V. v. Belgium*, cited above, § 66).

202. The Court observes that following the press coverage and after the Milan public prosecutor's office had sent them the evidence gathered and the request made to the Bulgarian Ministry of Justice by the Italian CAI, the Bulgarian authorities took a number of investigative steps. Thus, the SACP and other social services carried out checks and the public prosecutor ordered the opening of a preliminary investigation. Without prejudging their effectiveness and their thoroughness (see paragraphs 210-23 below), it should be observed that these measures appear appropriate and apt, in principle, to establish the facts and identify and punish those responsible. Depending on their findings, these investigations were capable of leading to the opening of criminal proceedings against individuals suspected of committing acts of violence or sexual abuse against the applicants, but also to the adoption of other measures such as disciplinary action against any employees who may have failed in their duty to ensure the safety of the children in the orphanage, or appropriate measures in relation to children who may have committed punishable acts but were not criminally liable. The Court will therefore examine whether the investigations carried out were sufficiently effective from the standpoint of Article 3 of the Convention.

203. With regard, firstly, to the promptness and speediness expected of the authorities, the Court notes that an initial inspection ordered by the SACP was carried out at the orphanage as early as Monday 14 January 2013, that is, on the first working day following the Bulgarian press coverage of the article in *L'Espresso*. It observes in that connection that the informal contacts between the journalist from the Italian weekly magazine and an unidentified police officer (see paragraph 77 above) do not provide sufficient evidence that the applicants' allegations had been brought to the authorities' attention for the purposes of the Court's case-law. Admittedly, the applicants' father had written to the SACP as early as 16 November 2012 and the Nadja Centre had informed the SACP on 20 November 2012 of the father's phone call. However, the Court notes that those messages did not mention the children's names or the name of the orphanage in question and that the father's message did not contain any specific allegations (see paragraphs 42-44 above). It is true that the SACP was empowered to carry out checks and in fact it took some steps to that end; however, these had not yet produced results by the time the article appeared in *L'Espresso*. In these circumstances, it seems difficult to criticise the authorities for the fact that a few weeks elapsed before an inspection was carried out.

204. The Court also notes that the SACP informed the prosecuting authorities swiftly of the disclosures made by the Italian weekly magazine and the findings of its first inspection. After receiving new and more specific evidence from the Milan public prosecutor's office in January 2013,

this time disclosing the names of individuals possibly implicated in the alleged abuse, the Veliko Tarnovo prosecutor's office quickly ordered the opening of a police investigation and further checks by the child protection services. The Court considers that all these investigative measures were taken within a reasonable time given the circumstances of the case, bearing in mind, in particular, the longer time needed in an international cooperation context for information to be sent between the various services involved and for documents to be translated. The two cases opened by the Bulgarian prosecuting authorities were completed within a matter of months, in June and November 2013 respectively, and led the authorities to conclude that the evidence obtained did not constitute grounds for instituting criminal proceedings.

205. It is true that longer periods of time elapsed subsequently before the findings of the investigation were sent to the Italian authorities and the applicants' parents. Nevertheless, the Court considers that these periods did not compromise the effectiveness of the investigation, which was completed in 2013 (see paragraphs 100-02 above).

206. In view of the above, the Court considers that there is no reason to call into question the promptness and expedition with which the Bulgarian authorities acted.

207. As to the applicants' claim that the SACP lacked independence and objectivity, the Court observes that the SACP is an administrative authority specialised in child protection, empowered to monitor compliance with the regulations applicable in children's residential facilities, to identify possible shortcomings in the arrangements to ensure the safety and care of those children, and to take steps to remedy such shortcomings. The Court notes that neither the SACP nor its employees were implicated in the case and, moreover, that there is no evidence in the case file capable of casting doubt on their independence. As to the SACP's alleged lack of objectivity, the Court will address this issue below (see paragraph 224).

208. The applicants also claimed that the Bulgarian authorities had not kept their legal representatives adequately informed of the progress of the investigation. The Court observes in that connection that Article 31 § 1 (a), (c) and (d) of the Lanzarote Convention lays down a requirement to inform victims of their rights and the services at their disposal and, unless they do not wish to receive such information, of the progress of the proceedings and their right to be heard, while providing them, where necessary, with appropriate support services (see paragraph 127 above). It notes that in the present case the applicants' parents did not lodge a formal complaint in Bulgaria and did not contact the prosecuting authorities in charge of the criminal investigation, which was instituted in response to the SACP's reports despite the absence of a formal complaint, in line with the recommendations of the Lanzarote Convention. However, even though the applicants' parents did not seek to be involved in the investigation, the

Court finds it regrettable that the Bulgarian authorities did not attempt to contact them in order to provide them with the necessary information and support. Although the parents were indeed informed through the Italian authorities of the outcome of the criminal investigation (see paragraphs 100-02 above), the fact that they were not provided with information and support in good time prevented them from taking an active part in the various proceedings, with the result that they were unable to lodge an appeal until long after the investigations had been concluded (see paragraphs 104-09 above).

209. In so far as the applicants complained that the authorities had disclosed their names to the press, the Court notes that they did not submit a separate complaint in this regard, notably under Article 8 of the Convention, but instead maintained that this circumstance constituted an aspect of the ineffectiveness, as they saw it, of the investigation. In that regard, the Court does not have any information in its possession to indicate that the investigating authorities were responsible for such a disclosure or that it undermined the effectiveness of the investigation. Moreover, it observes that the SACP claimed to have taken certain measures in response to the complaint made by the applicants' parents (see paragraph 64 above).

210. As to the thoroughness of the investigation, the Court reiterates at the outset that the procedural obligation to conduct an effective investigation is an obligation not of result but of means. Accordingly, the sole fact that the investigations in the present case did not result in specific persons being held criminally or otherwise liable is not sufficient to cast doubt on their effectiveness (see *A and B v. Croatia*, cited above, §§ 110 and 129, and *M.P. and Others v. Bulgaria*, no. 22457/08, § 111, 15 November 2011).

211. It observes in this connection that the competent domestic authorities took a number of investigative measures. In the course of the first inspection, carried out in January 2013 following the press disclosures concerning the case and the identification of the applicants, the child protection services carried out on-site checks to verify the proper running of the orphanage and, according to the reports drawn up by the investigators in that regard, consulted the files, including the medical records, of the applicants and the other children who had lived there during the period in question. They interviewed the director of the orphanage, the other members of staff, the general practitioner and the mayor of the municipality, who was responsible for the running of the orphanage. They also interviewed the children living in the orphanage, conducting interviews – albeit in a format that had not been adapted to the children's age and level of maturity and without video recording – and asking the older children to complete an anonymous questionnaire (see, as regards in particular the need to conduct interviews with children in premises suitable for this purpose and to videotape their statements, Article 35 §§ 1 and 2 of the Lanzarote

Convention, cited at paragraph 127 above). During the second set of inquiries, conducted in February 2013 by a team of experts from the different administrative authorities concerned and the police following receipt of the more detailed information sent by the Milan public prosecutor's office, further documentary checks were carried out and several of the persons concerned were interviewed. In particular, the police questioned various men who might have been the alleged perpetrators named by the applicants and some of whom, like the driver Da., the caretaker K. and the heating technician I., were employees of the orphanage, while others, like the photographer D. and the electrician N., worked there occasionally. Interviews were also conducted with four children mentioned by the applicants who still lived in the orphanage, although, again, their statements were not video-recorded and the child B. had to be interviewed a second time by the police (see paragraphs 68 and 72 above and Article 35 §§ 1 and 2 of the Lanzarote Convention).

212. The Court further notes that the authorities apparently neglected to pursue some lines of inquiry which might have proved relevant in the circumstances of the case, and to take certain investigative measures.

213. It reiterates in that connection that the authorities' obligation to conduct a sufficiently thorough investigation is triggered as soon as they receive arguable allegations of sexual abuse. This obligation cannot be limited to responding to any requests made by the victim or leaving it to the initiative of the victim to take responsibility for the conduct of any investigatory procedures (see *S.M. v. Croatia*, cited above, § 314, and *Y v. Bulgaria*, cited above, § 93; see also the judgment in *S.Z. v. Bulgaria* (cited above, § 50), in which the Court criticised the authorities for not following certain lines of inquiry, even though the applicant had not challenged an order discontinuing the proceedings in part, and the case of *M. and Others v. Italy and Bulgaria* (no. 40020/03, § 104, 31 July 2012), in which the Court identified some witnesses whom the authorities should have questioned, although the issue had not been raised in the domestic proceedings).

214. Similarly, it should be emphasised that other international instruments such as the Convention on the Rights of the Child and the Lanzarote Convention have incorporated the standards of the Court's case-law in relation to violence against children, particularly as regards the procedural obligation to conduct an effective investigation (see Article 19 § 2 of the Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child, paragraphs 124-26 above, and also Articles 12-14 and 30-38 of the Lanzarote Convention, to be read in conjunction with the Explanatory Report on that Convention, paragraphs 127-28 above). Under the terms of those instruments, whose applicability *ratione temporis* to the investigations in the present case has not been disputed (see paragraph 163 above), States are required to take the

appropriate legislative and other measures to provide the necessary support for the child and those who have the care of the child, for the purposes of reporting, identification and investigation (Article 19 of the Convention on the Rights of the Child), with a view to assisting and advising them (Articles 11-14 of the Lanzarote Convention) while protecting their anonymity (Article 13 of the Lanzarote Convention, which also refers to reporting by means of confidential telephone and Internet helplines). The aim of these provisions is to ensure that investigations, while securing the defence rights of the accused, are conducted in the child's best interests (Article 30 §§ 1, 4 and 5 of the Lanzarote Convention). The Lanzarote Convention also stipulates the need to enable the children concerned "to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered" (Article 31 § 1 (c) of the Lanzarote Convention), including by allowing them to be accompanied by their legal representative. In order to keep the number of interviews to a minimum and thus avoid further trauma, the Lanzarote Convention also provides for the use of video recording and recommends that such recordings should be accepted as evidence (Article 35).

215. In the present case the Court notes 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, were deemed credible by the Italian authorities on the basis of the findings made by specialists, contained some precise details, and named individuals as the perpetrators of the alleged abuse. Most of the available documents were 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 (see paragraphs 62, 65 and 97 above). If the Bulgarian authorities 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 filing a request to interview the applicants and their parents (for a similar situation, see *G.U. v. Turkey*, no. 16143/10, § 71, 18 October 2016). 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.

216. It is true that it might not have been advisable for the Bulgarian authorities to interview the applicants – an option left open by the Italian prosecutor, who had advised against questioning the applicants further in

view of the fact that the Bulgarian authorities might wish to interview them (see paragraph 92 above) – given the risk of exacerbating whatever trauma the applicants 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 considers that in these circumstances the Bulgarian authorities should have assessed the need to request such interviews. The decisions given by the prosecuting authorities do not, however, contain any reasoning in this regard and the possibility of questioning the applicants appears not to have been considered, presumably for the sole reason that they were not living in Bulgaria. The Court observes in that regard that Article 38 § 2 of the Lanzarote Convention provides that victims of alleged abuse may make a complaint before the competent authorities of their State of residence and cannot be required to travel abroad. Article 35 of that Convention, for its part, provides that all interviews with the child should as far as possible be conducted by the same person and that, where possible, audiovisual recordings should be used in evidence. Hence, in the instant case the Bulgarian authorities, guided by the principles set out in the international instruments, 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.

217. The Court reiterates that, according to its case-law, in transnational cases the procedural obligation to investigate may entail an obligation to seek the cooperation of other States for the purposes of investigation and prosecution (see paragraph 191 above). The possibility of recourse to international cooperation for the purposes of investigating child sexual abuse is also expressly provided for by Article 38 of the Lanzarote Convention (see paragraph 127 above). In the present case, although the Milan public prosecutor declined jurisdiction on the grounds that there was an insufficient jurisdictional link with Italy in respect of the facts, it would have been possible for the applicants to be interviewed under the judicial cooperation mechanisms existing within the European Union in particular (see paragraph 137 above).

218. 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 (see paragraphs 16 and 82 above). Because of this omission in the investigation, which could very easily have been avoided, the Bulgarian authorities were not 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).

219. Similarly, as the applicants did not produce 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.

220. The Court further notes that the applicants' accounts and the evidence furnished by their parents also contained information concerning other children who had allegedly been victims of abuse and children alleged to have committed abuse. In that connection it observes 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 within the meaning of Article 3 of the Convention and violence within the meaning of Article 19 of the Convention on the Rights of the Child (see paragraph 124 above); hence, the authorities were bound by the procedural obligation to shed light on the facts alleged by the applicants. However, despite these reports, the investigations were limited to interviewing and issuing questionnaires to a few children still living in the orphanage, in an environment that was liable to influence their answers (as regards the conditions in which those interviews took place, see paragraph 211 above). Indeed, the Court notes that the Bulgarian authorities did not attempt to interview all of the children named by the applicants who had left the orphanage in the meantime (see, for instance, paragraphs 25 and 28 *in fine* above), whether directly or, if necessary, through recourse to international judicial cooperation mechanisms.

221. Furthermore, in view of the nature and seriousness of the alleged abuse, and as suggested by the applicants, 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 are expressly provided for in Article 30 § 5 of the Lanzarote Convention and are widely used across Europe in investigations concerning child abuse. In that regard the Court takes note of the Government's argument that such measures are liable to infringe the right to privacy of the persons concerned and require judicial authorisation, based on the existence of credible evidence that an offence has been committed. It reiterates that considerations relating to compliance with the guarantees contained in Article 8 of the Convention may legitimately place restraints on the scope of investigative action (see *Đorđević*, cited above, § 139). Nevertheless, in the present case, such measures appear appropriate and proportionate, given the applicants' allegations that an organised ring was 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 must also be taken into account.

222. Although the Court cannot speculate as to the progress and outcome of the investigation had it been conducted differently, it nevertheless regrets 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 merely sent the father a letter, written in Bulgarian, requesting further information (see paragraphs 42-44 above). It observes that the Lanzarote Convention encourages the use of dedicated Internet or telephone helplines as a means of reporting abuse, and does not make the opening of an investigation conditional on the victims' statements. In the circumstances of the present case it was open to the SACP, within a framework guaranteeing anonymity to the potential victims, to request all the necessary details from the Nadja Centre, which was 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 *L'Espresso* article in January 2013. While it is true, as pointed out by the Government, that the article in *L'Espresso* reported on in the Bulgarian press may have alerted the possible perpetrators of the abuse, the Court considers that the very fact of its publication may conceivably have prompted them to contact each other by telephone or via messaging, a possibility which serves to demonstrate the usefulness of such investigative measures.

223. It should also be observed that, despite the applicants' allegations that the photographer D. had taken photographs and made videos, the investigators did not consider searching his studio, if necessary with the relevant court order, and seizing the media on which such images might have been stored. More generally, the seizure of telephones, computers, cameras, video cameras or other media used by the persons specifically mentioned in the lists drawn up by the applicants' father and sent to the Bulgarian authorities (see paragraphs 65 and 97 above) might have made it possible, if not to obtain proof of the abuse to which the applicants had allegedly been subjected several months previously, then at least to obtain evidence concerning similar abuse of other children.

224. The Court also notes that, despite the fact that three investigations were opened following the publication of the press articles and the requests from the Italian authorities, the Bulgarian authorities confined their efforts to questioning the people present in the orphanage or in the vicinity, and closed the case on the sole basis of that investigative method, which was

reiterated in different forms in each of the three investigations. In that connection the Court considers it unacceptable that even before the findings of the SACP's first inspection of the orphanage on 14 and 15 January 2013 – which was 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, accused the applicants' parents of slander, manipulation and inadequate parenting (see paragraph 58 above). A few days later, when the outcome of the criminal investigation was still not known, a group of MPs who visited the orphanage adopted a similar attitude (see paragraph 59 above). Such statements inevitably undermine the objectivity – and hence the credibility – of the inquiries conducted by the SACP and of the institution itself (see paragraph 207 above).

225. It is of course undeniable that the Bulgarian authorities, by conducting the three investigations in question, formally responded to the requests of the Italian authorities and, indirectly, to those of the applicants' parents. However, the Court would stress 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 (see paragraph 111 above), the reasons given for the authorities' decisions are indicative of the limited nature of the investigations carried out.

226. Thus, the first investigation was closed on the sole basis of the SACP's report (see paragraphs 54 and 60 above). In the second and third investigations the authorities, without having heard evidence from the applicants directly or even having viewed the video recordings, attached decisive weight to the explanations offered by the persons who had been questioned and to the contradictions in the applicants' remarks, particularly on the subject of the names and roles of the individuals they had named, although some of these inconsistencies, notably with regard to the name E., were easily explained (see paragraphs 74, 105-09 and 32 above). The final order issued on 27 January 2016 by the highest-ranking prosecutor's office posited that the applicants had made allegations of abuse because they "[had been] fearful of being rejected by their adoptive parents, who disapproved strongly of their immoral behaviour ... [and had] sought to inspire pity ... by relating incidents that had not actually occurred in which they were the victims of crimes". However, that order – which appears to have been based on the statement made by the President of the SACP a few hours after the commencement of the investigations three years previously (see paragraphs 207 and 224 above) – gave no details as to the factual circumstances on which these conclusions were based.

227. In the Court's view, an analysis of the information gathered and of the reasons given for the decisions reveals shortcomings which were liable

to impair the effectiveness of the investigation in the present case. The reasons given do not appear to have resulted from a careful study of the evidence obtained and appear to show that, rather than clarifying all the relevant facts, the investigating authorities sought to establish that the applicants' allegations were false by highlighting the inaccuracies which they contained, in particular regarding the name of the director and the fact that an individual named N. had not been employed in the orphanage but had worked as an outside contractor.

228. In the Court's view, all these considerations suggest that the investigating authorities, who did not make use, in particular, of the available investigation and international cooperation mechanisms, did not take all reasonable measures to shed light on the facts of the present case and did not undertake a full and careful analysis of the evidence before them. The omissions observed appear sufficiently serious for it to be considered that the investigation carried out was not 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. It follows that there has been a violation of the procedural limb of Article 3.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

229. 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

230. The applicants claimed 1,600,000 euros (EUR) each in respect of non-pecuniary damage. The Government considered the applicants' claims excessive and asked the Court to reject them.

231. The Court considers that the applicants have suffered non-pecuniary damage as a result of the procedural violation of Article 3 of the Convention found in the present case. Having regard to the circumstances of the case, it awards each of the applicants EUR 12,000 under this head.

B. Costs and expenses

232. As the applicants did not submit a claim for reimbursement of their costs and expenses, no award is to be made under that head.

C. Default interest

233. 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. *Dismisses*, unanimously, the Government's preliminary objection;

2. *Holds*, unanimously, that there has been no violation of the substantive limb of Article 3 of the Convention;

3. *Holds*, by nine votes to eight, that there has been a violation of the procedural limb of Article 3 of the Convention;

4. *Holds*, by ten votes to seven,
   (a) that the respondent State is to pay each of the applicants, within three months, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, making a total of EUR 36,000 (thirty-six thousand euros), plus any tax that may be chargeable;
   (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;

5. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English and French, and notified in writing on 2 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Robert Spano
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Joint concurring opinion of Judges Turković, Pinto de Albuquerque, Bošnjak and Sabato;

(b) Partly concurring opinion of Judge Serghides;

(c) Joint partly concurring, partly dissenting opinion of Judges Spano, Kjølbro, Lemmens, Grozev, Vehabović, Ranzoni, Eicke and Paczolay.

R.S.O.
M.T.

JOINT CONCURRING OPINION OF JUDGES TURKOVIĆ, PINTO DE ALBUQUERQUE, BOŠNJAK AND SABATO

I. Introduction

1. Our views are in accord with what is said in the Grand Chamber's judgment. In our opinion, however, some additional considerations may be outlined in order to further elucidate the Court's finding of a violation of the procedural limb of Article 3 of the European Convention on Human Rights ("the Convention") in the present case.

2. A first series of supplementary remarks should be made concerning the reasons why dealing with this case entailed a particularly delicate exercise by the Court of its role as supervisor of the application of human rights in Europe.

3. The case before the Grand Chamber indeed involved particularly vulnerable persons, since the applicants complained that they had been the victims of sexual abuse as children residing in an orphanage. In this regard, although a strong movement is active across Europe to ensure a transition from institutional to family and community-based care of children ("deinstitutionalisation"), orphanages still exist, with poverty remaining a major reason for their persistence. Reliance on institutional care also reflects ongoing discrimination against children with disabilities, who often cannot find alternative placement opportunities and sometimes live in institutions designed for adults[1]. It is therefore highly meaningful that the Court has had the opportunity to deal with at least some of the human rights problems relating to children in institutions.

4. Also, while the case concerns sexual abuse in an institutional setting, we consider that the principles developed in the judgment, stemming from Article 3 of the Convention, may be equally applicable, *mutatis mutandis*, to child abuse in other out-of-home care situations (including family-based care and some other forms of non-family-based care).

5. The applicant children were vulnerable also from another point of view. The abuse in the case at hand, indeed, had allegedly been committed

[1] The efforts of the European Union (EU) in this area are noteworthy. See, for example, the EU Commission policy webpage "Transition from institutional to community-based services (Deinstitutionalisation)", at https://ec.europa.eu/regional_policy/en/policy/themes/social-inclusion/desinstit/. The page provides links, *inter alia*, to the "Common European Guidelines on the Transition from Institutional to Community Based Care", the "Toolkit on the Use of European Union Funds for the Transition from Institutional to Community Based Care", the "Thematic Guidance Note on Transition from Institutional to Community-based Care (Deinstitutionalisation)", and the "Checklist to ensure EU-funded measures contribute to independent living by developing and ensuring access to family-based and community-based services".

not only in a place where children had been placed by the authorities, but by perpetrators who were in the children's "circle of trust", a notion which refers to abuse by those persons having care-taking functions, including peers[2].

6. This remark entails as a consequence that some of the principles contained in the judgment may extend to all sexual abuse allegations within the circle of trust of minors, including in the family and among peers. In our view, this further adds to the significance of the Court's findings in this case.

7. Both in institutional and non-institutional care settings, and in any circle of trust including the family, danger may come from persons in charge of taking care of children, but also from other children. We will revert specifically to this. But we would emphasise already at this point that we believe that some of the principles developed must concern child abuse by adults and by children alike.

8. In view of the above, we would emphasise that "international research has demonstrated that [both] residential care and institutional settings place children in a vulnerable situation, increasing the risk of those children being sexually abused by the professionals or volunteers taking care of them or by other children"[3]; international research and policies have also indicated specific strategies to fight sexual abuse of children in the circle of trust. A holistic approach has therefore been suggested to fight child abuse that has the above-mentioned characteristics, encompassing prevention, multi-disciplinary assistance to the victims, treatment of reporting on their part, investigations, prosecution, criminal and other sanctions, and international cooperation.

9. To conclude this first series of considerations, it seems important to us to say that, in our opinion, precisely because the aforementioned scientific and policy approaches have been acknowledged by the States Parties to the Lanzarote Convention and to other international and European instruments referred to in the judgment, in paragraph 192 of the judgment the Grand Chamber was able to reaffirm and develop its case-law by finding that the obligation under Article 3 of the Convention to conduct an effective investigation must be interpreted in the light of the obligations arising out of the other applicable international instruments, and more specifically the Lanzarote Convention.

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[2] Lanzarote Committee, 2nd implementation report "Protection of Children against Sexual Abuse in the Circle of Trust" adopted on 31 January 2018, at https://rm.coe.int/t-es-2017-12-en-final-report-cot-strategies-with-executive-summary/1680788770 .

[3] "Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse", 21 October 2019, at https://rm.coe.int/declaration-of-the-lanzarote-committee-on-protecting-children-in-out-o/1680985874, referred to in paragraph 131 of the judgment; the Declaration gives definitions for the notions of "out-of-home care", "residential care", and "institutional setting", with orphanages encompassed in the concept of "institutional settings".

II. The Convention and the Lanzarote Convention

10. This brings us to a second set of considerations, intended to emphasise – in addition to what is mentioned in the judgment – that the principles set out in the Lanzarote Convention (and the documents issued by the Lanzarote Committee as a follow-up to that international instrument), as well as in other Council of Europe texts referred to in the judgment, were crucial in our consideration of this case. We believe that these principles may, to a large extent, be deemed to flow from Article 3 of the Convention.

11. In this regard we wish to reiterate that, although it is not the Court's "task to review governments' compliance with instruments other than the European Convention on Human Rights and its Protocols", and in particular the Lanzarote Convention – "which, like the Convention itself, was drawn up within the Council of Europe" – the Lanzarote Convention may "provide it with a source of inspiration", "like other international treaties" (see, for instance, with reference to the European Social Charter, *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V). Moreover, the Convention cannot be interpreted in a vacuum and must be construed in harmony with the general principles of international law; account should be taken, as indicated in Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties, of "any relevant rules of international law applicable in relations between the parties", and in particular of the rules concerning the international protection of human rights (see, among many other authorities, *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, § 76, ECHR 2014, where reference was made to an ILO Convention and the European Social Charter). In the same vein, the Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein (see, among many other authorities, *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 65-86, ECHR 2008, and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 123-25, 8 November 2016). We would point out, in this regard, that the Court has already referred to the Lanzarote Convention as a source of inspiration in a context similar to the one at hand (see *A and B v. Croatia*, no. 7144/15, §§ 78, 80 and 116, 20 June 2019). The present case provided us with the opportunity to emphasise the relationship between the European Convention on Human Rights and its Protocols on the one hand, and the Lanzarote Convention on the other. This also applies, *mutatis mutandis*, to other texts referred to in the judgment. We can refrain from dwelling in further detail on this relationship, but – again – it was crucial in our consideration of this case.

III. The shortcomings in the investigation

12. A third series of clarifications, in our opinion, should address the shortcomings which affected the investigations in the respondent State, considered from the specific viewpoint of the above-mentioned procedural obligation to conduct an effective official investigation in response to arguable claims of child abuse (see, in the context of Article 4, *S.M. v. Croatia* ([GC], no. 60561/14, §§ 324-25, 332, and 336, 25 June 2020), where the Court's approach was explicitly declared to correspond in essence to the approach taken in Article 3 cases). As the Grand Chamber observed in the present judgment, although this obligation is one of means and not of result, the omissions of the respondent authorities were undoubtedly serious, such that the investigation had to be deemed not "effective for the purposes of Article 3 of the Convention, interpreted in the light of the other international instruments and in particular the Lanzarote Convention" (see paragraph 228 of the judgment). The Court is only allowed not to concern itself with errors or isolated omissions (paragraph 186); it must afford supervision in cases, such as the one at hand, in which the domestic authorities neglected to implement certain procedural (and specifically investigative) practices that are well established in the context of efforts to combat child abuse, or are even imposed by international texts (see paragraphs 208 and 211-26 of the judgment). We take this opportunity to elaborate on the most important shortcomings, in particular those involving some particular features of the above-mentioned relationship between the application of Article 3 of the Convention and other international texts.

13. In our view, in order for investigations to be considered thorough, they should include all reasonable steps to secure eyewitness testimony and forensic/scientific evidence. Where the protection of vulnerable persons – such as alleged victims of child abuse – is involved, passivity on the part of authorities cannot be tolerated. Of course, the need for an "arguable claim" to exist in order to trigger the obligation to investigate under Article 3 also applies in the area of child abuse (see paragraphs 184 and 201 of the judgment). Likewise, in this area also, the conclusion as to whether a procedural obligation arose for the domestic authorities has to be based on the circumstances prevailing at the time when the relevant allegations were made, and not on the subsequent results arrived at on completion of the investigation or the relevant proceedings (see, *mutatis mutandis*, *S.M. v. Croatia*, cited above, § 325). But the reiteration of this principle must be accompanied, in our view, by a necessary clarification: when child abuse is involved, an arguable claim must be actively "collected" rather than merely and passively "received" by the State, which is placed under a number of ancillary obligations as regards providing assistance and support to the victims and their representatives, in order to favour the disclosure of claims that might otherwise be lost; this is also relevant to ensure that arguable

claims do not remain outside the Court's scrutiny under the Convention (see, *mutatis mutandis*, ibid.)

14. The judgment reiterates that support has to be provided to the children and those who have care of them, for the purposes of reporting, identification, and investigation, with a view to assisting and advising them while protecting their anonymity; the specific tools to be used to this end include confidential telephone and Internet helplines (Articles 11, 12, and 13 of the Lanzarote Convention). The Grand Chamber also emphasises the right of the children to be heard, to supply evidence and to choose the means of having their views and concerns presented, directly or through an intermediary (Article 31 § 1 (c) of the Lanzarote Convention), normally their legal representative. The judgment furthermore highlights the need to have children's statements video-recorded, also in order to provide a source of evidence which is apt to assist in avoiding repeated interviews and which can be viewed again (Article 35 of the Lanzarote Convention).

15. We wish to stress the close connection existing between these principles and the other principles concerning the need for investigations to be independent in their assessment of the report made by the alleged victim and to continue even if the victim has withdrawn his or her statements (Article 32 of the Lanzarote Convention), and – when a child reporting abuse is in the territory of one State and the alleged offence was committed in another State – those concerning the procedural right of children to make a "complaint ... before the competent authorities of their State of residence" (Article 38 § 2 of the Lanzarote Convention). In this regard the authorities of the two States are obliged to cooperate in assisting the victims (Article 38 § 1 of the Lanzarote Convention). Close cooperation among telephone and Internet helplines is also a reality in Europe and internationally.

16. The above-mentioned principles, on which the Court's judgment is directly or indirectly based, are consistent, in our view, with one of the main characteristics of child abuse cases, namely that the report comes from a vulnerable person often placed in a new circle of trust, against a background of conflicting attitudes, both on the part of the child and the persons belonging to that circle, towards the environment where the possible abuse took place, especially if the latter was a previous circle of trust. The need to protect the development of the child, to look towards the future rather than back to a gloomy past, as well as the uncertainties that are natural for a child when telling a story for which he or she often feels responsible, are among the many elements that run counter to the full disclosure of child abuse, especially if no professionals are involved in the collection and assessment of information. Assistance and support to the alleged victim and those who have care of him or her are crucial, as is the need to preserve confidentiality.

17. With this as a background, we must emphasise that, in the circumstances of the case under our scrutiny, a relevant arguable claim – to be understood under the Court's case-law as specified above – was already

brought to the attention of the Bulgarian authorities when the applicants' father contacted the telephone helpline in their country of residence, providing all necessary details (see paragraphs 35 et seq. of the judgment), and when the latter contacted the Bulgarian telephone helpline on 16 November 2012 (see paragraph 43 of the judgment). Under the applicable principles prohibiting passivity and requiring recourse to international cooperation, the investigators should immediately acquire any further details in the context of cooperation between helplines, while fully protecting confidentiality and overcoming any language barriers. It should not be deemed necessary at the initial stage for the claim to be complete in order for the respondent authorities to start affording assistance to the alleged victims, since assistance and support for reporting in fact imply that claims may initially be incomplete. Within the above-mentioned best practices scheme, which is peculiar to child abuse investigations, arguable claims must – as we have said before – be actively "collected", rather than merely passively received, by the State. Unfortunately, a completely different approach, of a bureaucratic rather than a proactive nature (see paragraph 44 of the judgment), was taken by the respondent authorities in the present case.

18. We have already pointed out that a fundamental role in this process of collecting evidence of child abuse is played by the interviewing of the child and those who have taken care of the child. Extensive literature exists in this area, and the international texts recognise the crucial importance of applying a high standard to the questioning of the persons reporting the abuse. In many countries – alongside the Lanzarote Convention principles – child protection teams intervene when a suspicion of child abuse arises; these teams may include professionals in medicine, psychology, criminal justice, social work and education. Statements from the child, once they have emerged initially in the circle of trust (usually in a family, school or medical context), are then usually formally "collected" in a forensic environment involving some or all of those professional roles and skills.

19. Even when the disclosure of abuse takes place in the same State where it was allegedly committed, the role played by the child's circle of trust is of course of foremost importance: those in the circle of trust may receive early warnings or vague information, or observe physical or psychological symptoms, all of which need to be clarified and understood. Very rarely, when a forensic framework is established, the authorities collect statements from children who have allegedly been abused but who have not already told their story and answered clarification questions, thereby undergoing some degree of outside influence. However, the application of scientific criteria by trained professionals helps to assess the credibility of child witnesses. Parents and those in the circle of trust who received the initial disclosures are also questioned in accordance with similar criteria. The Lanzarote Convention resisted the temptation to

classify as tainted all statements in which children have disclosed events to their circle of trust. As we have already mentioned, the Lanzarote Convention has in general considered as an obligation, and not as a procedural defect, the provision of assistance and support before children give evidence, and the possibility for the child to even make statements or express views through an intermediary or accompanied by an adult of his or her choice, usually a legal representative (Articles 11-14, 31 § 1 (c) and 35 § 1 (f) of the Lanzarote Convention; see paragraph 214 of the judgment). To take the opposite view would be tantamount to denying children who provide early disclosures of abuse the support and assistance they need. If the opposite approach were to be followed, parents, physicians and psychologists who – often without prior notice – found themselves dealing with children displaying symptoms of sexual abuse would have to refrain from any contact, leave the children alone under a glass bell and wait for some authority – necessarily after some time had elapsed – to decide that the moment had come to listen to the children using forensic techniques. If, on the contrary, they decided to support the children and to help them express themselves and remember, not only would the children's statements be tainted, but they would be contaminated forever and the children would thus lose the right to be heard. These are absurd consequences which the above principles are intended to dispel, while ensuring at the same time that once the incident has been reported to the competent authorities appropriate forensic steps are organised within a timeframe that avoids as far as possible tainting the evidence.

20. Of course, when abuse is of a cross-border nature the context of international cooperation necessarily means that the risk of outside influences on child witnesses is even higher, as the transfer of information involves several persons and institutions as well as a longer timeframe.

21. In this regard, we disagree overtly with the Government's argument that, since the applicants had spoken about the events on numerous occasions with their parents, their psychologists and the Italian authorities, any evidence given by the children to the Bulgarian authorities would inevitably be distorted and could therefore be dispensed with, even without any attempt being made to organise some form of questioning.

22. The context of international collection of child abuse reports warrants some reflections concerning the "evidence" collected in the State of residence. We consider that, within the general framework of international cooperation referred to as a component of the procedural obligations under Article 3 of the Convention (see paragraph 217 of the judgment), any evidentiary document produced in the State of residence should be considered as a document in support of the complaint (a complaint which, as mentioned before, can be presented to the authority of the State of residence – Article 38 § 2 of the Lanzarote Convention – and

which in the case at hand may be identified already in the calls that the applicants' father made to the telephone helpline).

23. Likewise, we cannot agree with the view that the professionals who assisted the children, whether the psychologists employed by the applicants' legal representatives or the prosecutor at the Italian Youth Court, who collected the victims' testimony respectively for private purposes (see paragraphs 16-34 of the judgment) and in the context of the civil proceedings concerning the follow-up of the adoption (see paragraphs 81-96 of the judgment), should have observed the forensic protocols for interviewing child abuse victims in order for their interviews to be taken into consideration for evidentiary purposes (paradoxically, this was also referred to in the context of conversations with the psychologists acting as private individuals).

24. As we have said, in the framework of international cooperation any evidentiary document produced in the State of residence should be considered as a document in support of the complaint. Of course, a different conclusion would apply if the authorities of that State, affirming their jurisdiction, had started criminal proceedings for abuse. As this was not the case, a complaint remains a complaint and, even if transmitted through the local authority, does not lose its main characteristic of being an *ex parte* act, to be assessed regardless of the quantity and/or quality of the evidence provided. The Court's case-law, indeed, only requires that it be arguable (see, *mutatis mutandis, S.M. v. Croatia*, cited above, § 325). At most, in general, the lack of evidentiary support may result in the claim being dismissed (as the traditional maxim goes, a person bringing a claim can legitimately ignore all the reasons for which the claim should not have been brought: *nemo videtur dolo exsequi, qui ignorat causam cur non debeat petere*). The dismissal *de plano* for lack of evidentiary support is however not entirely applicable in the area of child abuse, where the claim – if it is arguable even if it does not include any useful evidence – must be investigated of the authorities' own motion, and the investigations must proceed even in the event of withdrawal of the claim.

25. Even if – just for the sake of argument – we were not to consider the information conveyed by the parents, and then by the Italian authorities to the Bulgarian authorities, as supportive of the claim, and therefore were to accept that such material should undergo close scrutiny with regard to its establishment under the appropriate forensic rules for obtaining evidence from minors in criminal proceedings, we would have to conclude that in the present case those rules were observed.

26. Although the applicants' conversations with their psychologists had a mainly therapeutic function, the way in which they were conducted – it seems to us – did indeed observe the most stringent rules laid down for the hearing of minors. The sessions were video-recorded, and it does not appear that the way in which the questions were asked in any sense violated

forensic protocols. The occasional presence of the father was limited to helping with translations, while the use of anatomical dolls was common practice at the time, and still is today, since criticism of the use of this tool only began to be expressed in the scientific community subsequently and to this day is still not generally shared. What in our opinion should be emphasised is that there is no doubt that these sessions were conducted competently by professional psychologists, despite taking place in a private setting.

27. As for the questioning of two of the applicants by the prosecutor at the Italian Youth Court, within the framework of the civil post-adoption proceedings, it too complied fully with the forensic criteria. The interview took place only after the prosecutor had ordered the acquisition of the recordings of the sessions at the therapy centre and a written summary report of the sessions. Compliance with forensic rules was also ensured by means of the video-recording of the questioning. Although the main purpose of the questioning was to learn more about the facts and to assess their impact on the minors and on the family in order to follow up the adoption, in proceedings of a civil nature, the prosecutor was assisted by a psychologist. Anatomical dolls were used when necessary, under the guidance of the psychologist.

28. The Grand Chamber refers to the fact that some of the questions put by the prosecutor were leading (see paragraphs 85 and 87 of the judgment). However, an in-depth examination of the questioning shows (and this is reflected in the judgment) that the very limited use of some direct or leading questions was in accordance with the rules of the main protocols regarding the hearing of minors (see, for instance, Guideline 71 of the Guidelines on child-friendly justice, which simply suggests avoiding leading questions but does not proscribe them, especially if this is in line with the protocols; the rule evidently draws on the judgment in *S.N. v. Sweden* (no. 34209/96, § 53, ECHR 2002-V), where the Court merely required that the judges apply the "necessary care" when dealing with children's statements made in response to leading questions). The questions were in fact asked after open-ended and indirect questions had remained unanswered, in circumstances in which the minor was reluctant to answer and because his reluctance persisted even after a change of subject as a technique for relaxing the tension. The questions were in any case based on evidence provided by the minors themselves during the interview.

29. If that were not enough, one should also consider the fact that the Italian Youth Court did not passively rely on the information coming from the therapy centre and from the prosecutor. In fact, as stated in the judgment (see paragraphs 93-95), the court ordered an expert report by an accredited professional in the field of paediatric neuropsychiatry who gave details of the international criteria used for assessing the credibility of the children's testimony, which he analysed on the basis of the video recordings. The

expert endorsed the complete reliability of both the process of acquiring the information and its results, finding that any uncertainties and contradictions in the stories could be easily explained on the basis of the same scientific criteria relating to the hearing of child abuse victims. Consequently, the expert did not consider, in accordance with the instructions issued by the court, that further questioning was necessary, as the existing information was sufficient.

30. One remark should also be made concerning the content of the decision of the Youth Court of 12 May 2014: the adoptive family, also on the basis of the opinion of the prosecutor and the expert, was conclusively declared suitable for a final adoption, having maintained a patient attitude while being aware of the need to pay attention to the special difficulties posed by the situation. The court reviewed the information contained in all the available statements made by the minors concerning the abuse, as well as the opinion of the prosecutor and the expert, and concluded that there was sufficient evidence to forward the information to the authorities responsible for criminal cases. The court also regretted the fact that the association that had acted as an intermediary for the adoption *vis-à-vis* the authorities of the respondent State had sent the court a note expressing the view that the parents were unsuitable as adoptive parents because – in the association's opinion – they had triggered a process of reporting abuse which did not exist, aimed at denigrating the procedure that had led to the adoption. The content of this decision, in our opinion, reinforces the idea that the minors' disclosures were credible, and the association's approach was officially rejected.

31. As noted in the judgment (paragraphs 111 and 226), the three sets of preliminary investigations started (and discontinued) in Bulgaria ended with a final order issued by the highest-ranking public prosecution authority on 27 January 2016. The prosecutor at the Supreme Court found that the applicants had reported abuse "that had not actually occurred" because they "were fearful of being rejected by their adoptive parents who disapproved strongly of their immoral behaviour", and that they had "sought to inspire pity" by reporting events "in which they were victims of crimes". The Grand Chamber noted how these considerations seemed to echo the unacceptable statement made to the media by the President of the State Agency for Child Protection ("the SACP") only a few hours after the very start of the investigations three years earlier (see paragraphs 207 and 224 of the judgment), an incident from which the Court inferred a lack of objectivity on the part of the investigating entity (see paragraph 224 of the judgment).

32. The above finding by the Grand Chamber could be supplemented, in our view, by the consideration that the reasoning adopted by the Bulgarian prosecuting authorities and the SACP substantially reiterated the theory put forward by the association which had acted as an intermediary for the

adoption. The representatives of that association, when the parents turned to them after the first disclosure of abuse, had started voicing the opinion that the parents were not fit to adopt the children, on the basis of their alleged conduct during a meeting organised by the association on 2 October 2012. The Court was unable to ascertain whether the report of this meeting between the association's staff, the parents, and the children was genuine, given that it was strongly contested in the Grand Chamber proceedings by the applicants, who produced a police report attesting that three representatives of the association had had to give signature samples and acknowledging that the document bore different signatures, all three written in the same hand. Furthermore, the document apparently showed textual discrepancies, in the form of additions and deletions, which the Court was unable to verify (see paragraph 14 of the judgment). Regardless of whether the Bulgarian authorities had known at the outset about this alleged falsification, it appears evident to us that the forgery of the document was discussed by the applicants before the Grand Chamber without the respondent Government in any way replying to the point. This fact, together with the fact that the association met representatives of the various authorities involved, including the SACP, from 23 to 26 January 2013 and then drafted a very critical report on the parents' account of the facts before transmitting it to the Italian Youth Court (which later rejected it on the basis of an expert opinion), testifies to the central role played by the association in creating an atmosphere of conflict which was not conducive to the start of effective investigations.

33. One of the most serious shortcomings – one which, in our opinion, certainly impaired the ability of the investigation to establish the facts, and which was an important factor in the Court's finding of a violation of the procedural obligation under Article 3 – was the lack of any official interview with the applicants (see paragraphs 214-18 of the judgment). In addition to the above-mentioned obligations to assist and support child victims in order to collect evidence from them, the right of the children to be heard is set out in several international texts, some of which are expressly referred to in the judgment (see also the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Guidelines 58, 70 and 73, and the Explanatory Report on the Guidelines, especially § 102; see also, similarly, General Comment No. 12 of the United Nations Committee on the Rights of the Child, § 132, and the United Nations Guidelines on justice in matters involving child victims and witnesses of crime, Articles 20 and 21). All these documents place a strong emphasis on the utmost importance of giving proper weight to the views of the abused child, which the respondent authorities failed to do. Likewise, these texts highlight the significance of the further obligation to promptly inform child victims and their parents and legal representatives of the progress of their

case, an obligation which was also wholly disregarded in the circumstances at hand (see paragraph 208 of the judgment).

34. Moreover, we would note that the judgment (paragraph 215) mentions the fact that the Bulgarian authorities' lack of interest in the children was such that no contact was established with them. As a matter of best practice, there is no absolute prohibition of multiple interviews with victims if these are needed (see paragraph 216 of the judgment). In the present case, there was no justification for completely omitting to question the children, and none of the documents in the file support the alleged wish of the Bulgarian authorities to avoid the trauma associated with repeated questioning. We believe that a need for a further interview may frequently arise in cases of transnational child abuse, especially where the State of residence has been unable to open official criminal investigations. In the case at hand, the prosecutor for minors in Italy clearly stated that no further questioning had been carried out so as not to perform a task that belonged within Bulgarian jurisdiction (see paragraphs 92 and 216 of the judgment).

35. The determination of the Bulgarian authorities to avoid any contact with the children reporting the abuse went even further, since they did not even request access to the video-recordings of their statements, nor did they consider the possibility of at least interviewing their parents, who had also (in particular the father) assumed the role of complainants, or of interviewing the professionals (psychologists or public officials) who had collected the children's statements. In particular, we find that in the circumstances of the present case hearing the parents and the psychologists would have been a valuable, albeit indirect, way to establish certain facts; moreover, the collection of such indirect evidence is common practice in this type of cases.

36. Furthermore, it transpires from the file that, while some experts were involved in the interviews with the children at the orphanage (which in many other respects were not compliant with the requirements for hearing children – see paragraph 211 of the judgment), in the framework of the investigations the applicants' statements were not examined by any professional (for example, a psychologist or a physician with experience in child interviews) so as to obtain a multi-disciplinary assessment of certain alleged discrepancies; as a consequence, the Bulgarian prosecutor's reasoning as referred to above (§ 31 of this opinion) contains a psychological analysis without any expert opinion being cited as a basis for it. This appears to us incompatible with the standard of investigation into child abuse required under Article 3 of the Convention (see, for example, Article 35 § 1 (c) of the Lanzarote Convention and Guidelines 64 et seq. of the Guidelines on child-friendly justice, which both call for the intervention of professionals when dealing with children's interviews and statements). The role played by the SACP cannot be deemed a substitute for the involvement of independent professionals in assessing the victims'

credibility; also, the lack of objectivity of this agency in this case has already been mentioned (see § 31 of this opinion and paragraph 224 of the judgment).

37. A final remark should be made, in our opinion, concerning the view that the events were a "simple" phenomenon of early sexualisation resulting from the fact of children living together in an orphanage. According to this view, there was consequently no need to investigate, since only minors were responsible for the sexual contacts and no criminal liability would be imputable to them. Firstly, we note once more that this was the theory supported by the association which acted as an intermediary in the adoption. Secondly, there were reports, even in the early disclosures, of violent sexual contacts initiated by minors. In this regard, we must point out that the relevant international instruments (see paragraphs 124 and 220 of the judgment) also consider violence which is inflicted by peers as violence against minors, and that in these cases criminal liability does not lie with the violent children, but with those who are charged with supervising them and organising the functioning of out-of-home care, for failing to take action to prevent such behaviour. This is relevant, in our view, also under Article 3 of the Convention, in the context of international instruments which consider such abuse by peers not as a "natural" and acceptable consequence of out-of-home care, but as a worrying phenomenon to be stopped, and attribute wide-ranging responsibilities in this regard to educators, psychologists and social workers. It is very significant, in our view, that the Lanzarote Convention obliges States to provide for corporate liability (Article 26 of the Lanzarote Convention), which could arise when entities responsible for the care of children benefit from savings in expenditure on staff and equipment through a lack or reduction of supervision of children and educational/psychological support and guidance. In this manner, international law requires – as long as out-of-home care of children is necessary – that it be provided in a way that ensures full protection of the best interests of children also in relation to their peers.

IV. Conclusion

38. To sum up, we agree entirely with the findings of the judgment and its reasoning. Nevertheless, we consider it crucial to stress the importance of the context concerning out-of-home care of children, of the relationship between human rights and international instruments concerning child abuse, and of effective investigations into abuse. In doing so, we trust that the multiple shortcomings which occurred in the domestic procedure may be avoided in future cases of child abuse, which in its different forms is still a widespread scourge. Under the Convention, States are required to pro-actively collect all relevant evidence, to take seriously the voice and

views of the victims, and to empower professionals in medicine, psychology, education and social sciences to help the children talk freely.

PARTLY CONCURRING OPINION OF JUDGE SERGHIDES

Not only the Convention itself evolves – the environment within which it evolves does so too

1. The present case concerns the respondent State's failure regarding its procedural obligation under Article 3 of the Convention to carry out an effective investigation into the applicants' allegations of child sexual abuse. The applicants, at the time of the alleged sexual abuse, were children living in an orphanage in Bulgaria, where they had been placed by the respondent State and where they stayed until they were adopted in June 2012 and moved to Italy. The allegations were reported to the relevant Bulgarian authorities by the applicants' adoptive parents, after the applicants had settled in Italy. Although the respondent State did undertake an investigation, the judgment rightly confirms that the actions undertaken did not meet the level of effectiveness required of member States for the purposes of their procedural obligations under Article 3. In particular, the respondent State failed to pursue some lines of inquiry which might have proved relevant in the circumstances of the case (see paragraphs 212-28 of the present judgment).

2. I am in agreement with point 3 of the operative part of the judgment, to the effect that there has been a violation of the procedural limb of Article 3 of the Convention, and with all the other points of the operative part. The purpose of this partly concurring opinion is to clarify and elaborate on the harmonious relationship between the interpretation and application of the Convention and other Council of Europe (CoE) treaties, such as the CoE Convention on Protection of Children against Sexual Exploitation and Sexual Abuse of 2007 ("the Lanzarote Convention") as well as other international law treaties, such as the UN Convention on the Rights of the Child of 1989. The standards entrenched within the above two treaties, especially the Lanzarote Convention, as well as in other international instruments referred to in the judgment, were taken into consideration by the Court in interpreting and applying Article 3 of the Convention and finding a violation of that provision. However, I wish to emphasise that these treaties must be considered as part of the same environment in which the Convention provisions – in the present case, Article 3 – evolve, and that this environment also evolves. This unity of the environment where the Convention and other treaties are to be found can also be explained in terms of the fact that the Convention is part of international law[1] and that international law is not fragmented.

[1] See, *inter alia, Al Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI. See also Article 31 § 3 (c) of the Vienna Convention on the Law of

3. Peter Steven said that the nature of space is not a kind of emptiness or nothingness, but "itself has a structure that influences the shape of every existing thing"[2]. According to him, there is interrelatedness between living beings and their environment: for example, a bird is impacted by the air in which it soars the skies and a fish by the water in which it swims. By analogy, like all living things, the Convention as a living instrument is impacted by the environment in which it flourishes. The Convention space or environment[3] is neither empty nor static nor does it exist in a vacuum; rather, it has its own structure, dynamism and life, based especially on the primary aim of the Convention, namely the effective protection of human rights, which the Convention environment also assists in fulfilling. Indeed, the Convention environment exists within the rich context and framework of legal developments in international law, European States' constitutional law and, most crucially, alongside other CoE treaties more recent than the Convention which safeguard specific human rights in the light of present-day conditions and the modern needs of human rights protection. To reiterate, the proposition is that, like the Convention, its environment also evolves, and that it influences all the Convention provisions as well as their relationships with real-life conditions and reinforces the primary aim of the Convention.

4. The present case is an example of the reciprocal relationship (a) between the Convention and another CoE treaty, namely the Lanzarote Convention, and (b) between the Convention and another international treaty, namely the UN Convention on the Rights of the Child of 1989. The Lanzarote Convention and the said UN Convention were drafted with an eye to the standards established by the Court's case-law on violence against children, in particular as regards the procedural obligation to conduct an effective investigation (see paragraph 214 of the judgment). In turn, the judgment, in interpreting Article 3 of the Convention, uses the Lanzarote Convention and the UN Convention to illuminate the expectations in relation to States' procedural obligations – a harmonious relationship in which one international instrument impacts the interpretation of another. As standards in international law move forward and become more refined and advanced, and the member States of the CoE ratify new treaties, the

Treaties 1969, according to which, for the interpretation of a treaty, any relevant rules of international law are to be taken into account together with its context (see, on this point and in relation to the interpretation of the Convention, *inter alia, Loizidou v. Turkey* (merits), 18 December 1996, § 43, *Reports of Judgments and Decisions* 1996-VI).

[2] Peter S. Steven, Patterns *in Nature,* London, 1976, reprinted 1977, at p. 4.

[3] On the Convention environment, see Georgios A. Serghides, "The European Convention on Human Rights as a 'Living Instrument' in the Light of the Principle of Effectiveness", in Robert Spano, Iulia Motoc, Branko Lubarda, Paulo Pinto de Albuquerque and Marialena Tsirli (eds.), assisted by Aikaterini Lazana, *Fair Trial: Regional and International Perspectives – Procès equitable : perspectives régionales et internationales – Liber Amicorum Linos-Alexandre Sicilianos*, Limal, 2020, 537, at pp. 541-543.

Convention also moves forward in a synchronous manner. At the same time, the Convention remains firm and steadfast on the key values and core principles of the CoE, against the changing winds which could erode its very essence.

5. The principle of effectiveness which underlies all Convention provisions does not allow an interpretation which goes against the text of a particular Convention provision but, on the contrary, aims to give full effect to it; at the same time, it aims to manifest and fulfil the object and purpose of the Convention provision in question; additionally, it requires that, as far as possible, the Convention must be interpreted in the light of and in external harmony with the existing standards of human right protection entrenched in other CoE treaties and international human rights instruments. Thus the Convention strives towards its purpose of the achievement of greater unity between its member States and the further realisation of human rights and fundamental freedoms, as envisaged in its Preamble.

6. This function of the principle of effectiveness, which applies to every treaty, is especially pertinent when it comes to the Convention. The aim of the Council of Europe is to safeguard the three pillars of justice in Europe: the rule of law, democracy and human rights. Although the Court has independent jurisdiction over the interpretation and evolution of the Convention, it is part of the larger framework of the CoE, and therefore it would be contrary to the democratic values of the institution if the Convention did not move hand in hand with the other treaties adopted by the 47 member States. One body of the Council cannot move in a different direction to the other, especially in the light of the living instrument doctrine, according to which the Convention is constantly evolving in order to represent and respond to modern standards within society and to always be effective at the present time.

7. By way of conclusion, although the Court possesses the ultimate authority when it comes to the interpretation and application of the Convention, it does not do so by disregarding the environment within which the Convention operates, which is also evolving. Furthermore, the relevant international treaties and instruments, especially the additional treaties and instruments of the CoE, should be seen as forming part of the same environment, within which the Convention operates in a co-evolutionary relationship with them.

JOINT PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGES SPANO, KJØLBRO, LEMMENS, GROZEV, VEHABOVIĆ, RANZONI, EICKE AND PACZOLAY

I. Introduction

1. This is a sad case, involving as it does three children abandoned by their mother to an orphanage who were given hope of a better life as a result of their adoption by an Italian family. These are some of the most vulnerable of applicants that have come before this Court and their best interest should inform not only the conduct of the national authorities of both their country of origin and their country of adoption but also the approach of this Court.

2. Unfortunately, in our view, in their desire to respond to the applicants' sad story, the majority in this judgment have gone beyond the confines of this Court's proper role and, by doing so, have created an uncertainty as to the scope of the protection available and required under Article 8, both in the national context as well as before this Court. An uncertainty that might affect negatively the protection under the Convention of privacy rights from unreasonable surveillance and searches. Paradoxically, it may even put at risk the best interests of other children who find themselves in a similarly vulnerable position, by encouraging excessively intrusive and finally unreliable investigative measures. In fact, there is little we find wrong with the reasoning or the conclusion of the unanimous judgment of the Chamber of 17 January 2019. Like our colleagues in the Chamber we have come to the clear conclusion that there is in this case no basis to conclude that the Bulgarian authorities breached their procedural obligation to conduct an effective investigation into the applicants' allegations (Chamber judgment at § 106). This, of course, leaves us as a Court in the uncomfortable and unattractive position that the current judgment only has the support of nine out of the overall 23 judges of this Court who have considered this application; a factor which should have sounded a note of caution to the Grand Chamber.

3. That said, there is, in fact, much in this judgment which, in essence, reflects the principles applied by the Chamber and which we agree with. As such, we agree that in this case there has not been a violation of the substantive limb of Article 3, neither in relation to the duty to put in place an appropriate legislative and regulatory framework (§ 196) nor in relation to the duty to take operational preventive measures (the so-called *Osman* duty, § 199). We also agree in principle with the statement of general

principles set out in §§ 184-192 in relation to the procedural obligation under Article 3 to carry out an effective investigation.

4. Where, however, we part company with the majority is in the application of those principles to the evidence in this case especially in relation to the assessment of the "effectiveness" of the investigations conducted by the Bulgarian authorities as well as the interpretation of and weight given to the provisions of the Lanzarote Convention by the majority, in particular in §§ 200-228 of the judgment.

II. The Lanzarote Convention

5. This is not to say that we consider the Lanzarote Convention unimportant or even irrelevant. Quite the contrary, we expressly acknowledge the value of the standards laid down, after careful negotiations between the Contracting Parties, in the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention") and the work done by the Committee of the Parties to the Lanzarote Convention, established under Chapter X ("Monitoring Mechanism") of the Convention, to monitor whether Parties effectively implement the Lanzarote Convention and to identify good practices, in particular through capacity-building activities. They form an important part of the broader Council of Europe human rights framework.

6. That said, it is equally important to note that, on the one hand, the Lanzarote Convention, unlike e.g. the Convention on Human Rights and Biomedicine ("the Oviedo Convention"; Article 29), does not confer any role on the Court either in interpreting its provisions or in enforcing its standards; and, on the other hand, the Court itself has always, rightly, stressed that its role is to interpret and apply the rights protected by and under the Convention and its protocols. While it does so on the basis of the "living" nature of the Convention, which must be interpreted in the light of present-day conditions, *inter alia* by taking into account evolving norms of national and international law, the Court does so by seeking a harmonious interpretation of the Convention with other instruments of international law (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 67 and 68, ECHR 2008, and *S.M. v. Croatia* [GC], no. 60561/14, § 290, 29 June 2020); the focus, however, always remains the Convention itself.

7. In assessing the "effectiveness" of the investigations by the Bulgarian authorities, the majority rely heavily on Articles 11-14 ("Protective measures and assistance to victims"), 30-36 ("Investigation, prosecution and procedural law") and 38 ("General principles and measures for international co-operation") of the Lanzarote Convention. We do not consider that these provisions are capable of bearing the weight the majority is seeking to place on them to give content to the investigative obligation under Article 3. That said, we accept that they are relevant to achieving the above harmonious

interpretation of the Convention generally and of Article 3 in particular, it is in our view important in deploying them for that purpose to pay close attention to the terms in which these provisions are cast and the context in which they were adopted.

8. In that context the first thing to note is that these provisions are not drafted in a form which envisages or anticipates direct application or effect. They are deliberately cast in programmatic terms akin to framework legislation designed to lead to the creation of an appropriate legislative and administrative framework. After all, the vast majority of them start with the words "[e]ach Party shall take the necessary legislative or other measures to ensure ..." or "[e]ach Party shall establish ...". However, if that is their primary focus, it compliments one of the substantive obligations which the Court has established as existing under Article 3: a substantive obligation which we all agree was satisfied in the present case. In fact, we note that the judgment manages to reach this conclusion without any reference to the Lanzarote Convention; a fact which serves to demonstrate the natural complementarity between the two instruments.

9. We further note that this complementarity is also acknowledged in the Explanatory Report to the Lanzarote Convention where it is expressly affirmed that any measures taken under it "are without prejudice to the positive obligations on States to protect the rights recognised by the Convention for the Protection of Human Rights and Fundamentals Freedoms" (Explanatory Report at para. 36). The Lanzarote Convention itself identifies the European Convention on Human Rights as an express limit on the measures that may be taken under it. By way of example, Article 30(4) of the Lanzarote Convention makes clear (and its Explanatory Report reaffirms in paras. 213, 216 (Article 30) and 226 (Article 31)) that "[e]ach Party shall ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention". We would add that this must be equally so in relation to the rights protected under Article 8 of the Convention.

10. The latter is, of course, of particular relevance in the context of the reliance placed by the majority on Article 30(5) of the Lanzarote Convention (§§ 213-215). Article 30(5), first indent, provides that "[e]ach Party shall take the necessary legislative or other measures, in conformity with the fundamental principles of its internal law: to ensure an effective investigation and prosecution of offences established in accordance with this Convention, allowing, where appropriate, for the possibility of covert operations". So, not only is this provision for covert measures a provision inviting the establishment of an appropriate legislative and administrative framework to enable such measures to be taken (rather than a requirement that they be taken), the obligation imposed by this provision is also subject to two very important caveats: (1) that it be "in conformity with

fundamental principles of its internal law" and (2) that, where deployed, it has to be "appropriate". The Explanatory Report to the Lanzarote Convention (para. 217), again, expressly underlines this:

> "It is left to the Parties to decide on when and under which circumstances such investigative methods should be allowed, taking into account, inter alia, the principle of proportionality in relation to the rules of evidence and regarding the nature and seriousness of the offences under investigation."

11. In the present case, there is, of course, no question that Bulgarian law does provide for the use of covert measures (see *inter alia* Sections V and VIII of its Code of Criminal Procedure) but they also, rightly in our view, subject them to appropriate safeguards (including the need for prior judicial authorisation). The only question the majority concerned themselves with was whether their use should have been considered in the present case. The majority asserts in § 221 (without much analysis) that such measures "appear appropriate and proportionate in the present case" but do so, ultimately on the basis that this "might have made it possible if not to obtain proof of the abuse to which the applicants had allegedly been subjected several months previously, then at least to obtain evidence concerning similar abuse of other children" (§ 223).

12. We fundamentally disagree with the majority that it was right or appropriate to come to such a conclusion in the present case. This is because (1) even on the majority's case this would not have availed these applicants or furthered the investigation into the abuse they allegedly suffered and (2) it completely disregards the safeguards so rightly advocated by the Lanzarote Convention and explained in its Explanatory Report but also, of course, inherent in the Convention rights of any possible target of such covert measures. Furthermore, for reasons we come to next, we also disagree that, on the facts of this particular case, "the applicants' allegations that an organised ring was involved and the fact that identifiable individuals had been named" was capable of providing a sufficient basis for such measures to be taken.

III. "Effectiveness" of the investigations

13. In § 186 of the judgment, this Court's role in relation to assessing the effectiveness of a domestic investigation under Article 3 is clearly and rightly delimited on the basis that "the obligation to conduct an effective investigation is an obligation not of result but of means"; "[t]here is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable" and "the Court is not concerned with allegations of errors or isolated omissions in the investigation: it cannot replace the domestic authorities in the assessment of the facts of the case, nor can it decide on the alleged perpetrators' criminal responsibility".

14. Furthermore, the judgment in § 184 rightly emphasises that the obligation to conduct an "effective investigation" is only triggered "where an individual claims on arguable grounds to have suffered acts contrary to Article 3".

15. The nature of the claim and the quality of the evidence underlying it are, therefore, of fundamental importance both to their arguability (and, therefore, their ability to trigger the investigative obligation under Article 3) as well as any subsequent assessment of the effectiveness of their investigation. The majority, however, avoids any detailed or careful consideration of the underlying allegations and evidence in support by "[l]eaving aside the question whether the first reports made to the Bulgarian authorities were sufficiently detailed" and relying on a broad assertion that the allegations had been deemed credible by the Italian authorities and provided more detailed evidence, "as early as February 2013" (§ 200). These assertions need some unpacking; especially as the majority ultimately goes on to criticise the Bulgarian authorities not only for the steps taken after this date (in so far as it is reliable) but also in relation to their conduct before that date.

16. Looking at the date given (February 2013), it is noteworthy first that it is after the Bulgarian State Agency for Child Protection ("the SACP") had concluded its first detailed and multi-disciplinary investigation (14-15 January and 18-24 January 2013; see §§ 54 and 58), as a result of reports in the Italian and Bulgarian press, and after the Veliko Tarnovo district prosecutor's office, on 28 January 2013, had opened a first preliminary (criminal) investigation concerning the findings of the SACP (number 222/2013; § 60). This investigation was opened *ex officio* and the only evidence available was obtained by the Bulgarian Ministry of Justice contacting the *Amici dei Bambini* agency ("AiBi") which had been named in the article and that agency supplying its two reports of 27 September and 3 October 2012.

17. Secondly, it is worth noting that the majority's assertion appears to refer to the request by the Milan public prosecutor's office, sent to the Bulgarian embassy in Rome for them "to contact the relevant local authorities with a view to assessing whether the allegations in question are well founded" (§ 65) and received by the Veliko Tarnovo district prosecutor in February 2013. This request was accompanied by the record of the calls made by the applicants' father to Telefono Azzurro, by a complaint from the father dated 28 November 2012 "setting out the applicants' allegations", and by the report of the psychologists from the relational therapy centre ("the RTC") dated 31 October 2012 but provided no indication as to the "credibility" of the various claims made by the applicants' father. Nevertheless, and despite the fact that an investigation was already on-going, the district prosecutor's office in response opened a further investigation (number 473/2013).

18. There is, however, a more profound difficulty with the "complaint" as it reached the Bulgarian authorities – whether through the father (in November 2012), the Italian and the Bulgarian press (11 January 2013) or the Italian authorities (as from February 2013) – which in our view must inform any assessment of the effectiveness of their investigation into those allegations, namely the nature and "credibility" of its different components.

19. The evidence before the Court makes clear that there were at least two distinct components to the allegations made by the applicants and/or their father, the first being of inappropriate sexual behaviour between children in the orphanage and possible abuse of (some of) the applicants by other children and the second of sexual abuse of the children by the adults into whose care they had been entrusted in the orphanage and/or their associates and contractors. Considering the credibility of those different components of the "complaint", as it reached the Bulgarian authorities, inevitably requires a close analysis of the way in which the applicants' allegations were raised with and investigated by the Italian authorities and how they were communicated to the Bulgarian authorities. After all, the response of the Bulgarian authorities – especially in the context of international legal assistance – can only be assessed (and ultimately) judged by reference to the nature and quality of the information/evidence provided to them by the authorities of the state of residence of the alleged victims. However, the majority have completely failed to engage in such an analysis.

20. Considering the evidence as summarised in the judgment, and of course without having heard submissions from the Italian government, it appears clear to us that there were serious deficiencies in the way the applicants' allegations came to light and were investigated in Italy which contaminated (for want of a better word) the response by the Bulgarian authorities. These include the fact that:

(a) The original allegations made in September/October 2012, which appear to have been made relatively spontaneously by the applicants, related solely to inappropriate sexual conduct between the siblings and between other children at the orphanage (§§ 19-28);

(b) The first interview with the applicants in October 2012, while video recorded, was not conducted by or on behalf of the Italian competent authorities (in fact the applicants' father had decided against going to the authorities; see § 38), nor in premises designed or adapted for this purpose, nor by professionals trained for the purpose of conducting such investigative interviews. In fact, it appears that the applicants were interviewed in a therapy setting and, while the interviewing psychologists specialised in child abuse cases (§ 15), their role was at best a mixed counselling/investigative role. In fact, it became clear when they appeared as part of the applicants' counsel team before the Grand Chamber and sought to respond to questions posed by the judges that theirs was clearly not a detached and independent role;[1]

(c) In the context of this first interview the judgment notes that the first applicant "had difficulty expressing himself in Italian and asked for his adoptive father to be present [who] helped the child to explain what he wanted to say" (§ 18). The role of the father, who it is clear spoke little to no Bulgarian and whose role in "translating" for the applicants is unclear, therefore becomes quite central to the allegations made.
(d) It is therefore relevant that it was also the father to or by whom any allegations of sexual abuse at the hands of adults were first made, initially by reference to what happened at the "discotheque". It was not until the applicants were subjected to leading questions as to "what the 'grown-ups' used to do in the orphanage" (§ 32) that they started talking about inappropriate sexual conduct by adults. However, as the judgment notes in § 33 it was "[t]he applicants' father [who] then said that N., who he thought was one of the employees of the orphanage, had first abused the first applicant and then other children, and that other adults had also been involved". It was only then that the first applicant named adults K., Da., O. and P.;
(e) It is, however, part of the relevant context, as conveyed to and therefore known by the Bulgarian authorities, that as soon as the adoptive parents became aware of the allegations of inappropriate sexual behaviour between the children their immediate response was to threaten to send the first applicant back to Bulgaria. This is first recorded in the report of a meeting the applicants had with a psychiatrist and an educational adviser on 2 October 2012 (§ 14). While the authenticity of that note was challenged during the proceedings before the Grand Chamber, it was never challenged in the proceedings before the Bulgarian authorities (nor before the Chamber of this Court) and it was officially communicated to the Bulgarian authorities in January/February 2013. The parents' response was also confirmed by a representative of the Italian Commission for Intercountry Adoption ("CAI") who is recorded as having said that the adoptive parents had raised this possibility in a moment of panic, in view of the seriousness of the facts that had been disclosed (§ 62). This, of course, goes hand in hand with information from the orphanage itself, in the course of the first investigation by the SACP, "that the Italian family's intention ... had been to adopt two girls, and that they had compromised by taking the eleven-year-old brother as well" and with the statement of the orphanage's psychologist, recorded in the police statement of 5 June 2013, that "at the time of the initial meeting with the prospective

[1] The Annex to the Court's Rules of Court provides a mechanism by which the Court at the request of a party or of its own motion could, in the appropriate cases, hear expert evidence.

adoptive parents, the first applicant had been annoyed because the parents had apparently paid more attention to his sisters" (§ 72);

(f) Any subsequent complaint about and (increasing) details of the alleged sexual abuse of the applicants (and other children in the orphanage) by adults also came from the applicants' father or parents (see e.g. the complaint to the CAI on 22 November 2012 at § 45, the letter from the father to Telefono Azzurro on 1 December 2012 at §§ 46-47 and the complaint to the Italian police of 21 December 2012 at § 48);

(g) Even during their interview by the prosecutor of the R Youth Court, together with a psychiatrist, on 8 April 2013, both the first and the second applicant "had quite a limited command of Italian and ... the person interviewing them had to explain the meaning of certain words such as 'undress' and 'breasts' which featured in their questions" (§ 83). Importantly, even then "[n]either of them mentioned the allegations of sexual abuse of their own accord"; they only spoke about it when the prosecutor asked them direct and leading questions about the inappropriate behaviour on their part and/or the matters they had mentioned in October 2012 and the evidence of the first applicant contained a number of contradictions (§§ 84-87); and

(h) During the same interview, "in reply to several questions" the second applicant confirmed that she had never seen any adult naked, that no adult had touched her and that she had never been photographed (§ 90).

21. In light of the above we cannot help but think that, in fact, any evidence of alleged sexual abuse suffered by the applicants, certainly in so far as it concerned abuse allegedly suffered at the hands of adults, was contaminated by the way in which the applicants' original allegations were handled in Italy by the parents, the psychologists and the authorities (in so far as they were involved). That said, we agree that the Bulgarian authorities were confronted with an "arguable" complaint about inappropriate sexual conduct between children at the orphanage and possible sexual abuse of some of the applicants at the hand of other children.

22. When one considers the question under Article 3 whether that allegation was appropriately, expeditiously and independently investigated, applying the general principles identified above, we cannot but conclude that it was. After all, before any official notification by the Italian authorities, the SACP and the relevant public prosecutor had initiated detailed multi-disciplinary investigations into the conditions and management of the orphanage. As soon as they were asked to, in February 2013, yet another investigation was initiated which led to yet another multi-disciplinary investigation leading to police reports on 6 March 2013 (§ 68) and on 5 June 2013 (§ 72). The discontinuance of these investigations in November 2013 was subsequently reviewed in light

of the further material provided by the Italian authorities and confirmed first by the regional prosecutor (§ 105), then by the relevant appellate prosecutor (§ 110) and finally by the public prosecutor of the Supreme Court of Cassation (§ 111).

23. Even if, with the benefit of hindsight, it might be possible to say that these investigations could have been conducted differently, it is clear to us that there is no basis on which we could conclude that the Bulgarian authorities have not complied with the investigative obligations under Article 3 of the Convention.

24. We have more doubt about whether, in fact, the allegations concerning sexual abuse by adults (as communicated to the Bulgarian authorities) in the present case are capable of amounting to a sufficiently "arguable" complaint to trigger the investigative obligation under Article 3. However, even assuming that they do, the form in which they emerged and developed over time clearly affected their credibility and, therefore, impacted upon the investigatory measures this Court could legitimately expect of the national authorities while respecting the Convention rights of those who would be the subject of such investigatory measures; including the rights of the applicants not to be subjected to unnecessary further measures with the inevitable risk of re-traumatising them.

25. In this context we also find it difficult to criticise the Bulgarian authorities for not having requested additional interviews with the applicants, as the majority do (§ 208). As the Lanzarote Convention rightly notes, good practice is that "the number of interviews (of children) is as limited as possible and ... strictly necessary for the purpose of the criminal proceedings" (Article 35 § 1 (e)). In the specific circumstances of this case, it is not clear what would have been the added value of such further interviews. The applicants had already been questioned several times, the last interview having been carried out by the prosecutor of the R Youth Court on 8 April 2013 and video recorded. Furthermore, there is nothing in the case file to suggest that the contradictions in the statements of the first applicant and the issues of lack of credibility stemming from the manner in which the initial interviews were carried out, could have been overcome; and there was clear indication of the first applicant being traumatised by further questioning (§§ 85-86).

26. On the material before this Court it is therefore clear to us that the allegations were not sufficiently credible and substantiated to mandate the type of measures the majority envisages in §§ 208, 211 and 214-223 and, therefore, to find a violation of the investigative obligation under Article 3 for not having taken such measures.

V. Conclusion

27. Overall, like the Chamber we have therefore concluded that, on the evidence before this Court, "it cannot be concluded that the Bulgarian authorities breached their procedural obligation to conduct an effective investigation into the applicants' allegations" and that, therefore, "there has been no violation of Article 3 ... of the Convention in this regard" (Chamber judgment § 106).