motion. Accordingly, the Court does not discern a link of causation between the domestic courts' refusal to examine the merits of B.K.'s claim and the expenses incurred by B.K.'s transport to Switzerland and her suicide. Accordingly, the Court does not make any award in this respect.

B. Costs and expenses

92. The applicant, who submitted documentary evidence in support of his claim, sought a total of EUR 46,490.91 for costs and expenses. This sum comprised EUR 6,539.05 for lawyers' fees and expenses in the proceedings before the national courts, as well as EUR 39,951.86 for lawyers' fees and expenses before this Court. He submitted that he had agreed to pay his lawyer EUR 300 per hour.
93. The Government expressed their doubts as to the necessity and appropriateness of the amount claimed. They further pointed out that the applicant had not submitted a written agreement on the hourly rate he claimed.
94. According to the Court's case law, an applicant is entitled to the reimbursement of costs and expenses only as far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the claim for costs and expenses in the domestic proceedings in full. Including the costs of the administrative appeal proceedings (EUR 197.20, see paragraphs 89 and 91 above), the Court awards the applicant the amount of EUR 6,736.25 (including VAT) for the proceedings before the domestic courts. Further taking into account that the applicant's complaints before the Court were only partially successful, the Court considers it reasonable to award the sum of EUR 20,000 (including VAT) for the proceedings before the Court.

C. Default interest

95. 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 unanimously

1. *Declares* the applicant's complaint about a violation of his wife's Convention rights inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention in that the domestic courts refused to examine the merits of the applicant's motion;
3. *Holds* that it is not necessary to examine whether there has been a violation of the applicant's right of access to a court under Article 6 § 1 of the Convention;
4. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
(i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 26,736.25 (twenty-six thousand seven hundred thirty six euros and twenty five cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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Europees Hof voor de Rechten van de Mens
31 juli 2012, nr. 40020/03
(Tulkens (President), Jočienė, Popović, Berro-Lefèvre, Kalaydjieva, Sajó, Raimondi)
Noot mr. M. Boot-Matthijssen

Mensenhandel. Onmenselijke en vernederende behandeling. Roma-huwelijk. Onderzoeksplicht. Gedwongen huwelijk? Valse aangifte.

[EVRM art. 3, 4, 14]

Deze zaak betreft onder meer vermeende mensenhandel. De vier klagers, een Roma-familie, hebben de Bulgaarse nationaliteit. Op 12 mei 2003 gingen drie van de klagers, dochter M en haar ouders, naar Milaan na een belofte van werk in de villa van een man, een Roma van Servische origine (X). De ouders van M stellen dat zij zes dagen later, mis-

handeld en met de dood bedreigd, werden gedwongen terug te keren naar Bulgarije en hun dochter – destijds 17 jaar en dus minderjarig – achter moesten laten in de villa. Dochter M zou onder constante bewaking zijn gehouden, zij zou gedwongen zijn om te stelen, zij zou zijn geslagen en met de dood zijn bedreigd, en zij zou door Y, de neef van X, herhaaldelijk zijn verkracht. Op 24 mei 2003 keerde de moeder terug naar Italië, met de schoonzus van M – de vierde klager – en deed aangifte onder meer van ontvoering van haar dochter. Op 11 juni 2003 bestormde de Italiaanse politie de villa en ontzette dochter M. Naar aanleiding van verklaringen van onder meer M concludeerde de Italiaanse aanklager vervolgens echter dat geen sprake was van ontvoering, maar van een overeengekomen huwelijk, gesloten tussen Y en M. Deze conclusie werd volgens de Italiaanse autoriteiten bevestigd door foto's die na de inval door X aan de politie waren overhandigd. Daarop stond een trouwfeest waarop de vader van M een som geld van X. overhandigd kreeg. In juli 2003 besloot het Italiaanse OM tot vervolging van dochter M en haar moeder over te gaan vanwege het doen van een valse aangifte waarin zij onder meer hadden verklaard dat dochter M ontvoerd was en zij onder dwang in de villa werd vastgehouden.

Op grond van art. 3 EVRM stellen de klagers voor het EHRM dat de Italiaanse autoriteiten hebben gefaald in het zorgen voor een snelle bevrijding van M, dat verdere slechte behandeling door de Servische familie in de villa zou hebben kunnen voorkomen. Ook klagen zij dat het onderzoek dat daarop volgde met betrekking tot hun aangiften ineffectief was. Zij klagen ook op grond van art. 4 EVRM dat M – ook gedwongen om deel te nemen aan georganiseerde misdaad, namelijk om te stelen (een vorm van uitbuiting) – een slachtoffer van mensenhandel was waarvoor zowel Bulgarije als Italië verantwoordelijk zijn. De Italiaanse autoriteiten zouden deze gebeurtenissen niet adequaat hebben onderzocht, zulks in strijd met art. 4 EVRM. Tot slot klagen zij op grond van art. 14 EVRM dat de behandeling van hun zaak in beide landen vooringenomen was op grond van hun Roma-origine.

Het Hof komt niet tot het oordeel dat art. 3 EVRM geschonden is wat betreft de door de Italiaanse autoriteiten genomen maatregelen om dochter M te bevrijden. Het Hof oordeelt echter wel dat de Italiaanse autoriteiten de klacht dat M herhaaldelijk was geslagen en verkracht in de villa, niet effectief hebben onderzocht. Dit leidt tot constatering van een schending van art. 3 EVRM. In dit verband – bij de behandeling van art. 3 EVRM en niet art. 4 EVRM – overweegt het Hof dat de conclusie van de Italiaanse autoriteiten dat het ging om een Roma-huwelijk niet voldoende is om alle twijfel weg te nemen en geen reden is om die omstandigheden niet verder te onderzoeken. Het Hof overweegt ook dat de betaling van een geldsom op zich onvoldoende is om te concluderen dat sprake is van mensenhandel. Ook is er i.c. geen bewijs voor de stelling dat zo'n verbintenis tot stand is gebracht met het oogmerk van uitbuiting, seksueel of anderszins. Het Hof oordeelt dat er geen reden is om aan te nemen dat de verbintenis met een ander doel tot stand is gekomen dan hetgeen in het algemeen samenhangt met een traditioneel huwelijk. Het Hof oordeelt voorts dat bewijs ontbreekt om de klacht over mensenhandel, de vermeende criminele uitbuiting, te ondersteunen. Er is niet genoeg bewijs voor de omstandigheden die vallen onder art. 4 EVRM. Het Hof oordeelt tot slot dat de klacht op grond van art. 14 EVRM tegen Italië, het discriminatieverbod ongegrond is, ook voor zover sprake zou zijn van dezelfde klacht tegen Bulgarije.

M. e.a.
tegen
Italië en Bulgarije

The Law

I. Preliminary objections

A. The Bulgarian and Italian Governments' objection as to abuse of the right of petition

64. The Bulgarian Government considered that there had been no violation in the present case since the available evidence indicated that the applicants' stay in Italy had been voluntary, as was the marriage in accordance with the related ethnic rituals. Moreover, they considered the application an abuse of petition in view of the incorrect and unjustifiable abusive language used by the applicants' representative in his submissions to the Court.

65. The Italian Government did not submit specific reasons in respect of their objection.

66. The applicants submitted that they had been subjected to violations of international law and that both the Italian and Bulgarian authorities had remained passive in the face of such events.

67. The Court recalls that, whilst the use of offensive language in proceedings before it is undoubtedly inappropriate, an application may only

be rejected as abusive in extraordinary circumstances, for instance if it was knowingly based on untrue facts (see, for example, *Akdivar and Others v. Turkey*, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 53-54; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; and *Popov v. Moldova*, no. 74153/01, § 49, 18 January 2005). Nevertheless, in certain exceptional cases the persistent use of insulting or provocative language by an applicant against the respondent Government may be considered an abuse of the right of petition within the meaning of Article 35 § 3 of the Convention (see *Duringer and Grunge v. France* (dec.), nos. 61164/00 and 18589/02, ECHR 2003-II, and *Chernitsyn v. Russia*, no. 5964/02, § 25, 6 April 2006).

68. The Court considers that although some of the applicants' representative's statements were inappropriate, excessively emotive and regrettable, they did not amount to circumstances of the kind that would justify a decision to declare the application inadmissible as an abuse of the right of petition (see *Felbab v. Serbia*, no. 14011/07, § 56, 14 April 2009). In so far as an application can be found to be an abuse of the right of petition if it is based on untrue facts, the Court notes that the Italian domestic courts themselves considered that it was difficult to decipher the facts and the veracity of the situation (see paragraph 32 above). In such circumstances, the Court cannot consider that the version given by the applicants undoubtedly constitutes untrue facts.

69. It follows that the Governments' plea must be dismissed.

B. The Bulgarian and Italian Governments' objection as to lack of victim status

70. The Bulgarian Government submitted that there had been no transgression in the present case. Moreover, the second, third and fourth applicants had no direct connection with the alleged violations and were not directly or personally affected by them. Furthermore, the fourth applicant was not a next-of-kin of the first applicant but only the third applicant's daughter-in-law who accompanied her to Italy.

71. The Italian Government submitted that the second and fourth applicants did not have *locus standi* in the proceedings since they had suffered no damage as a result of the alleged violations.

72. The applicants submitted that violations had indeed been committed and in consequence they had victim status. Moreover, the second, third and fourth applicants fell within the notion of "victims of crime" according to Articles 1 and 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (see Relevant international texts above). They further contended that all the applicants had suffered prejudice in the form of physical ill-treatment at the hands of the aggressors and moral damage in the light of the authorities' inaction, while the second, third and fourth applicants had been trying their best to protect the first applicant. This was evident particularly in so far as it concerned the parents of the first applicant.

73. The Court considers that the Governments' objection mainly relates to the second, third and fourth applicants in so far as they claim that they are themselves victims of violations of the Convention in respect of the first applicant's alleged subjection to trafficking in human beings and inhuman and degrading treatment at the hands of third parties.

74. The Court recalls that under Article 3, in respect of disappearance cases, whether a family member is a victim will depend on the existence of special factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. In these cases the essence of such a violation does not so much lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct (see, *Kurt v. Turkey*, 25 May 1998, §§ 130-134, *Reports* 1998 III; *Timurtaş v. Turkey*, no. 23531/94, §§ 91-98, ECHR 2000 VI; *İpek v. Turkey*, no. 25760/94, §§ 178-183,

ECHR 2004 II (extracts); and conversely, *Çakıcı v. Turkey* [GC], no. 23657/94, § 99, ECHR 1999 IV).

75. The Court has also exceptionally considered that relatives had victim status of their own in situations where there was not a distinct long-lasting period during which they sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances but where the corpses of the victims had been dismembered and decapitated and where the applicants had been unable to bury the dead bodies of their loved ones in a proper manner, which according to the Court in itself must have caused them profound and continuous anguish and distress. The Court thus considered that in the specific circumstances of such cases the moral suffering endured by the applicants had reached a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation (see, *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 121, 6 November 2008 and *Akpınar and Altun v. Turkey*, no. 56760/00, § 86, 27 February 2007).

76. In this light, the Court considers that, although they witnessed some of the events in question, and were, each to a different extent, involved in the attempts to obtain information about the first applicant, the second, third and fourth applicants cannot be considered as victims themselves of the violations relating to the treatment of the first applicant and the investigations in that respect, since the moral suffering endured by them cannot be said to have reached a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation.

77. The Court notes that this conclusion does not run contrary to the findings in the *Rantsev* case (*Rantsev v. Cyprus and Russia*, no. 25965/04, 7 January 2010) since, in the present case, unlike in the *Rantsev* case, the first applicant who was subject to the alleged violations is not deceased and is a party to the current proceedings.

78. It follows that the Governments' objection in respect of the second, third and fourth applicants' victim status in relation to the complaints under Articles 3 and 4 of the Convention in respect of which the first applicant is the direct victim, including the alleged lack of an investigation in that respect, must be upheld.

79. Moreover, the Court considers that the fourth applicant cannot claim to be a direct victim of any of the alleged violations, while the second applicant can only claim to be a victim in respect of the treatment to which he was himself allegedly subjected by the Serbian family. As regards the third applicant in respect of the alleged ill-treatment she suffered at the hands of the Serbian family in Ghislarengo and the police, the Court considers that there is no element which at this stage could deprive her of victim status.

80. It follows that the Governments' objection in relation to the fourth applicant in respect of all the complaints and to the second applicant, except in relation to the complaint about the treatment to which he was allegedly subjected by the Serbian family, must be upheld, whereas it must be dismissed in relation to the remaining complaints.

81. Accordingly, those complaints in respect of which the objection was upheld are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

C. The Bulgarian Government's objection as to non-exhaustion of domestic remedies

82. The Bulgarian Government submitted that the applicants had had the opportunity to bring proceedings in relation to the alleged offences. According to Articles 4 and 5 of the Bulgarian Penal Code, proceedings could have been brought against alien subjects who had committed crimes abroad against Bulgarian nationals even if such prosecution had already taken place in another State. Moreover, the applicants could have sought redress under the State Liability for Damage caused to Citizens Act, which was in force at the relevant time and provided that the State was liable for damage caused to citizens by illegal acts, actions or omissions of authorities and officials during or in connection with the performance of administrative activities. Furthermore, the applicants could also have sought redress under the general provisions of the Obligations and Contracts Act.

83. The applicants submitted that they had sent letters to the Prime Minister and the Minister for Foreign Affairs and complained to the Embassy of Bulgaria in Rome, which should have enabled the Bulgarian authorities to take action in accordance with Article 174 (2) of the Code of Criminal

Procedure. Moreover, according to Bulgarian law, if a complaint reached an organ which was not competent to deal with the matter it was for that organ to transfer the request to the competent authority. As to an action under the State Liability for Damage caused to Citizens Act, the applicants considered that such an action would not be appropriate since no body had informed them of the means available to safeguard their rights under Article 3 of the same text.

84. For reasons which appear below in respect of the complaints against the Bulgarian State, the Court does not consider it necessary to examine whether the applicants have exhausted all available domestic remedies as regards their complaints against Bulgaria and consequently leaves this matter open (see, *mutatis mutandis, Zarb v. Malta*, no. 16631/04, § 45, 4 July 2006).

II. Alleged violations of Article 3 of the Convention

85. The applicants complained that the first applicant had suffered ill-treatment (including sexual abuse together with a subjection to forced labour), as had to a lesser extent the second and third applicants at the hands of the Roma family in Ghislarengo, and that the authorities (especially the Public Prosecutor in Vercelli) had failed to investigate the events adequately. They also complained that the first and third applicants had been ill-treated by Italian police officers during their questioning. Thus, the Italian and Bulgarian authorities' actions and omissions were contrary to Article 3 of the Convention, which reads as follows:

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

A. The complaints concerning the lack of adequate steps to prevent the first applicant's ill-treatment by the Serbian family by securing her swift release and the lack of an effective investigation into that alleged ill-treatment

1. The parties' observations

(a) The applicants

86. The applicants insisted that their version of events was faithful and that the Governments' submissions were entirely based on the witness statements of X., Y. and Z., which were contradictory and untruthful. One such example was the fact that X., Y. and Z.'s testimony did not correspond in respect of the venue where the alleged wedding celebrations had taken place. They also contended that any slight discrepancies in the first applicant's testimony could only have been due to her anxiety as a result of the threats and ill-treatment she had been suffering. They further reiterated that the photos used as evidence had been obtained under threat and that the second applicant had been repeatedly beaten and forced at gun-point to pose in the said pictures. They also argued that the first applicant had been to discotheques and travelled in cars only within the ambit of the planning and actual robberies she was forced to participate in by the Serbian family. As to any medical records, they considered it was for the authorities to provide such materials.

87. In their view, the first applicant had clearly suffered a violation of Article 3 following the treatment she had endured at the hands of the Serbian family, in relation to which no effective investigation had been undertaken to establish the facts and prosecute the offenders.

88. The Italian authorities took seventeen days to free the first applicant, who was found to be in bad shape both physically and mentally. This notwithstanding, no medical examinations were carried out on the first applicant to establish the extent of her injuries. Indeed, to date, the truth had not been established and various items of evidence had been disregarded. The minutes of the search of the villa were incomplete, the substantial amounts of money seized during the raid had not been described, and certain facts had not been examined, such as the finding of multiple passports in the same name. Neither had the investigation examined the first applicant's claim that she had been repeatedly raped by Y. while having her hands and feet tied to the bed. Nor had any research been done to establish the criminal records of the Serbian family, whose only means of income were the recurring robberies they organised, or in relation to the events, namely the promise of work which had led the applicants to move to Italy. It was evident in their view that the investigation had left room for dissimulation of the facts.

89. Furthermore, the applicants were not allowed access to the investigation file, no translations of the questioning were given to them, and no witness testimony by letters rogatory was taken from

the applicants when they returned to Bulgaria, to enable the authorities to correctly establish the facts.

(b) The Italian Government
90. The Italian Government submitted that the facts as alleged by the applicants had been entirely disproved during domestic proceedings on the basis of documentary evidence. Moreover, they noted that one of the medical documents mentioned in the facts had not been transmitted to them and the other document had no bearing on the case. As to the injury to the first applicant's rib, they noted that the third applicant in her complaint to the police in Turin had claimed that the first applicant had had a similar injury which dated back to a prior accident.
91. They noted that criminal investigations for the alleged kidnapping of the first applicant had been initiated immediately following the third applicant's oral complaints to the police of Turin on 24 May 2003. The Government submitted that it took the authorities until 11 June 2003 to locate the villa where the first applicant was being held (since the third applicant had only provided a vague indication of the premises), to identify the occupants of the villa (no one officially resided there), to observe the happenings in the location and to make preparations for the necessary action leading to the arrest of the occupants and the release of the first applicant without casualties, as the third applicant had alleged that arms were held there.
92. The immediate investigation and arrest which ensued had shown a reality different from that announced by the third applicant in her initial complaint. It appeared that the first applicant had married Y. according to the customs and traditions of their ethnic group, for the price of EUR 11,000. This was evident from a number of photos which had been found at the venue, showing a wedding ceremony in which the first three applicants had participated and where, together with Y., they appeared contented and relaxed. Further photos showed the second applicant receiving money from Y.'s relatives. The conclusion that this consisted of a payment for the bride according to Roma customs and not a kidnapping was even more evident in the light of the numerous contradictions in the first and third applicants' testimonies, together with the first applicant's admission of a marriage contract. Moreover, no firearms were found during the raid, which disproved the third applicant's allegation that they had been threatened by means of a firearm.
93. The Italian Government submitted that this version of events had been considered truthful by the judgment of the Turin Investigating Magistrate of 26 January 2005. It had also been considered probable by the Turin Tribunal in its judgment of 8 February 2006, which according to the Government's interpretation, concluded that the problem was mainly an economic disagreement in relation to the marriage contract concluded. It was very probable that the marriage contract had not been respected either because of an economic disagreement or because of the treatment of the first applicant following the marriage, which she had related to the third applicant over the phone. The Government reiterated that Roma marriages were specific, as had been accepted by the Court in *Muñoz Díaz v. Spain* (no. 49151/07, ECHR 2009).
94. They further submitted that the investigation had been carried out immediately and without unnecessary delay and the judicial authorities had not spared any efforts to establish the facts. The scene of the events was isolated and preserved; relevant objects were identified and seized; the occupants of the premises were identified and arrested, and the first applicant was lodged in Caritas premises; the relevant actors and witnesses including the applicants were immediately heard and they were assisted by interpreters, lawyers and psychological experts. Having considered all the above, the judicial authorities had found it more likely that there had been a marriage contract. The Italian Government considered that in view of the evidence, it could not have been concluded otherwise. They further noted that it was not for the Court to establish the facts of the case, unless this was inevitable given the special circumstances, which was not so in the present case. Indeed, as had been proved by the Government, the official investigation had been carried out in depth, as shown by its detailed conclusions.
95. The Italian Government submitted that in the eighteen days between 24 May and 11 June 2003 the third applicant had the status of a witness and had access to the information collected during the investigation to a degree which sufficed to allow her an effective participation in the procedure.

From 11 June 2003 onwards the first and third applicants had the status of accused, in relation to which the invoked provisions had no bearing.

2. The Court's assessment

(a) Admissibility

96. The Court notes that it is confronted with a dispute over the exact nature of the alleged events. In this regard, it considers that it must reach its decision on the basis of the evidence submitted by the parties (see *Menteşe and Others v. Turkey*, no. 36217/97, § 70, 18 January 2005).

97. The Court considers that the medical records in respect of the first applicant dated 22 and 24 June 2003, submitted to the Court at the time of the lodging of the application (see paragraph 18 above), both transferred to the Government on 1 March 2010 and appearing on their secure site, even though not submitted to the investigating authorities, constitute sufficient *prima facie* evidence that the first applicant may have been subjected to some form of ill-treatment. In the specific circumstances of the case, the latter, together with the uncontested fact that a complaint was lodged with the authorities on 24 May 2003 giving a detailed account of the facts complained of, provides enough basis for the Court to consider that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

98. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

i. General principles

99. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on 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 in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI). These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001 V).

100. The Court reiterates that Article 3 of the Convention requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion", even if such treatment is administered by private individuals (see *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005, and *Mehmet Ümit Erdem v. Turkey*, no. 42234/02, § 26, 17 July 2008). The minimum standards applicable, as defined by the Court's case-law, include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004). In addition, for an investigation to be considered effective, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports (see, in particular, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)).

ii. Application to the present case

101. The Court notes that the third applicant's complaint lodged on 24 May 2003 was not supported by any medical records. However, the Court considers that this was logical and that medical evidence could not be expected given that according to that complaint the first applicant was being retained against her will by the Serbian family. In these circumstances, the Court considers that the third applicant's testimony and the seriousness of the allegations made in the complaint lodged on 24 May 2003 raised a reasonable suspicion that the first applicant could have been subjected to ill-treatment as alleged. This suffices to attract the applicability of Article 3 of the Convention.

(a) The steps taken by the Italian authorities

102. As regards the steps taken by the Italian authorities, the Court notes that the police released the first applicant from her alleged captivity

within two and a half weeks. It took them three days to locate the villa and a further two weeks to prepare the raid which led to the first applicant's release. Bearing in mind that the applicants had claimed that the Serbian family was armed, the Court can accept that prior surveillance was necessary. Therefore, in its view, the intervention complied with the requirement of promptness and diligence with which the authorities should act in such circumstances.
103. It follows that the State authorities fulfilled their positive obligation of protecting the first applicant. There has therefore been no violation of Article 3 under this head.

(b) The investigation
104. As to the investigation following the first applicant's release, the Court notes that the Italian authorities questioned X., Y., Z., the first applicant and the third applicant. It does not appear that any other efforts were made to question any third parties who could have witnessed the events at issue. Indeed, the Italian authorities considered that the photos collected at the venue corroborated the alleged assailants' version of events. However, none of the other people in the photos was ever identified or questioned, a step which the Court considers was essential, given that the applicants maintained that they had been forced at gun-point to pose for such photos. Nor were any attempts made to hear the second applicant, who had been a major actor in the events at issue. Indeed, the Court notes that on the same day that the first applicant was released and heard, the criminal proceedings which had been instituted against the assailants were turned into criminal proceedings against the first and third applicants (see paragraph 25 above). The Court is struck by the fact that following the first applicant's release it took the authorities less than a full day to reach their conclusions. In this light it stood to reason that the Turin Criminal Court considered it impossible to establish the facts clearly (see paragraph 32 above).
105. The Court also notes that, when released, the first applicant was not subject to a medical examination, notwithstanding the claims that she had been repeatedly beaten and raped. The Court further notes that even assuming that it was true that the events at issue amounted to a marriage in accordance with the Roma traditions, it was still alleged that in the month the first applicant stayed in Ghislarengo she had been beaten and forced to have sexual intercourse with Y. The Court notes that State authorities must take protective measures in the form of effective deterrence against serious breaches of an individual's personal integrity also by a husband (see *Opuz v. Turkey,* no. 33401/02, §§ 160-176, 9 June 2009) or partner. It follows that any such allegation should also have required an investigation. However, no particular questioning took place in this respect, nor was any other test undertaken, whether strictly medical or merely scientific. It is of even greater concern that the first applicant was a minor at the time of the events at issue. Indeed, the Convention requires effective deterrence against grave acts such as rape, and children and other vulnerable individuals, in particular, are entitled to effective protection (see, *mutatis mutandis, M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003 XII). However, the Italian authorities chose not to investigate this aspect of the complaint.
106. Moreover, the Court notes that the applicants alleged that they had moved to Italy following a promise of work, although none ensued, and that the first applicant was threatened and forced to participate in robberies and private sexual activities during the period of time she remained in Ghislarengo. While this has not been established, the Court cannot exclude that the circumstances of the present case, as reported by the first applicant to the Italian authorities (see paragraph 8 above), had they been proved, could have amounted to human trafficking as defined in international conventions (see Relevant International Texts above), which undoubtedly also amounts to inhuman and degrading treatment under Article 3 of the Convention. In consequence, the Italian authorities had an obligation to look into the matter and to establish all the relevant facts by means of an appropriate investigation which required that this aspect of the complaint be also examined and scrutinized. This was not so, the Italian authorities having opined that the circumstances of the present case fell within the context of a Roma marriage. The Court cannot share the view that such a conclusion sufficed to remove any doubt that the circumstances of the case revealed an instance of human trafficking which required a particularly thorough investigation *inter alia* because a possible "Roma marriage" cannot be used as a reason not to investigate in

the circumstances. Furthermore, the Court observes that the rapid decision of the Italian authorities not to proceed to a thorough investigation had, among other things, the consequence that medical evidence on the physical condition of the first applicant was not even sought.
107. In conclusion, the Court considers that the above elements suffice to demonstrate that, in the particular circumstances of this case, the investigation into the first applicant's alleged ill-treatment by private individuals was not effective under Article 3 of the Convention.
108. There has therefore been a procedural violation of Article 3.

B. The complaint regarding the second and third applicant's ill-treatment at the hands of the Roma family and the lack of an effective investigation by the Italian authorities in this respect

1. The parties' observations
109. The applicants complained that the second and third applicants had also suffered ill-treatment and threats at the hands of the Serbian family. In particular, the second applicant had been repeatedly beaten and forced at gun-point to pose in the "wedding" pictures. However, the Italian authorities took no steps to question the second applicant as a victim of ill-treatment and threats, as a result of which they claimed he had been declared 100% invalid by the Vidin Medical Commission on 5 October 2010 (the applicants acknowledged that they had not submitted documents in proof of this). As a result of the stress and anxiety caused, the second applicant had been diagnosed with diabetes shortly after the events at issue.
110. The Italian Government submitted that criminal investigations in respect of threats against and injuries to the second and third applicants had been initiated immediately following the third applicant's oral complaints to the police of Turin on 24 May 2003. However, it had not resulted from the investigation that their complaints were truthful. According to the Government, it was strange that the second and third applicants claimed to have been beaten on 18 May 2003 and yet they decided to go back to Bulgaria. Furthermore, no medical documents substantiating this claim had been submitted and no firearms had been found during the raid at the villa, which disproved the allegation that they had been threatened at gun-point.

2. The Court's assessment
111. According to the Court's case-law, allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", although such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, § 161 *in fi*ne; and *Medova v. Russia*, no. 25385/04, § 116, ECHR 2009 ....).
112. The Court notes that, even assuming that the second and third applicants had been previously kept under constraint, it is uncontested that this was no longer so after 18 May 2003. It follows that the second and third applicants, unlike in the case of the first applicant, could have sought medical assistance and acquired medical evidence in support of their claims. However, they did not provide the authorities with any form of medical report to accompany the complaint lodged by the third applicant on 24 May 2003. Moreover, to date, no evidence has been submitted to the Court indicating that the second and third applicants could have been subjected to ill-treatment at the hands of the Serbian family. In this light, the Court considers that there is no sufficient, consistent or reliable evidence to establish to the necessary degree of proof that they were subjected to such ill-treatment.
113. In consequence, the authorities were not given a reasonable cause for suspecting that the second and third applicants had been subjected to improper treatment, which would have required a fully fledged investigation.
114. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. The complaint regarding the first and third applicants' ill-treatment at the hands of the police officers during their questioning
115. The first and third applicants complained about ill-treatment during their interrogation, namely that they were not provided with lawyers and interpreters during that time and that they were forced to sign documents the content of

which they had not understood. They further complained about the criminal proceedings with which they were threatened and which were eventually instituted against them, noting that they had only been taken up in order for the authorities to apply pressure on them. They also contended that subsequently the court-appointed lawyer failed to safeguard their interests during the questioning, notably by failing to request that the Serbian family be kept outside the room, by not ensuring adequate interpreters and treatment without threats and most gravely by allowing the first applicant to be kept in a cell for hours following her questioning.

116. The Court firstly notes that the first and third applicants failed to press charges against any alleged offenders from the police force. No official complaint has ever been lodged with the Italian authorities in respect of this alleged ill-treatment. Neither has it been submitted that they attempted to make such a complaint in the context of the proceedings eventually instituted against them. It follows that the first and third applicants failed to exhaust domestic remedies in respect of this complaint.

117. Furthermore, the Court notes that the treatment described by the applicants does not attain the minimum level of severity to make it fall within the scope of Article 3. In particular, the Court considers that the fact that the first and third applicants were warned about the possibility of being prosecuted and imprisoned if they did not tell the truth may be considered to be part of the normal duties of the authorities when questioning an individual, and not an unlawful threat. Moreover, according to the documents submitted by the Italian Government, an interpreter or a lawyer or both accompanied the first and third applicants during the different stages of the interrogation.

118. For these reasons, this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention

D. The complaint regarding the lack of action and an effective investigation into the alleged events against Bulgaria

1. The parties' observations

119. In respect of Bulgaria, the applicants complained about the delay in the treatment of the second applicant's complaint of 31 May 2003 by the consular authorities. It took the authorities two days to take action in respect of the complaint, following the applicants' representative's aggressive criticisms. They contended that the Bulgarian Government had failed to explain in what way the CRD had assisted the applicants in their interests as required by Article 32 of the Regulations of the Ministry of Foreign Affairs. Indeed, they had not interfered in the choice of interpreters (who remained silent in the face of the treatment suffered by the two applicants during interrogation) or the court-appointed lawyer, nor had a consular representative been present during the questioning.

120. Similarly, no information had been submitted and nothing had been done by the Bulgarian authorities to repatriate the applicants and the National agency for the protection of infants had not been informed in order for it to be able to take the necessary measures. Neither had the Ministry or the Embassy of Bulgaria in Rome informed the Prosecutor's Office in Bulgaria, which could have undertaken proceedings against the Serbian family. Moreover, the Bulgarian authorities had not informed the Italian authorities that according to Bulgarian law a marriage of a minor Bulgarian national, celebrated abroad, required the prior authorisation of the Bulgarian diplomatic or consular representative (Articles 12, 13 and 131 of the Bulgarian Family Code). In the present case no such request was made or granted. This requirement was valid for all Bulgarian citizens irrespective of their ethnicity and in any case ethnic traditions could not set aside the law.

121. The Bulgarian Government contended that in the absence of any specific allegation of any treatment contrary to Article 3 there could not be a violation of that provision. Moreover, any positive obligations on their part could only arise in respect of actions committed or ongoing in Bulgarian territory.

122. Without prejudice to the above, the Bulgarian Government submitted that the Ministry of Foreign Affairs, the CRD, the Ambassador and the Consul in Rome immediately reacted when notified of the case. They established contact with the Italian authorities and specified that the alleged victim was a minor and was being held against her will. The Bulgarian Ambassador maintained constant communication with the Italian authorities and transferred the information to the second applicant, who had expressed his gratitude in this

respect. The fact that adequate and comprehensive measures had been taken by the Bulgarian CRD was also evident from the consular file in relation to the case, which was submitted to the Court. That file contained more than a hundred pages and, on 2 June 2003, it had been sent to the Embassy of Bulgaria in Rome with the instruction to take immediate action in cooperation with the Italian authorities for the release of the first applicant and her return to Bulgaria.
123. The second applicant again solicited the Bulgarian authorities on 11 June 2003 and the CRD again referred to the Embassy of Bulgaria in Rome on the same day. In turn the Embassy replied that the provincial unit of the carabinieri in Turin and the central management of the Vercelli Police had conducted a successful action to release the first applicant from the house; she was found to be in good condition and was under the protection of the public authorities. This information was immediately forwarded to the second applicant. By a letter dated 24 June 2003 the Bulgarian Embassy in Rome notified the CRD that, following a request by the second applicant, information had been received from the Head Office of the Criminal Police of Italy to the effect that the result of the inquiry and declaration of the first applicant indicated that her father had received money for a forthcoming wedding and therefore there were no grounds to institute criminal proceedings against the Serbian family. They further noted that the judicial authorities were considering the possibility of bringing proceedings against the first and third applicants for libel and perjury. The second applicant was informed of this by a letter of 1 July 2003. Subsequently correspondence was maintained between the Consular Section and the applicants and their representative, as well as with the Italian authorities. Thus, within their competence, the Bulgarian authorities had been fully cooperative.

2. The Court's assessment
124. The Court reiterates that the engagement undertaken by a Contracting State under Article 1 of the Convention is confined to "securing" ("*reconnaître*" in the French text) the listed rights and freedoms to persons within its own "jurisdiction" (see *Soering v. the United Kingdom*, 7 July 1989, § 86, Series A no. 161). The Court's case-law has defined various instances where the Convention provisions, read in conjunction with the State's general duty under Article 1, impose an obligation on States to carry out a thorough and effective investigation (see for example *Ay v. Turkey*, cited above, §§ 59-60; *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports* 1996-VI, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII). However, in each case the State's obligation applied only in relation to ill-treatment allegedly committed within its jurisdiction (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 38, ECHR 2001-XI, where the Court did not uphold the applicant's claim that the Convention required the United Kingdom to assist one of its citizens in obtaining an effective remedy for torture against another State since it had not been contended that the alleged torture took place in the jurisdiction of the United Kingdom or that the United Kingdom authorities had any causal connection with its occurrence).
125. Similarly, in *Rantsev v. Cyprus and Russia* (no. 25965/04, §§ 243-247, ECHR 2010 (extracts)), the Court noted that the direct victim's death had taken place in Cyprus. Accordingly, since it could not be shown that there were special features in that case which required a departure from the general approach, the obligation to ensure an effective official investigation applied to Cyprus alone. Notwithstanding that Ms Rantseva was a Russian national, the Court concluded that there was no free-standing obligation incumbent on the Russian authorities under Article 2 of the Convention to investigate.
126. It follows from the above that in the circumstances of the present case, where the alleged ill-treatment occurred on Italian territory and where the Court has already found that it was for the Italian authorities to investigate the events, there cannot be said to have been an obligation on the part of the Bulgarian authorities to carry out an investigation under Article 3 of the Convention.
127. Moreover, the Convention organs have repeatedly stated that the Convention does not contain a right which requires a High Contracting Party to exercise diplomatic protection, or espouse an applicant's complaints under international law or otherwise to intervene with the authorities of another State on his or her behalf (see for example, *Kapas v the United Kingdom*, no. 12822/87, Commission decision of 9 December 1987, Decision and Reports (DR) 54, *L. v Sweden*, no. 12920/87, Commission decision of 13 December 1988, and *Dobberstein v Germany*, no. 25045/94,

Commission decision of 12 April 1996 and the decisions cited therein). Nevertheless, the Court notes that the Bulgarian authorities repeatedly pressed for action by the Italian authorities, as explained by the Bulgarian Government in their submissions and as shown from the documents submitted to the Court.
128. In conclusion, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. Alleged violation of Article 4 of the Convention

129. The applicants contended that the treatment the first applicant had suffered at the hands of the Serbian family and the fact that she was forced to take part in organised crime constituted a violation of Article 4. According to the applicants, the violation of the said provision also arose in relation to the entire facts of the case which clearly concerned trafficking in human beings and was contrary to that provision, which reads as follows:
"1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term 'forced or compulsory labour' shall not include:
(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
(d) any work or service which forms part of normal civic obligations."

A. The parties' submissions

1. The applicants

130. The applicants noted that they had been led to believe that they would find work, but to the contrary the first applicant had been forced to steal and had suffered corporeal injuries as a result of the treatment she received, as proved by the medical documents submitted. They considered that, given the deceit by which they had been persuaded to move to Italy and the ensuing treatment suffered, particularly by the first applicant, the case undoubtedly concerned trafficking in human beings within the meaning of international treaties. They were of the view that both States were responsible for the alleged violation. It was degrading that the Governments were trying to cover up their failings by hiding behind the excuse of Roma customs, which had clearly not been the case, as repeatedly stated by the applicants. Moreover, the applicants failed to understand how the authorities considered that Roma traditions, which clearly amounted to a violation of the criminal law (see sections 177-78 and 190-91 of the Bulgarian Criminal Code, relevant domestic law above), could be overlooked and considered normal.
131. In respect of their complaint against Italy they reiterated their submissions put forward under Article 3.
132. In respect of Bulgaria, the applicants also reiterated their submissions under Article 3. They further noted that even though in Bulgaria a law against human trafficking had been enacted, in practice this had no effect. In fact, the Bulgarian Government had not been able to submit any statistics as to the number of people having been prosecuted under the Criminal Code provisions in this respect. As to prevention, the applicants contended that the Bulgarian Government should have been able to spot the dangers a family like the applicants would have faced when deciding to move to Italy following a suspicious promise of work. They insisted that no relevant questions had been set to the applicants at the border as though a risk for trafficking could have never existed.

2. The Italian Government

133. The Italian Government submitted that in the third applicant's complaint to the Turin Police of 24 May 2003 there had been no allegation of forced labour of human trafficking, but only a fear that the first applicant could be forced into prostitution. They considered that the Trafficking Convention could not come to play in the circumstances of the case as established by the domestic courts. Moreover the Italian state had not signed or ratified the Trafficking Convention at the time of the events of the case and therefore it was not applicable to them.

134. Nevertheless, criminal investigations for the alleged kidnapping of the first applicant had been initiated immediately following the third applicant's oral complaints to the police of Turin on 24 May 2003. They noted that a law in relation to human trafficking was only introduced in August 2003 (see Relevant domestic law). They further reiterated their submissions under Article 3, contending that an effective investigation into the circumstances of the case had taken place.
135. Lastly, they submitted that in so far as the Court wanted to examine the State's conduct *vis-á-vis* marriage agreements in the Rom community, the Italian Government noted that the first applicant had in fact been freed and returned to Bulgaria. However, it was not for the state to judge the traditions of the Rom minority, their identity or way of life, particularly since the Court itself highlighted the importance of the Rom culture in *Munoz Diaz*.

3. The Bulgarian Government
136. The Government reiterated that the present case did not concern trafficking in human beings, as the facts did not fall under the definition of trafficking according to Article 4 of the Trafficking Convention. As confirmed by the excerpt of the border police (submitted to the Court) the applicants freely and voluntarily established themselves in Italy according to their right of freedom of movement. The first applicant, although a minor, left the borders of Bulgaria and arrived and resided in Italy with her parents, voluntarily and with their consent. The departure from Bulgarian territory was lawful and the authorities had no reason to prohibit it, allowing such a move according to Article 2 of Protocol No. 4 to the Convention and European Union legislation. Moreover, there had been no evidence of trafficking in human beings on Bulgarian territory, an issue not alleged by the applicants. Indeed, the applicants, alone or through their representative, had not notified any of the Bulgarian institutions in charge of trafficking. Any allegations in this respect could be communicated to the State Agency for Child Protection, the National Committee to Combat Human Trafficking and the Council of Ministers, the Prosecution of the Republic of Bulgaria and the Ministry of Interior which had specific powers under the Criminal Code and the Code of Criminal Procedure to deal with such allegations.
137. They submitted that the present case regarded a personal relationship of a private legal nature in terms of the voluntary involvement in marriage and the related rituals in accordance with the particular ethnicity of the applicants. According to the investigation, the first applicant freely married Y. in accordance with their traditions. The accepted and practiced model of Roma marriages provided for early and ubiquitous marriages. Marriage age was governed by custom according to the group to which the persons belonged, and in practice was generally a young age. Roma marriages were considered concluded with a wedding in the presence of the community and it did not require a civil or religious procedure to be considered sacred and indissoluble. The traditional Roma marriage consisted of two phases. The first, the engagement, regulated the pre-requisites of marriage such as the fixing of the bride's "price"/"ransom"/"dowry", which is a bargaining made by the fathers in view of the fact that the bride will then be part of the family of the groom. The second is the wedding, which includes a set of rituals, the most important of which was the consummation of the marriage, bearing in mind that virginity was a pre-requisite to the marriage. The Bulgarian Government submitted that from the testimony of X. Y. and Z., as drawn up by the Italian Urgent Action Squad, the wedding ritual of the applicant to Y. conformed to this traditional practice.
138. Moreover, it had not been established that there had been any debasing or degrading attitudes or instances of forced labour. The Government submitted that in her testimony of 11 June 2003, the first applicant declared to have married Y. and did not claim that she was dissatisfied with her marriage or that herself or her parents had been ill-treated or forced to work. Thus, according to the Government, the facts of the case regarded a regular consummation of a marriage and the undertaking of usual household chores, which could not amount to treatment prohibited under Article 4, particularly since the first applicant admitted to having freely moved to Italy, travelled by car and attended discotheques.
139. The Government considered that when the Bulgarian Consular Section signalled a coercive holding of a minor-aged female, the Italian authorities gave full assistance and carried out an effective investigation, but after having established the above-mentioned facts, could not conclude that

the case concerned trafficking in human beings. They noted that the Italian authorities "freed" the first applicant who was found to be in a good health and mental condition. She was questioned by staff specialised in interaction with minors and had access to an interpreter. Moreover, the authorities provided support to her and her relatives, including accommodation and payment of costs. The Italian authorities took all the relevant witness testimony and other measures to establish the facts and the applicants had ample opportunity to participate as witnesses in the investigation, throughout which they were provided with an interpreter. Thus, the relatives had also been directly involved in the investigation. Therefore, the criteria for an effective investigation according to the Court's case-law (*Rantsev v. Cyprus and Russia*, no. 25965/04, § 233, 7 January 2010) had been fulfilled.

140. As to the steps taken by the Bulgarian authorities, the Bulgarian Government reiterated their submissions under Article 3 (see paragraphs 121-123 above). Indeed both the Bulgarian and Italian authorities had reacted promptly. It followed that the actions of both States had been in accordance with Convention obligations (*Rantsev*, cited above, § 289).

141. They further submitted that in so far as the case could be considered under Article 4 the Bulgarian authorities had fulfilled their positive obligations in an adequate and timely manner. The Bulgarian Government noted that the Trafficking Convention entered into force in respect of Bulgaria in 2007 and therefore was not applicable at the time of the events in the present case. However, the Government submitted that Bulgaria had fulfilled its positive obligation and taken the necessary measures to establish a workable and effective legislation on the criminalisation of human trafficking.

142. They had further put in place an appropriate legislative and administrative framework. They noted that by 2003 the following legislation was applicable, in connection with the prevention, combating and criminalisation of trafficking:

– The United Nations Convention against Transnational Organised Crime, adopted on 15 November 2000, ratified by Bulgaria in 2001
– The Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children of 15 November 2000
– Recommendation No. R (85) 11 to the Member States on the position of the victim in the framework of criminal law and procedure, adopted by the Committee of Ministers of the Council of Europe on 28 June 1985
– Recommendation 1545 (2002) on the campaign against trafficking in women of January 21, 2002
– Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration and who cooperate with the competent authorities.
– European Parliament resolutions related to exploitation of prostitution and trafficking in people.

Moreover, by means of amendments to the Criminal Code in 2002, human trafficking had been criminalised (see Relevant domestic law) and in 2003 a specific law on combating human trafficking establishing effective counter-action leverage was passed by parliament. Public information was also provided by the national media on the risks of trafficking in persons. Thus, the Bulgarian Government took all feasible positive measures on the creation of an effective domestic system for the prevention, investigation and prosecution of such offences. Moreover, the applicants had made no complaint in respect of this framework.

143. The Bulgarian Government also submitted that they had fulfilled their positive obligation to take protective measures. They submitted that there was no evidence that they had been particularly notified about any particular circumstances which could give rise to a justified and reasonable suspicion of a real and immediate risk to the first applicant before she left to Italy and later during her stay there. In consequence there had not been a positive obligation to take preliminary steps to protect her.

144. As to a procedural obligation to investigate potential trafficking, the Government reiterated that the applicants actions were voluntary, this notwithstanding that the Bulgarian and Italian joint efforts led to the desired result of the first applicant being released and returned to Bulgaria.

145. As to the forensic expertise presented, the Government noted that this could not be considered as valid evidence as it had not been produced according to the law, it having been com-

piled one month after the first applicant's return to Bulgaria and not immediately at the time of the alleged events.

B. The Court's assessment

1. Application of Article 4 of the Convention

146. 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 *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, 12 November 2008). It has long stated that one of the main principles of the application of the Convention provisions is that it does not apply them in a vacuum (see *Loizidou v. Turkey*, 18 December 1996, *Reports* 1996-VI; and *Öcalan v. Turkey* [GC], no. 46221/99, § 163, ECHR 2005-IV). As an international treaty, the Convention must be interpreted in the light of the rules of interpretation set out in the Vienna Convention of 23 May 1969 on the Law of Treaties (see *Rantsev*, cited above, § 273).

147. Under that Convention, the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn (see *Golder v. the United Kingdom*, 21 February 1975, § 29, Series A no. 18; *Loizidou*, cited above, § 43). The Court must have regard to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 48, ECHR 2005-X). Account must also be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see *Al-Adsani*, cited above, § 55; Demir and *Baykara*, cited above, § 67; *Saadi v. the United Kingdom* [GC], no. 13229/03, § 62, ECHR 2008-...; and *Ranstev*, cited above, §§ 273-275).

148. The object and purpose of the Convention, as an instrument for the protection of individual human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, *inter alia*, *Soering*, cited above, § 87; and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

149. In *Siliadin*, considering the scope of "slavery" under Article 4, the Court referred to the classic definition of slavery contained in the 1926 Slavery Convention, which required the exercise of a genuine right of ownership and reduction of the status of the individual concerned to an "object" (see *Siliadin v. France*, no. 73316/01, § 122, ECHR 2005 VII). With regard to the concept of "servitude", the Court has held that what is prohibited is a "particularly serious form of denial of freedom" (see *Van Droogenbroeck v. Belgium*, Commission's report of 9 July 1980, §§ 78-80, Series B no. 44). The concept of "servitude" entails an obligation, under coercion, to provide one's services, and is linked with the concept of "slavery" (see *Seguin v. France* (dec.), no. 42400/98, 7 March 2000; and *Siliadin*, cited above, § 124). For "forced or compulsory labour" to arise, the Court has held that there must be some physical or mental constraint, as well as some overriding of the person's will (see *Van der Mussele v. Belgium*, 23 November 1983, § 34, Series A no. 70; *Siliadin*, cited above, § 117).

150. The Court is not regularly called upon to consider the application of Article 4 and, in particular, has had only two occasions to date to consider the extent to which treatment associated with trafficking fell within the scope of that Article (*Siliadin* and *Rantsev*, both cited above). In the latter case, the Court concluded that the treatment suffered by the applicant amounted to servitude and forced and compulsory labour, although it fell short of slavery. In the former, trafficking itself was considered to run counter to the spirit and purpose of Article 4 of the Convention such as to fall within the scope of the guarantees offered by that Article without the need to assess which of the three types of proscribed conduct was engaged by the particular treatment in the case in question.

151. In *Rantsev*, the Court considered that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and

threats against victims, who live and work under poor conditions. It is described in the explanatory report accompanying the Anti-Trafficking Convention as the modern form of the old worldwide slave trade. In those circumstances, the Court concluded that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, fell within the scope of Article 4 of the Convention (see *Rantsev*, cited above, §§ 281-282).

2. Application to the present case
152. The Court once again highlights that it is confronted with a dispute over the exact nature of the alleged events. The parties to the case have presented diverging factual circumstances and regrettably the lack of investigation by the Italian authorities has led to little evidence being available to determine the case. Having said that, the Court cannot but take its decisions on the basis of the evidence submitted by the parties.
153. In this light, in so far as an objection *ratione materiae* can be inferred from the Governments' submissions the Court considers that it is not necessary to deal with this objection since it considers that the complaint, in its various branches, is in any event inadmissible for the following reasons.

(a) The complaint against Italy

1. The circumstances as alleged by the applicants
154. The Court has already held above that the circumstances as alleged by the applicants could have amounted to human trafficking. However, it considers that from the evidence submitted there is not sufficient ground to establish the veracity of the applicants' version of events, namely that the first applicant was transferred to Italy in order to serve as a pawn in some kind of racket devoted to illegal activities. In consequence, the Court does not recognise the existence of circumstances capable of amounting to the recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. It follows that the applicants' allegation that there had been an instance of actual human trafficking has not been proved and therefore cannot be accepted by the Court.
155. Since it has not been established that the first applicant was a victim of trafficking, the Court considers that the obligations under Article 4 to penalise and prosecute trafficking in the ambit of a proper legal or regulatory framework cannot come into play in the instant case.
156. As to the Article 4 obligation on the authorities to take appropriate measures within the scope of their powers to remove the individual from that situation or risk, the Court notes that irrespective of whether or not there existed a credible suspicion that there was a real or immediate risk that the first applicant was being trafficked or exploited, the Court has already found under Article 3 of the Convention that the Italian authorities had taken all the required steps to free the applicant from the situation she was in (see paragraph 103 above).
157. In so far as Article 4 also provides for a procedural obligation to investigate situations of potential trafficking, the Court has already found in its assessment under the procedural aspect of Article 3 above (see paragraphs 107-108 above) that the Italian authorities failed to undertake an effective investigation into the circumstances of the present case.
158. In consequence the Court does not find it necessary to examine this limb of the complaint.
159. Given the above, the Court considers that the overall complaint under Article 4 against Italy based on the applicant's version of events is inadmissible, as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

ii. The circumstances as established by the authorities
160. The Court notes that the authorities concluded that the facts of the case amounted to a typical marriage according to the Roma tradition. The first applicant, who was aged seventeen years and nine months at the time of the alleged marriage, never denied that she willingly married Y. She did, however, deny that any payment had been made to her father for the marriage. Nevertheless, the photos collected by the police appear to suggest that an exchange of money in fact took place. Little has been established in respect of any ensuing treatment within the household.
161. The Court therefore considers that in relation to the events as established by the authorities, again, there is not sufficient evidence indicating that the first applicant was held in slavery. Even

assuming that the applicant's father received a sum of money in respect of the alleged marriage, the Court is of the view that, in the circumstances of the present case, such a monetary contribution cannot be considered to amount to a price attached to the transfer of ownership, which would bring into play the concept of slavery. The Court reiterates that marriage has deep-rooted social and cultural connotations which may differ largely from one society to another (see *Schalk and Kopf v. Austria*, no. 30141/04, § 62, ECHR 2010). According to the Court, this payment can reasonably be accepted as representing a gift from one family to another, a tradition common to many different cultures in today's society.

162. Neither is there any evidence indicating that the first applicant was subjected to "servitude" or "forced or compulsory" labour, the former entailing coercion to provide one's services (see *Siliadin*, cited above § 124) and the latter bringing to mind the idea of physical or mental constraint. What there has to be is work "exacted ... under the menace of any penalty" and also performed against the will of the person concerned, that is work for which he or she "has not offered himself or herself voluntarily" (see *Van der Mussele*, cited above, § 34, and *Siliadin*, cited above § 117). The court observes that despite the first applicant's testimony claiming that she was forced to work, the third applicant explained in her complaint of 24 May 2003 that her family had been employed to do housework.

163. Furthermore, according to the Court the *post facto* medical records submitted are not sufficient to determine beyond reasonable doubt that the first applicant actually suffered some form of ill-treatment or exploitation as understood in the definition of trafficking. Neither can the Court consider that the sole payment of a sum of money suffices to consider that there had been trafficking in human beings. Nor is there evidence suggesting that such a union was contracted for the purposes of exploitation, be it sexual or other. Thus, there is no reason to believe that the union was undertaken for purposes other than those generally associated with a traditional marriage.

164. The Court notes with interest the Parliamentary Assembly of the Council of Europe's resolutions (see Relevant international texts above) showing concern in respect of Roma women in the context of forced and child marriages (the latter defined as the union of two persons at least one of whom is under 18 years of age) and it shares these apprehensions. The Court, however, notes that the resolutions airing such concerns and encouraging action in this respect are dated 2005 and 2010 and therefore at the time of the alleged events not only was there not any binding instrument, as remains the case to date, but in actual fact there was not enough awareness and consensus among the international community to condemn such actions. The prevailing document at the time (which was not ratified by Italy or Bulgaria) was the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) which determined that it was for the States to decide on an age limit for contracting marriage and allowed a dispensation as to age to be given by a competent authority in exceptional circumstances. This trend is reflected in the legislation of many of the member States of the Council of Europe which consider eighteen years to be the age of consent for the purposes of marriage, and provide for exceptional circumstances whereby a court or other authority (often on consulting the guardians) may allow a marriage to be contracted by a person who is younger (for example, Azerbaijan, Bulgaria, Croatia, Italy, Hungary, Malta, San Marino, Serbia, Slovenia, Spain, Sweden), the most common being at least sixteen years of age.

165. The Court notes that in 2003, when the first applicant appears to have undertaken this union, she was a few months away from adulthood. Indeed under Italian legislation, it is perfectly legal for a person aged sixteen or more to have consensual sexual intercourse (see by implication article 609 quarter in paragraph 40 above), even without the consent of the parent, and he or she may also leave the family home with the consent of the parents. Moreover, in the instant case there is not sufficient evidence indicating that the union was forced on the first applicant who had not testified that she had not consented to it and who emphasized that Y. had not forced her to have sexual intercourse with him. In this light it cannot be said that the circumstances as established by the authorities raise any issue under Article 4 of the Convention.

166. Accordingly, this part of the complaint under this provision, against Italy, is inadmissible as being manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

(b) The complaint against Bulgaria
167. The Court notes that had any alleged trafficking commenced in Bulgaria it would not be outside the Court's competence to examine whether Bulgaria complied with any obligation it may have had to take measures within the limits of its own jurisdiction and powers to protect the first applicant from trafficking and to investigate the possibility that she had been trafficked (see *Rantsev*, cited above § 207). In addition, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories (see *Rantsev*, cited above, § 289).
168. However, whether the matters complained of give rise to the Bulgarian's State responsibility in the circumstances of the present case is a question which falls to be determined by the Court according to its examination of the merits of the complaint.
169. The Court has already established, above, that in respect of both the version of the events, the circumstances of the case did not give rise to human trafficking, a situation which would have engaged the responsibility of the Bulgarian State, had any trafficking commenced there. Moreover, the applicants did not complain that the Bulgarian authorities did not investigate any potential trafficking, but solely that the Bulgarian authorities did not provide them with the required assistance in their dealings with the Italian authorities. As suggested above in paragraph 119 *in fine*, the Court considers that the Bulgarian authorities assisted the applicants and maintained constant contact and co-operation with the Italian authorities.
170. It follows that the complaint under Article 4 against Bulgaria is also manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

III. Alleged violation of Article 14 of the Convention
171. The applicants further complained that the treatment they suffered was due to their Roma origin. They relied on Article 14 of the Convention, which reads as follows:
"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."
172. The applicants submitted that they had been discriminated against by the authorities in the handling of their case. They noted that the fact that the offenders they accused had also been Roma had no relevance, since Roma of Serbian origin were wealthy enough to get away scot free after having made arrangements with corrupt police agents.
173. The Italian Government considered that had the applicants been discriminated against, no investigation would have ensued. However, as explained above, a full investigation had been undertaken and the conclusions of the authorities had been justified on the basis of an objective and reasonable approach.
174. The Bulgarian Government submitted that their authorities had taken prompt, adequate and comprehensive measures to protect the interests of the applicants, as confirmed by the evidence provided by the CRD. They noted that the database of the Ministry of Foreign affairs did not store data in relation to ethnicity. Thus, there could be no allegation that the applicants had been subjected to discriminatory attitudes due to their ethnic origin. Moreover, they noted that the family accused by the applicants of such treatment was of the same ethnicity, which in itself dispelled any ideas of a difference in treatment.
175. The Court's case-law on Article 14 establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment. (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII).
176. The Court further recalls that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played

a role in the events. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use its best endeavours and is not absolute; the authorities must do what is reasonable in the circumstances of the case (see *Nachova and others*, cited above, § 160).

177. Faced with the applicants' complaint under Article 14, the Court's task is to establish first of all whether or not racism was a causal factor in the circumstances leading to their complaint to the authorities and in relation to this, whether or not the respondent State complied with its obligation to investigate possible racist motives. Moreover, the Court should also examine whether in carrying out the investigation into the applicants' allegation of ill-treatment by the police, the domestic authorities discriminated against the applicants and, if so, whether the discrimination was based on their ethnic origin.

178. As to the first limb of the complaint, the Court notes that even assuming the applicants' version of events was truthful, the treatment they claim to have suffered at the hands of third parties cannot be said in any way to have racist overtones or that it was instigated by ethnic hatred or prejudice because the alleged perpetrators belonged to the same ethnic group as the applicants. Indeed, the applicants did not make this allegation to the police when they complained about the events related to the Serbian family. It follows that there was no positive obligation on the State to investigate such motives.

179. As to the second limb, namely whether the domestic authorities discriminated against the applicants on the basis of their ethnic origin, the Court notes that while it has already held above that the Italian authorities failed to adequately investigate the applicants' allegations, from the documents submitted, it does not transpire that such failure to act was a consequence of discriminatory attitudes. Indeed, there appears to be no racist verbal abuse by the police during the investigation, nor were any tendentious remarks made by the prosecutor in relation to the applicants' Roma origin throughout the investigation or by the courts in the subsequent trials. Moreover, the applicants did not accuse the authorities of displaying anti-Roma sentiment at the relevant time.

180. Accordingly, in so far as the complaint is directed against Italy, it is manifestly ill-founded, and is to be rejected according to Article 35 §§ 3 and 4 of the Convention.

181. The Court considers that no such complaint has been directed against Bulgaria, and even if it were, the complaint is manifestly ill-founded and is to be rejected according to Article 35 §§ 3 and 4 of the Convention.

IV. Other alleged violations of the Convention

182. Lastly, the applicants complained that the first and third applicants were not provided with lawyers and interpreters during their questioning, were not informed in what capacity they were being questioned, and were forced to sign documents the content of which they were unaware. They invoked Article 13 of the Convention.

183. The Court considers that the complaint in so far as Article 13 is invoked is misconceived and would more appropriately be analysed under Article 6.

184. However, the Court reiterates that a person may not claim to be a victim of a violation of his right to a fair trial under Article 6 of the Convention which, according to him or her, took place in the course of proceedings in which he or she was acquitted or which were discontinued (see *Osmanov and Husseinov v. Bulgaria* (dec.), nos. 54178/00 and 59901/00, 4 September 2003, and the case-law cited therein).

185. The Court notes that the proceedings against the first applicant were discontinued (see paragraph 29 above) and that the third applicant was acquitted by a judgment of 8 February 2006 (see paragraph 32 above). The Court therefore considers that in these circumstances the two applicants cannot claim to be victims of a violation of their right to a fair trial under Article 6.

186. It follows that this complaint must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

V. Application of Article 41 of the Convention

187. 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."

188. Although a request for just satisfaction (EUR 200,000) was made when the applicants lodged their application, they did not submit a claim for just satisfaction when requested by the Court. Accordingly, the Court considers that there is no call to award them any sum on that account.

For these reasons, the Court

1. *Declares* unanimously the complaints concerning the lack of adequate steps to prevent the first applicant's ill-treatment by the Serbian family by securing her swift release and the lack of an effective investigation into that alleged ill-treatment, by the Italian authorities, admissible and the remainder of the application inadmissible;

2. *Holds* by 6 votes to 1 that there has not been a violation of Article 3 of the Convention in respect of the steps taken by the authorities to release the first applicant;

3. *Holds* unanimously that there has been a violation of Article 3 of the Convention in so far as the investigation into the first applicant's alleged ill-treatment by private individuals was not effective;

Dissenting opinion of Judge Kalaydjieva

Together with my esteemed colleagues, I am "struck by the fact that following the first applicant's release, it took the authorities less than a full day to reach their conclusions" (paragraph 104) and discontinue any further investigation into the applicants' complaints. These complaints involved ill-treatment and non-consensual sexual acts with a minor, which allegedly lasted one month and took place in a villa owned by a person with a criminal record. The Court was unanimous in finding that "had they been proved, [some of the acts complained of] could have amounted to human trafficking" and -further on - that no investigation had taken place.

What I find even more striking in the present case is the fact that having raided the villa, where the first applicant was allegedly held against her will, and released her seventeen days after obtaining information that the mother feared that her daughter might be subjected to forced prostitution, the authorities decided not only to dismiss these complaints without any further enquiries, but also to immediately institute criminal proceedings against the seventeen-year-old girl and her mother for perjury and false accusations to the effect "that X., Y. and Z. [had] deprived [the minor] of her liberty by keeping her in the villa, thus accusing them of kidnapping while knowing they were innocent" (paragraph 30).

It appears somewhat illogical that having "opined that the circumstances of the present case concerned a Roma marriage", the authorities nonetheless undertook protective measures by placing the girl in a Caritas shelter and then handing her into her mother's care, instead of leaving her free to happily rejoin her "husband" after an action apparently regarded as an unnecessary interference in their peaceful family affairs.

I find it alarming that, after receiving further detailed and insistent complaints from the applicants (paragraphs 16 and 25) through the Bulgarian embassy in Rome, the Italian authorities insisted on proceeding with the accusations against the applicants rather than investigating the circumstances complained of. It is difficult to avoid the impression that this was done in an attempt to actively disprove not only the purposes for which the minor had allegedly been forcefully held in the villa, but also the very fact of the unlawful deprivation of liberty, from which they released her. Indeed, the respondent Italian Government relied on the proceedings instituted for perjury to convince the Court that "the facts as alleged by the applicants had been entirely disproved during domestic proceedings" (paragraph 90) and that the "traditional marriage" understanding of the events had been considered "truthful by the judgment of the Turin Investigating Magistrate" in discontinuing the proceedings against the first applicant as well as found "probable by the Turin Tribunal in its judgment of 2006" acquitting the third applicant (paragraphs 92 and 93). In fact, the judge of the Turin Tribunal found the photographs of the "marriage" to depict a scene that was rather grim for Roma traditions. Acting in proceedings *in absentia*, where the third applicant was neither summoned to appear, nor able to defend herself, or explain the circumstances, he dismissed the accusations of perjury and false accusations against her, noting also that X., Y. and Z. had availed themselves of their right to remain silent in the "false accusations of kidnapping", allegedly raised by the mother.

The applicants' allegations of ill-treatment by the Italian authorities were not limited to the failure to undertake timely action for the release and protection of a minor, as suggested by paragraphs 102-108 of the judgment. In this regard I see no reason to join the majority in their approval of the "promptness and diligence" (paragraph 102) displayed in an action which the national authorities themselves deemed unnecessary and caused by false assertions.

Nor were the applicants' complaints about the manner in which they were allegedly questioned separated from those concerning the attitude of the Italian authorities – as examined in paragraphs 115-118. In this regard, the very fact that the criminal proceedings for perjury and false accusations were instituted a few hours after the allegedly threatening interrogations suffices to support a conclusion that the threats were quite realistic.

The applicants' submissions about ill-treatment by the authorities concerned the overall approach of the Italian investigation authorities to their complaints. Seeing that they were not only dismissed without any enquiries, but were also followed by an attempt to actively disprove them, I cannot come to any explanation for this treatment other than an assumption on the part of the authorities that the applicants had been telling lies from the outset. This assumption transpires from the reluctance to organise the timely release of the minor, the manner in which she and her mother were hastily questioned under threat and the immediate (but unsuccessful) institution of proceedings for perjury in an attempt to establish that their complaints were nothing but false accusations, made while knowing that X., Y. and Z. were innocent.

This explanation appears to be more reasonable than that offered to the Court, namely, that the "Italian authorities opined that the circumstances of the present case fell within the context of a Roma marriage". Even if correct (and I would venture to doubt it), such an "opinion" could not reasonably explain the manner in which the authorities dealt with the applicants' complaints of ill-treatment, non-consensual sex, forced participation in criminal activities, etc., unless it is seen as an understanding that a Roma marriage constituted an agreement of the parents to sell a bride "for all purposes".

I find myself unable to accept either of these two explanations for the manner in which the authorities dealt with the applicants' complaints and find each of them to be based on equally inappropriate assumptions.

NOOT

1. Dit arrest betreft een klacht op grond van art. 4 EVRM en raakt in belangrijke mate aan het fenomeen mensenhandel. Alleen al het tot nu toe beperkte aantal uitspraken van het Hof over art. 4 EVRM in dit verband noopt tot bespreking van dit – nog niet definitieve – arrest. Uit de eerste zaak voor het Europees Hof met betrekking tot art. 4 EVRM, *Siliadin* t. *Frankrijk* (EHRM 26 juli 2005, nr. 73316/01, «EHRC» 2005/103 m.nt. Van der Velde, «JV» 2005/425 m.nt. Lawson), volgde onder meer dat een verdragsstaat bij het EVRM aansprakelijk gehouden kan worden voor een schending van art. 4 EVRM door een particulier. In die zaak oordeelde het Hof dat het Franse strafrecht een minderjarig en illegaal verblijvend meisje uit Togo, dat onder zeer slechte omstandigheden in een huishouden in Frankrijk werkte, niet voldoende en effectief beschermde tegen de dienstbaarheid waaraan zij was onderworpen door de familie waar ze bij inwoonde en moest werken. Over deze materie gaat ook *C.N. en V.* t. *Frankrijk*, EHRM 11 oktober 2012, nr. 67724/09. In deze zaak was zelfs sprake van een familierelatie tussen slachtoffer en uitbuiters. In *C.N.* t. *Verenigd Koninkrijk* betrof het, net als in de hierboven afgedrukte zaak *M.,* huishoudelijk werk; ook in deze zaak constateerde het Hof een schending van art. 4 EVRM. In het arrest *Rantsev* t. *Cyprus en Rusland* (EHRM 7 januari 2010, nr. 25965/04, «EHRC» 2010/29 m.nt. Timmer), bracht het EHRM mensenhandel binnen het bereik van art. 4 EVRM en formuleerde het bovendien een aantal verplichtingen van lidstaten van de Raad van Europa met betrekking tot de aanpak van mensenhandel. Die positieve verplichtingen, die niet alleen bestaan uit opsporing en vervolging, maar ook uit preventie, bescherming van slachtoffers en internationale samenwerking, gelden zowel ten aanzien van bronlanden en transitlanden als voor bestemmingslanden (zie hierover A. Beijer, 'Rantsev v. Cyprus en Rusland, Een korte schets van de situatie in Nederland wat betreft mensenhandel', *Ars Aequi* 2010,

p. 684-691; M. Boot-Matthijssen, 'Artikel 4 en de aanpak van mensenhandel', *Nederlands Tijdschrift voor de Mensenrechten/NJCM-Bulletin* 2010, p. 501-519). Mensenhandel speelt zich echter niet alleen af in de seksindustrie en het huishoudelijk werk; ook in andere economische sectoren zoals horeca en land- en tuinbouw worden mensen uitgebuit (zie hierover Nationaal Rapporteur Mensenhandel, *Achtste rapportage mensenhandel*, Den Haag 2010).

2. In de onderhavige zaak veroordeelt het Hof Italië voor een schending van art. 3 EVRM vanwege de gebrekkige effectiviteit van het onderzoek door de Italiaanse autoriteiten naar de klacht dat M, minderjarig op het moment waarop de relevante feiten speelden, herhaaldelijk was geslagen en verkracht in de villa. De klagers stellen dat zij naar Italië zijn gegaan na een belofte van werk maar dat daar niets van terechtkwam, en dat M bedreigd werd en gedwongen om mee te doen aan berovingen en seksuele activiteiten toen ze in Italië verbleef. Hoewel deze feiten niet vast zijn komen te staan, kan het Hof niet uitsluiten dat de feiten zoals klagers die naar voren brengen indien bewezen, mensenhandel hadden kunnen opleveren zoals in internationale verdragen gedefinieerd, "which undoubtedly also amounts to inhuman and degrading treatment under art. 3 of the Convention" (par. 106). Mensenhandel wordt hier dus benoemd als een onmenselijke en vernederende behandeling in de zin van art. 3 EVRM.

3. Het Hof oordeelt – op grond van art. 3 EVRM – dat de Italiaanse autoriteiten de plicht hadden om zich in de zaak te verdiepen en alle relevante feiten boven water te krijgen door gedegen onderzoek, waarbij ook dit aspect van de aangifte had moeten worden onderzocht. Dat was niet het geval, de Italiaanse autoriteiten waren immers na het zien van de trouwfoto's en een paar verklaringen uitgegaan van een Roma-huwelijk. Het Hof acht deze conclusie echter onvoldoende reden om alle twijfel weg te nemen over de vraag of deze omstandigheden op mensenhandel zouden duiden. Het wegnemen van die twijfel zou een bijzonder grondig onderzoek vereisen, en een mogelijk Roma-huwelijk kan geen reden zijn om de omstandigheden van deze zaak niet verder te bekijken (par. 106). De Italiaanse autoriteiten hebben volgens het Hof wel heel snel besloten om dit niet te doen. Dat had onder meer tot gevolg dat geen medisch bewijs is gezocht met betrekking tot de fysieke conditie van M. Daarom oordeelt het Hof dat het onderzoek naar de slechte behandeling – door particuliere personen – niet effectief was zoals art. 3 EVRM vereist.

4. Het Hof acht een onderzoeksplicht naar de vermeende mensenhandel van belang op grond van art. 3 EVRM. Het Hof komt vervolgens niet toe aan de behandeling van de klachten op grond van art. 4 EVRM. De klagers hadden gesteld dat de behandeling van M door de Servische familie en het feit dat M gedwongen was deel te nemen aan roven en stelen, een schending van art. 4 EVRM oplevert. Het Hof verklaart de klacht niet-ontvankelijk. Het vaststellen van slachtofferschap van mensenhandel was niet mogelijk aldus het Hof, nu de Italiaanse rechter had geoordeeld dat het onmogelijk was om de feiten duidelijk vast te stellen. Dat is naar het oordeel van het Hof begrijpelijk omdat de Italiaanse autoriteiten een beperkt aantal mensen hadden ondervraagd. Op grond van de overgelegde trouwfoto's zijn de autoriteiten vervolgens uitgegaan van een traditioneel Roma-huwelijk. Het Hof benadrukt hier dat het zich geconfronteerd ziet met een discussie over de precieze aard van de gebeurtenissen. Er is dan ook niet genoeg bewijs voor mensenhandel en daarom komen ook niet de (positieve) verplichtingen op grond van art. 4 EVRM aan de orde (par. 155). En of er nu wel of niet een reëel of onmiddellijk risico was dat dochter M slachtoffer was van mensenhandel: ze is bevrijd door de Italiaanse politie, zoals het Hof al had vastgesteld. Nu het Hof al een schending van art. 3 EVRM heeft vastgesteld oordeelt het Hof dat het niet nodig is dezelfde klacht op grond van art. 4 te onderzoeken (par. 156-158).

5. Op dezelfde dag dat dochter M werd bevrijd en gehoord door de Italiaanse autoriteiten, werden de strafrechtelijke procedures die tegen de vermeende daders waren ingesteld, omgezet in strafrechtelijke procedures tegen dochter M zelf en haar moeder voor het doen van een valse aangifte van onder meer ontvoering. Het verbaast het Hof dat het na de bevrijding van M de Italiaanse autoriteiten minder dan een dag heeft gekost om tot hun conclusies te komen. Niettemin merkt het Hof op dat het feit dat de klagers waren gewaarschuwd over de mogelijkheid dat zij zouden worden vervolgd als ze de waarheid niet zouden spreken "may be considered to be

part of the normal duties of the authorities when questioning an individual, and not an unlawful threat" (par. 117). Uit de *dissenting opinion* van rechter Kalaydjieva blijkt haar twijfel over de werkelijke gang van zaken en het vermoeden van vooringenomenheid van de Italiaanse autoriteiten. Omdat de klachten van de Bulgaarse Roma-familie zonder enige navraag niet alleen waren afgewezen, maar hierop ook een poging volgde om de klachten actief te weerleggen, kon zij tot geen andere verklaring voor deze behandeling komen dan dat de Italiaanse autoriteiten ervan uit moeten zijn gegaan dat de klagers vanaf het begin hadden gelogen. Nu Italië echter geen nader onderzoek heeft gedaan naar de feiten, inclusief de mogelijke mensenhandel, kon de Italiaanse justitie binnen een dag aan de slag met nader strafrechtelijk onderzoek naar dochter M en haar moeder. Over de behandeling van de politie waren i.c. op nationaal niveau ook geen klachten ingediend en dus waren met betrekking tot deze klacht bij het Hof niet alle nationale rechtsmiddelen uitgeput. Uiteindelijk leidt het oordeel van het Hof op dit punt echter tot een onbevredigende uitkomst. Als Italië aan zijn onderzoeksplicht had voldaan, is het twijfelachtig of een adequaat strafrechtelijk onderzoek naar mogelijke mensenhandel, ook als sprake zou zijn geweest van weinig opsporingsindicaties, binnen een paar uur afgerond had kunnen zijn met de conclusie dat sprake was van een valse aangifte.

6. De uitspraak draait om het (vermeende) Roma-huwelijk. Ten aanzien van het betalen van een bruidsschat overweegt het Hof dat, gezien de omstandigheden van de zaak, zo'n geldelijke bijdrage niet beschouwd kan worden als een prijs met betrekking tot de overdracht van eigendom, zoals bij slavernij. "The Court reiterates that marriage has deep-rooted social and cultural connotations which may differ largely from one society to another [...] this payment can reasonably be accepted as representing a gift from one family to another, a tradition common to many different cultures in today's society" (par. 161). Louter het betalen van een som geld is dan ook onvoldoende om ervan uit te gaan dat sprake is van mensenhandel, "[n]or is there evidence suggesting that such a union was contracted for the purpose of exploitation, be it sexual or other" (par. 163). Er is naar het oordeel van het Hof geen reden om te veronderstellen dat het huwelijk i.c. voor een ander doel was gesloten dan een traditioneel huwelijk.

7. Het is met name de vraag hoe cultuur en tradities – zoals bij een Roma-huwelijk, als er al sprake zou zijn van een eenvormige Roma-cultuur en -traditie – zich verhouden met de kernwaarden die in art. 4 (en art. 3) EVRM besloten liggen. Het Hof noemt een aantal resoluties van de Parlementaire Assemblee van de Raad van Europa uit 2005 en 2010, waarin zorg wordt geuit, ook specifiek ten aanzien van Roma-vrouwen en -meisjes, over gedwongen huwelijken en kindhuwelijken die hierin worden beschouwd als schendingen van fundamentele mensenrechten. Het Hof legt deze resoluties echter terzijde. Volgens het Hof waren ten tijde van de vermeende feiten hieromtrent geen juridisch bindende instrumenten van kracht en ontbrak consensus binnen de internationale gemeenschap om zulks te veroordelen.

8. Een Roma-huwelijk kan onder omstandigheden een gedwongen huwelijk zijn. Daarbij moet worden aangetekend dat de term 'gedwongen huwelijk' niet eenduidig is. Zo worden in Nederland verschillende vormen van gedwongen huwelijken onderscheiden, variërend van gedwongen gearrangeerde huwelijken tot kindhuwelijken (A. Cornelissens, J. Kuppens en H. Ferwerda, *Huwelijksdwang. Een verbintenis voor het leven? Een verkenning van de aard en aanpak van gedwongen huwelijken in Nederland*, Den Haag: WODC 2009). Een daadwerkelijk gedwongen huwelijk wordt internationaal gezien als een vorm van geweld tegen vrouwen en meisjes. In het in 2011 tot stand gekomen Verdrag van de Raad van Europa ter bestrijding van geweld tegen vrouwen worden partijen verplicht het dwingen van een vrouw of meisje tot een huwelijk strafbaar te stellen (Raad van Europa, Verdrag ter preventie en bestrijding van geweld tegen vrouwen en huiselijk geweld, CM(2011)49 final, art. 37 (nog niet in werking getreden); zie ook *Kamerstukken I* 2012/13, 32 840 A, Verruiming strafrechtelijke aanpak huwelijksdwang, polygamie en vrouwelijke genitale verminking; dit wetsvoorstel is op 23 oktober 2012 met algemene stemmen door de Tweede Kamer aangenomen).

9. Een gedwongen huwelijk kan onder omstandigheden zelfs een met slavernij vergelijkbare praktijk in de zin van mensenhandel zijn. Het

VN-Palermo Protocol bevat een niet-limitatieve opsomming van vormen van uitbuiting, waaronder met slavernij vergelijkbare praktijken (het Protocol inzake de voorkoming, bestrijding en bestraffing van mensenhandel, in het bijzonder vrouwenhandel en kinderhandel tot aanvulling van het Verdrag van de Verenigde Naties tegen grensoverschrijdende georganiseerde misdaad, New York, 15 november 2000, *Trb*. 2001, 69). In deze context is ook de modelwetgeving van belang die door het United Nations Office on Drugs and Crime (UNODC) in 2009 is ontwikkeld ter implementatie van het VN-Palermo Protocol. Deze modelwetgeving noemt een gedwongen huwelijk expliciet als mogelijke vorm van mensenhandel (UNODC Model Law Against Trafficking in Persons, 2009, p. 16). Het gaat hierbij om een instituut of praktijk waarbij "(i) A woman [person] or child without the right to refuse is promised or given in marriage on payment of a consideration in money or in kind to her [his] parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family or his clan has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person". Bron van deze formuleringen is oorspronkelijk art. 1 van het Aanvullende Verdrag inzake de afschaffing van slavernij, de slavenhandel en met slavernij gelijk te stellen instellingen en praktijken (Genève, 7 september 1956, *Trb*. 1957, 118). Hoewel een gedwongen huwelijk niet noodzakelijkerwijs wordt gesloten met het oogmerk van uitbuiting, wordt het, als sprake is van een materiële wederprestatie, in voornoemd Aanvullend Verdrag benoemd als een met slavernij vergelijkbare praktijk. Dit verdrag is door Italië op 12 februari 1958, en door Bulgarije op 21 augustus 1958 geratificeerd. Het is vreemd dat het Hof dit verdrag niet noemt in het hoofdstuk met de voor deze uitspraak relevante internationale verdragen en andere bronnen, en dus ook niet in relatie tot art. 4 EVRM.

10. Als belangrijkste verdrag ("prevailing document at the time") in relatie tot het Roma-huwelijk noemt het Hof de *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (New York, 10 december 1962, *Trb*. 1964, 55), dat het aan staten overlaat om de leeftijdsgrens voor het huwelijk te bepalen. Dit verdrag is echter niet geratificeerd door Italië, noch door Bulgarije. Daarnaast wordt dit verdrag in de literatuur beschreven als het hebben van "all the bite of a toothless man without its dentures" als het om de bescherming van kinderen tegen kindhuwelijken gaat (E. Warner, 'Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls', 12 *Journal of Gender, Social Policy & The Law* 2004, p. 233-271, op p. 250). Dochter M in deze zaak was minderjarig; 17 jaar en negen maanden, aldus de Italiaanse autoriteiten en zoals verwoord door het Hof "a few months away from adulthood" (par. 165). Het is de vraag of de leeftijdsgrens van seksuele meerderjarigheid waar het Hof vervolgens naar verwijst – zestien jaar in Italië – het meest relevante criterium is om een oordeel te vellen over het karakter van het onderhavige huwelijk. Het oordeel van het Hof op dit punt is in ieder geval lastig te volgen, ook in het licht van een eerdere overweging in het arrest waarin het Hof zich bezorgd toont over de minderjarigheid van dochter M en daarbij aangeeft dat kinderen en andere kwetsbare personen recht hebben op effectieve bescherming (par. 105). In de context van een huwelijk blijft minderjarigheid kennelijk een relatief begrip waarbij de grens niet per se bij achttien jaar ligt. Vanuit het perspectief van de aanpak van mensenhandel is de leeftijdsgrens van achttien jaar voor het bepalen van meer- en minderjarigheid echter een absolute, zo ook in het Verdrag van de Raad van Europa inzake de bestrijding van mensenhandel (Warschau, 16 mei 2005, *Trb*. 2006, 99) waarin een kind wordt gedefinieerd als iedere persoon jonger dan achttien jaar, evenals in de EU-Richtlijn mensenhandel van 5 april 2011 (EU-Richtlijn 2011/36/EU inzake voorkoming en bestrijding van mensenhandel, *PbEU* 2011, L 101/1). In laatstgenoemd document worden kinderen zelfs benoemd als bijzonder kwetsbare personen, en geldt voor hen dan ook een aantal beschermende bepalingen.

11. In Nederland is in ieder geval één zaak bekend waarin een verdachte terechtstond omdat hij volgens het OM een bruid had gekocht en het oogmerk had het meisje, dat i.c. jonger was dan zestien jaar, uit te buiten. Een met slavernij vergelijkbare praktijk is één van de genoemde vormen van uitbuiting in het mensenhandelartikel 273f lid 2 Sr, conform het VN Palermo Protocol. Zowel de verdachte als het vermeende slachtoffer hadden in deze zaak verklaard dat er

bij Roma regels zijn voor het kopen van een bruid, waarbij werd verwezen naar het uit 2006 daterende boek van M. Eycken, *Roma-zigeuners overleven in een industriële samenleving*. Verdachte had zich niet gehouden aan de regels beschreven in dit werk. Daarom concludeerde het OM dat verdachte wist dat het huwelijk niet vrijwillig was en dat hij het oogmerk had zich een vijftienjarig meisje toe te eigenen als zijn eigendom en haar in een van hem en zijn familie afhankelijke situatie te houden. Verdachte had – aldus het OM – het meisje vervoerd in zijn auto, gehuisvest in het huis van zijn moeder, seks met haar gehad en haar identiteitsbewijs afgenomen, dit alles met het oogmerk van uitbuiting. De rechtbank sprak verdachte vrij van mensenhandel, onder meer omdat het meisje en verdachte beiden hadden verklaard dat het in de Roma-cultuur gebruikelijk is om geld te betalen voor een bruid. Ook hadden beiden verklaard dat verdachte niet op de hoogte was van het feit dat het meisje (aangeefster) niet wilde. De rechtbank oordeelt vervolgens: "Wat er ook zij van de wijze waarop verdachte een huwelijkspartner heeft gezocht niet is gebleken dat verdachte enige opzet had [betrokkene] tegen haar wil aan zich te binden. Evenmin is gebleken van enige dwang of misleiding. De rechtbank is tevens van oordeel dat de moeder van verdachte niet het oogmerk had om [betrokkene] gevangen te houden. Dat zij in het bezit was van haar identiteitsbewijs, impliceert niet zonder meer dat deze als zekerheidstelling werd gebruikt" (Rechtbank Utrecht 28 december 2009, LJN: BK8230). Dwang is ten aanzien van minderjarige slachtoffers van mensenhandel echter geen delictsbestanddeel van art. 273f Sr (zie hierover Nationaal Rapporteur Mensenhandel, *Mensenhandel – Jurisprudentie mensenhandelzaken 2009-2012, Een analyse*, Den Haag 2012, p. 26 en 51 e.v.).

12. Dit arrest maakt in ieder geval duidelijk dat mensenhandel niet alleen tegen het licht van art. 4 EVRM moet worden gehouden, maar ook wordt gezien als een onmenselijke en vernederende behandeling in de zin van art. 3 EVRM. Een (positieve) onderzoeksplicht naar mensenhandel vloeit niet alleen voort uit art. 4 – gezien het *Rantsev*-arrest – maar ook uit art. 3 EVRM. Het feit dat het Hof i.c. de klacht op grond van art. 4 EVRM niet inhoudelijk behandelt, laat de positieve verplichtingen die uit dit verdragsartikel volgen onverlet. De plichten tot, onder meer, onderzoek en bescherming gelden niet alleen na reeds vastgestelde mensenhandelpraktijken maar ook ten aanzien van situaties waarin sprake is van *mogelijke* slachtoffers. Een belangrijke vraag blijft hoe cultuur en tradities zich verhouden met kernwaarden die in deze bepalingen besloten liggen wanneer sprake is van een huwelijk waarbij ten minste één van de partners minderjarig – jonger dan achttien jaar – is. De onderhavige uitspraak van het Europees Hof geeft hierop geen antwoord. De uitspraak is echter nog niet definitief en er is gevraagd om een hogere voorziening; mogelijk besluit het panel van vijf de zaak nog voor te leggen aan de Grote Kamer.

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Jurist, Bureau Nationaal Rapporteur Mensenhandel

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Europees Hof voor de Rechten van de Mens
28 augustus 2012, nr. 54270/10
(Tulkens (President), Popović, Berro-Lefèvre, Sajó, Raimondi, Pinto de Albuquerque, Keller, Jočienė, Karakaş)
Noot N.R. Koffeman LL.M

Privé- en gezinsleven. Algeheel verbod op pre-implantatie genetische diagnostiek. Taaislijmziekte. Incoherente wetgeving. Proportionaliteit.

[EVRM art. 8, 14]

Mw. Costa en dhr. Pavan ontdekken in 2006 bij de geboorte van hun dochter dat zij dragers zijn van cystische fibrose (taaislijmziekte). Wanneer mw. Costa in 2010 wederom zwanger raakt, laten zij de vrucht onderzoeken. Als blijkt dat deze – net als hun dochter – aan cystische fibrose lijdt, laten zij op medische gronden abortus plegen. Costa en Pavan willen nu graag een ivf-behandeling ondergaan, zodat het embryo vóór plaatsing in de baarmoeder kan worden onderzocht middels zogenoemde pre-implantatie genetische diagnostiek (PGD). Naar Italiaans recht is PGD echter verboden. Ivf-behandeling is slechts toegankelijk voor onvruchtbare paren of voor paren waarbij de man een seksueel overdraagbare aandoening heeft, zoals hiv of hepatitis B of C. Deze regelgeving heeft tot doel