



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

FOURTH SECTION

CASE OF W v. FINLAND

(Application no. 14151/02)

JUDGMENT

STRASBOURG

24 April 2007

FINAL

24/07/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of W v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 14151/02) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, (“the applicant”), on 15 March 2002. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr J. Mäkinen, a lawyer practising in Lahti. The Finnish Government (“the Government”) were represented by their Agent, Mr A. Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged that the rights of the defence in respect of witnesses, *i.e.* the child complainants, had not been respected.

4. By a decision of 17 January 2006, the Court declared the application admissible. Judge Pellonpää, who at the time of the decision sat in respect of Finland, continued to participate in the examination of the case (Article 23 § 7 of the Convention).

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The investigation

6. On 7 August 2000 a mother contacted the police on account of a suspicion that her children, a girl born in 1991 and a boy born in 1993, had been sexually abused by a neighbour, the applicant. On 10 August and 2 September 2000 the siblings were interviewed by a police officer experienced in investigating sexual abuse of children. The applicant was also suspected of having abused two other girls, both friends of the siblings and born in 1991. The girls were interviewed by the police on 11 August and 18 August respectively and again on 3 September 2000. All the interviews were recorded on videotape.

7. At the time of the first interviews, *i.e.* on the morning of 10 August 2000, the applicant had not been informed of the suspicions against him and no defence counsel had yet been appointed for him. Neither the applicant nor his counsel was present during the later interviews. The siblings and one of the other girls underwent a psychological examination in the Family Advice Centre with a view to assessing whether their testimonies during the pre-trial investigation were reliable.

8. Meanwhile, on the afternoon of 10 August 2000 the applicant was questioned by the police. Before the questioning he was notified of the suspicions against him and it appears that he did not exercise his right to have his counsel present. The applicant was in detention from that day until 7 September 2000 when travel restrictions were imposed on him. He was accompanied by counsel when questioned again on 17, 18, 19 and 23 August and 6 September 2000. He was questioned alone on 12 January 2001.

9. Prior to the close of the pre-trial investigation, in his closing statement the applicant requested, on 7 December 2000, having watched the above-mentioned video recordings, that the siblings be questioned again and that his questions be put to them about how and where they had learnt about the sexual things they had mentioned to him and, in particular, if they had been subjected to sexual acts at a place other than the applicant's home. His request was however refused on 21 January 2001. According to the Government, this was because their mother had refused to allow any further questioning of the children, now aged 7 and 9.

B. The Lahti District Court

10. The applicant was charged before the District Court (*käräjäoikeus, tingsrätten*) with having sexually abused the four children during the summer of 2000. He denied the charges. He however admitted having tapped two of the girls on their buttocks.

11. In February 2001 the District Court held an oral hearing during which the applicant, the parents of the siblings and the mothers of the other two girls gave evidence. The children were not heard in person. The videotaped interviews with the children were shown during the hearing. The court also heard evidence from a psychologist on the reliability of the statements of the siblings and of one of the other girls. The applicant did not request that the children give evidence at the hearing.

12. The mother of the siblings testified that they had told her about the improper touching in the same manner as they had done on the videotape. When the touching had become known, on 1 August 2000, her son had reacted intensely by crying and slamming doors. He had also suffered from sleeping problems and her daughter had suffered from headaches. Neither of these ailments had occurred before. According to two written opinions of the Family Advice Centre, the siblings' accounts of the events were considered credible given their detailed and precise nature. There was nothing to suggest that they were the siblings' own inventions. The mothers of the two other girls testified that they had told them about the improper touching in the same manner as they had done on the videotape.

13. In its judgment of 28 February 2001 the District Court observed that the evidence was mainly of an indirect nature and that the sole direct evidence was the testimony of a psychologist, who had testified as to the children's credibility.

14. The court noted that the applicant had argued that the main evidence in the case was flawed due to the fact that he had not been afforded an opportunity to put questions to the children and that the authorities had put leading questions to them. He had also argued that there were shortcomings insofar as the psychological examinations carried out by the Family Advice Centre were concerned. The court however found no such flaws as would significantly have reduced the evidentiary value of the examinations.

15. The court then stated that the case turned on an assessment of the credibility of the children's statements. While it was true that the pre-trial statements' probative value was weakened by the fact that the applicant had not been able to put questions to the children, these statements were nonetheless reliable as the children had provided details about the events and as their young age gave no reason to believe that they would have sought to lie about the events. Although some leading questions may have been put to the children, there was nothing to suggest that they would have sought to please the interviewer and adapted their replies accordingly. This

being so, the court found that questioning the children in court would not have added anything significant to the case. Having regard to their best interests, the questioning of children of such a young age before a court could not be considered justifiable. The court found that the testimonies of the psychologist and the parents supported the credibility of the children's accounts.

16. It convicted the applicant of having sexually abused the four children and sentenced him to two years and three months' imprisonment.

C. The Kouvola Court of Appeal

17. The applicant appealed, alleging *inter alia* a breach of Article 6 § 3 (d) of the Convention in that he had not been afforded an opportunity to put questions to the children.

18. The Court of Appeal (*hovioikeus, hovrätten*) held an oral hearing and was presented with the same evidence as had been before the District Court. The parties agreed that it was in the best interests of the children that they should not be heard before the court. The applicant however rejected the admission of the children's pre-trial statements as evidence since he had not been afforded an opportunity to put questions to them.

19. In its judgment of 6 November 2001 the Court of Appeal noted that the children had been interviewed twice during the pre-trial investigation and all but one of the girls had been examined in the Family Advice Centre using tests and interviews. As the questioning of the children, now aged 8 to 10, before the court would probably have caused them suffering, it was possible to use in evidence their pre-trial statements, although the applicant's minimum rights under, *inter alia*, Article 6 § 3 (d) of the Convention would thereby be violated. In evaluating the weight to be attached to the children's statements, the court found that it had to take into account the discrepancies pointed out by the applicant and the fact that the police had not put to the children the questions proposed by him in his pre-trial closing statement.

20. In its assessment of the evidence the appellate court reached the same conclusions as the lower court and upheld the conviction. It however reduced the sentence to one year and eight months' imprisonment, which it considered fair, having regard to the fact that the applicant had not forced the children into doing anything, the relevant sentencing practice and the fact that the applicant had no previous convictions.

D. The Supreme Court

21. The applicant requested leave to appeal, maintaining, *inter alia*, that there had been a breach of Article 6 § 3 (d) of the Convention. He did not submit any request for the children to be heard.

22. On 28 February 2002 the Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The pre-trial investigation

23. The Decree on Criminal Investigations and Coercive Measures (*asetus esitutkinnasta ja pakkokeinoista, förordning om förundersökning och tvångsmedel*; Act no. 575/1988) provides that when questioned during a pre-trial investigation the child must be treated with due respect having regard to his or her age and level of development. Where possible, the interview should be carried out by a police officer acquainted with that task. If need be, a doctor or an expert must be consulted before the interview (section 11).

24. The Criminal Investigations Act (*esitutkintalaki, förundersökningslagen*; Act no. 449/1987) provides that questioning and other investigation measures requested by a party must be carried out, if that party shows that there is a possibility that these measures could have an effect on the case, provided that the expenses so incurred are not disproportionate to the nature of the case (section 12). The competence to decide on investigation measures requested by a party lies with the head of investigation during the pre-trial investigation and with the public prosecutor after the case has been transferred to him or her (section 15(3), Act no. 692/1997). A pre-trial investigation has to be carried out in such a manner that no one is placed under suspicion without due cause and no one is unnecessarily subjected to harm or inconvenience. Nor must the rights of those concerned be infringed more than is necessary for the achievement of the purpose of the investigation (section 8).

25. The investigator may permit a party and his counsel to be present during the questioning of another party or witness, provided this does not hinder the investigation of the offence (section 32(1), Act no. 692/1997). A party and his or her counsel may, with the permission of the investigator, put questions to the person being questioned in order to clear up the case. The investigator may decide that the questions are to be put through him or her. Also, the prosecutor may put questions to the person being questioned. A party and his or her counsel have the right to request the investigator to ask the person being questioned about matters necessary for the clearing up of the case at other times also (section 34, Act no. 692/1997).

26. Before the closing of the criminal investigation, the parties must be afforded the opportunity to present to the criminal investigation authority their statement on the material gathered during the investigation, if this is

conducive to hastening or facilitating the hearing of the case in court. The statement is to be appended to the investigation record (section 42).

B. The receipt of evidence in court

27. The Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) lays down the applicable rules on receiving testimony.

28. A statement in a pre-trial investigation record or another document may as a rule not be admitted as evidence in court. The court may exceptionally admit such a statement as evidence, if the witness in question cannot be questioned before the court (chapter 17, Article 11; Act no. 690/1997). A witness must give testimony orally before the court and must not refer to a written testimony. Oral evidence given during a pre-trial investigation may be read out when the witness in question is heard by the court only if he or she retracts in court an earlier statement or states that he or she is unable or unwilling to testify before the court (chapter 17, Article 32; Act no. 571/1948).

29. If a person called as a witness is less than 15 years of age, is mentally ill or mentally retarded, or his or her mental capacities have otherwise been impaired, the court shall, taking into consideration the circumstances, assess whether or not he or she may be heard as a witness (Chapter 17, Article 21). Although the hearing of evidence from children falls within the court's discretion, there has been a long-standing practice not to hear evidence in court from children under the age of ten.

30. At the time of the proceedings in question, there were no legal provisions concerning the use as evidence of a video recording of a statement given by a child during the pre-trial investigation. There was however a practice to admit such recordings as evidence.

C. Subsequent amendments

31. The Code of Judicial Procedure was amended with effect from 1 October 2003 to the effect that the testimony of a person under 15 years of age, or a mentally disturbed person, recorded on audio or videotape during a pre-trial investigation may be used as evidence if the accused has been provided with an opportunity to have questions put to the person giving the testimony (chapter 17, Article 11(2); Act no. 360/2003). According to the explanatory report to the relevant Government Bill (no. 190/2002), this new provision places emphasis on both the idea that giving testimony before the court may be detrimental to *inter alia* a child and on the importance of respecting the rights of the defence.

32. Chapter 17, Article 21 (as amended by Act no. 360/2003) of the Code of Judicial Procedure reads with effect from 1 October 2003 as follows:

“(1) A person who has not attained the age of fifteen or whose mental capacities have been impaired, may be heard as a witness or for the purpose of obtaining evidence if the court finds it appropriate and:

(i) if the hearing in person is of significant relevance for the establishment of the facts of the case; and

(ii) the hearing is not likely to cause such suffering or other harm to the person to be heard as could be detrimental to the person concerned or his or her development.

(2) Where necessary, the court shall designate a support person for the person to be heard, pursuant to the provisions of chapter 2 of the Criminal Procedure Code (Act no. 689/1997).

(3) The person to be heard shall be questioned by the court, unless the court finds particular reason to entrust the questioning to the parties in accordance with the provisions of section 33. The parties shall be provided with an opportunity to put questions to the person to be heard through the intermediary of the court or, if the court finds it appropriate, directly to the person concerned. Where necessary, the hearing may take place on premises other than the court room.”

33. In 2003, the Criminal Investigations Act was supplemented with a new section 39a (Act no. 645/2003) that entered into force on 1 January 2004 and reads as follows:

“The questioning of a victim or a witness must be recorded on videotape, or by using other comparable audio-visual means of recording, if there is an intention to use the statement given in the interview as evidence in court proceedings, and where it is not possible to hear the victim or the witness in person, due to his or her young age or mental disturbance, without causing likely harm to him or her. The special requirements set by the level of maturity of the questioned person for the methods used, for the number of participating persons, and for other conditions, must be taken into account in the questioning. The person in charge of the criminal investigation may decide that authorities other than the investigators may, under the supervision of the investigator, put the questions to the person being interviewed. The suspect must be provided with an opportunity to put questions to the questioned person. On the request of the suspect, he or she may also put the questions through a legal counsel or other representative. However, the investigator may order that the questions be put through his or her intermediary.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained, under Article 6 §§ 1 and 3 (d) of the Convention, that he had been denied a fair hearing in that he had not been afforded an opportunity to put questions to the witnesses against him, *i.e.*

the children, and in that the police officer conducting the pre-trial investigation had put leading questions to two of the children, which affected their opinion of what had taken place.

Article 6 reads, in so far as relevant:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”

A. The parties' submissions

35. The applicant maintained that prior to the close of the pre-trial investigation he had unsuccessfully requested that the siblings be questioned again. He contested the Government's allegation that he had waived his right to examine the witnesses against him. As it had been clear from the outset that a Finnish court would never have children under the age of ten appear in court, any request to that effect would not have succeeded. The applicant made reference to *S.N. v. Sweden* (no. 34209/96, ECHR 2002-V), in which it was noted that children under the age of ten were not heard before Swedish courts either.

36. The applicant contested the Government's allegation that his own account of the events had disclosed indications of improper touching.

37. The applicant considered that his case bore certain similarities to *S.N. v. Sweden* (cited above) but was different in that the defence counsel in *S.N. v. Sweden* had been afforded an opportunity to have questions put to the child during the investigation whereas in his case no such opportunity had been given.

38. The Government emphasised that the applicant had not requested that the children be heard in the District Court. In the Court of Appeal he had even agreed that it was in their best interests that they should not appear in court. Nor had he requested that they be heard before the Supreme Court. He could therefore be considered to have waived his right in this connection.

39. The Government submitted that the children in the present case had been harmed to a much lesser extent by the interviews at the pre-trial stage than they would have been had they appeared in court. The domestic authorities had sought to respect the rights of the defence in that the children

had been videotaped when they gave their statements during the pre-trial investigation. The tapes had been shown during the court proceedings, enabling the courts to establish how the children had behaved when giving their statements. In this way the applicant had been able to examine the evidence against him and make comments on it.

40. The Government considered that the courts had paid close attention to the assessment of the credibility of the children's statements and to the fact that the applicant had not been given an opportunity to put questions to them. The Court of Appeal had even reduced the applicant's sentence on this ground. The parents of the siblings, the mothers of the two other girls and a psychologist had testified about the conduct of the children and as to whether the children were reliable. Accordingly, the video recordings were not the only evidence in the case. Also, the applicant's own account of the events, such as the improper touching of the children, the relevance of which he had contested, had nevertheless been relevant to his conviction.

41. In their observations of 13 March 2006, the Government submitted that the applicant had not requested that the children be heard again or that additional questions be put to them during the pre-trial investigation. He had requested this only in his closing statement of 7 December 2000. That request should have been made earlier.

B. The Court's assessment

42. Given that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set forth in paragraph 1, it is appropriate to examine the complaint under the two provisions taken together (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, p. 10, § 25).

43. All the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. However, the use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him or her either when the statements were made or at a later stage of the proceedings (see *Saïdi v. France*, judgment of 20 September 1993, Series A no. 261-C, p. 56, § 43, and *A.M. v. Italy*, no. 37019/97, § 25, ECHR 1999-IX). A conviction should not be based either solely or to a decisive extent on statements which the defence has not been able to challenge (see, *mutatis mutandis*, *Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports of Judgments and Decisions* 1996-II, p. 472, § 76). Article 6 does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary

or advisable to hear a witness (see, among other authorities, *Bricmont v. Belgium*, judgment of 7 July 1989, Series A no. 158, p. 31, § 89).

44. The child complainants in this case should for the purposes of Article 6 § 3(d) be regarded as “witnesses”, a term to be given an autonomous interpretation (see *Asch v. Austria*, cited above, p. 10, § 25), because their statements, as recorded on videotape by the police, were played back in court and used in evidence against the applicant.

45. Criminal proceedings concerning sexual offences are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the private life of the alleged victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence (see *Baegen v. the Netherlands*, judgment of 27 October 1995, Series A no. 327-B, opinion of the Commission, p. 44, § 77). In securing the rights of the defence, the judicial authorities may be required to take measures which counterbalance the handicaps under which the defence labours (see *Doorson*, cited above, p. 471, § 72, and *P.S. v. Germany*, no. 33900/96, § 23, 20 December 2001).

46. The Court observes that the applicant was never given an opportunity to have questions put to the children. Before the close of the pre-trial investigation, and having watched the video recordings of the children's statements, the applicant requested that the siblings be interviewed again and that his questions be put to them. This request was however refused. As to the proceedings in the District Court and the Court of Appeal, it should first be noted that the applicant did not request the attendance of the children. Before the Court the applicant stated that he had refrained from requesting that they give evidence in person during the hearings as, in line with long-standing practice, any such request would have been refused. In view of the apparent absence of cases where counsel for the defence has successfully requested the cross-examination of a child complainant of a similar age as those in the present case, the Court accepts that the applicant could not have obtained the appearance of any of the children in person before the courts.

47. The children's statements as recorded on videotape during the pre-trial investigation and played back in the District Court and the Court of Appeal constituted virtually the sole evidence on which the courts' findings of guilt were based. The witnesses heard by the courts, the parents, had made no observations on the alleged acts and gave evidence only in respect of the perceived changes in the children's personality and on their reliability. The psychologist testified only about the reliability of the children's

statements. In contrast to the case of *S.N. v. Sweden*, in the present case the applicant and his counsel had at no point been afforded an opportunity to have questions put to the children.

48. In these circumstances, the use of this evidence involved such limitations on the rights of the defence that the applicant cannot be said to have received a fair trial.

Therefore, there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (d).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

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

A. Damage

50. Under the heading of non-pecuniary damage the applicant claimed 50,000 euros (EUR) for suffering and distress caused by the alleged violation.

51. The Government considered the claim excessive. Any compensation should not exceed EUR 2,200.

52. The Court accepts that the lack of the guarantees of Article 6 has caused the applicant non-pecuniary damage, which cannot be made good by the mere finding of a violation. The Court, making its assessment on an equitable basis, awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant claimed reimbursement of his costs before the District Court and the Court of Appeal in the amount of EUR 5,222.07 and EUR 1,395.29 respectively. His costs before the Court ran to EUR 6,062.05 (all amounts inclusive of value-added tax).

54. The Government did not consider the claim regarding the costs before the District Court valid in the sense that the costs did not relate to the alleged violation but to the entire criminal proceedings against the applicant. Any award for the costs in the national proceedings should not exceed EUR 500 and any award concerning the costs before the Court should not exceed EUR 2,500, both amounts net of value-added tax.

55. The Court reiterates that an award under this head may be made only insofar as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63).

Taking into account all the circumstances, the Court awards EUR 2,000 as regards the costs in the national proceedings and EUR 6,062 for the costs before the Court (both amounts inclusive of value-added tax).

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention taken together with Article 6 § 3 (d) of the Convention;
2. *Holds* unanimously
 - (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 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 8,062 (eight thousand and sixty-two euros) in respect of costs and expenses; and
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Maruste is annexed to this judgment.

N.B.
T.L.E.

DISSENTING OPINION OF JUDGE MARUSTE

With some hesitation I voted against finding a violation because I found the alleged violation somewhat formal and minimal in nature and considered that the finding of a violation would cross the border between the supervisory role of the Court and the prerogative of the domestic courts in assessing the evidence and in weighing up the conflicting interests.

The investigation and adjudication of cases involving sexual abuse of minor children is always very complicated, sensitive and delicate. In these matters the international court should be very cautious in drawing conclusions on formal grounds, not having any direct contact with the case and with the persons involved. It seems to me that the domestic authorities did what they were reasonably expected to do in such a case – they took into account the best interests of the children, asked for a specialist's opinion about the children's status and the credibility of their statements and made an analysis of the applicant's allegation of a violation of his minimum Convention rights under Article 6 § 3 (d). The courts recognised the discrepancies pointed out by the applicant and acknowledged that there had been a certain infringement of the applicant's Convention rights. The District Court also agreed that the probative value of the children's statements was weakened but nonetheless found that the statements were reliable, the various items of evidence corroborated one another and the infringement was justified. The Court of Appeal reached the same conclusion as the lower court and reduced the sentence.

Two more things have to be pointed out. Firstly, the applicant never asked or insisted that the witnesses be heard before the court. He only insisted at the very end of the preliminary investigation stage that a question be put to the children. Secondly, it falls within the discretion of the investigating authorities and the courts to decide whether or not to hear direct evidence from the children and what questions to put to them. I leave open the question whether the right to examine witnesses applies to an equal extent during the investigation and the trial stage and whether the problem, if there is one, could be remedied at the trial stage. It is clear that in the case at hand the applicant had the opportunity to ask for the children to be questioned during the trial stage, but he failed to do so.

It has to be believed that the authorities had good grounds under the circumstances not to subject children younger than 10 years to unnecessary harm or inconvenience. Our Court has accepted that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victims, provided that such measures can be reconciled with the basic rights of the defence under the Convention (see, *mutatis mutandis*, *Baegen v. the Netherlands*, judgment of 27 October 1995, Series A no. 327-B). It seems to me that this case falls into this category and the measures

taken were proportionate and counterbalanced and did not reach the level of a substantive violation of the Convention.