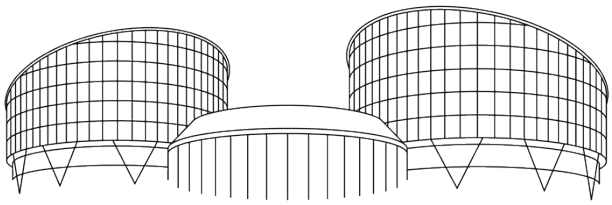

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 25307/10
D.T.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 2 April 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 28 April 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr D.T., is a Netherlands national who was born in 1968 and lives in Tilburg. He is represented before the Court by Mr J.F.M. Wasser, a lawyer practising in Tilburg.

2. The Netherlands Government ("the Government") are represented by their Agent, Mr R.A.A. Böcker, and their Deputy Agent, Ms L. Egmond, both of the Ministry of Foreign Affairs.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is the father of R., a girl born in 1998. The applicant and R.'s mother have since split up.

A. The criminal investigation

5. On 21 January 2003, when R. was five years old, her mother contacted the police on account of a suspicion that her daughter had been sexually abused by the applicant. She alleged that on Sunday 19 January 2003, upon her return from having spent the weekend with her father, R. had told her that the applicant had performed sexual acts with her during that weekend. The mother was invited to report the crime at another time to specialised police investigators.

6. On 3 February 2003 the mother reported the alleged sexual abuse of R. to two investigators specialised in the investigation of alleged sexual offences. The statement was recorded on tape.

7. On 26 February 2003 R. was interviewed by a specialised police sergeant in a child-friendly studio during which she told about the sexual, non-penetrating, abuse. The interview was recorded on videotape, minutes were drawn up containing a summary of the interview, and a verbatim record was also produced.

8. R.'s grandmother was interviewed by police on 24 March 2003. She confirmed that R. had told her mother about the sexual abuse.

9. On 14 April 2003 the applicant was questioned by police as a suspect. He denied the sexual abuse, but did confirm that on the night of 18 January 2003 R. had lain next to him in his bed. Subsequently the applicant was taken into police custody.

10. The applicant was brought before the investigating judge (*rechter-commissaris*) on 17 April 2003. The investigating judge ordered the applicant's detention on remand on the same day, but suspended this detention immediately.

11. On 21 July 2003 the investigating judge appointed C., a professor of law and psychology, in order for him to assess the abovementioned studio interview of R. On 24 September 2003 C. issued a report. He had found nothing wrong in the way the studio interview had been conducted, but did note a number of peculiarities in R.'s statement. He further wrote that there was no suitable experience-based method to establish the truthfulness of witness statements, and added that the method of Criteria-Based Content Analysis ("CBCA") used by some psychologists was not fit for this purpose. He advised not to bring the case before a court yet but first to have a developmental-psychological investigation carried out by a child psychologist into the possible causes of R.'s sexualised behaviour. On 26 January 2004 the investigating judge appointed child psychologist L. and

child psychiatrist A.R. in order for them to report on the reliability of the statements made by R. during the studio interview. Their examination concluded that it was highly unlikely that R.'s statements had been made up or that words had been put into her mouth.

12. The investigating judge subsequently asked the experts L. and A.R. whether they agreed with C. that a developmental-psychological investigation into the reasons for R.'s sexualised behaviour ought to take place. L. replied that the conclusions reached by her in her original report were not so much based on a CBCA analysis but on a wider developmental-psychological investigation as indicated by C.

B. Proceedings before the 's-Hertogenbosch Regional Court

13. The applicant was charged with having sexually abused R. during the period of 17 until 19 January 2003. Following a hearing held on 8 February 2005, the 's-Hertogenbosch Regional Court (*rechtbank*) convicted the applicant on 22 February 2005 of an attempt to perform acts with a child under the age of twelve, consisting of the sexual penetration of that child's body, and of having sexually abused his minor child several times. He was sentenced to a partially suspended prison term of twenty-four months. After these proceedings, the applicant changed counsel.

14. At no point during the proceedings at first instance did the applicant request the hearing of R. as a witness.

C. Proceedings before the 's-Hertogenbosch Court of Appeal

15. On 3 March 2005 the applicant lodged an appeal with the 's-Hertogenbosch Court of Appeal (*gerechtshof*). On 10 March 2005 counsel for the applicant requested that several witnesses, including R., be heard. By letter of 21 September 2005 the Advocate General (*Advocaat-Generaal*) at the Court of Appeal informed counsel of his decision not to summon R. as a witness. He considered that the interest of the protection of R.'s private life should prevail over the applicant's interest in having her examined as a witness. The applicant nevertheless maintained his request for the hearing of R.

16. At his request, counsel for the applicant was provided with a copy of the videotape of the studio interview of R. and he requested W., a professor of psychology, to give his opinion on the reliability of R.'s statements. In his report of 15 October 2005 W. concluded that the recommendations of C. – with which W. concurred – had not been followed up, and that this failure impeded a proper assessment of the reliability of R.'s statements. Although it was true that the experts L. and A.R. had not based their reply to the question concerning the reliability of R.'s statements exclusively on a strict

CBCA analysis, it could nevertheless not be said that a wider investigation into the possible reasons for R.'s sexualised behaviour had been conducted.

17. The first hearing before the Court of Appeal was held on 17 October 2005. Counsel for the applicant once more requested that R. be heard as a witness, preferably at a hearing in the presence of the applicant, but alternatively at a hearing where the applicant was not present, or by the investigating judge. This request was rejected by the Court of Appeal, which noted that R., who was now nearly eight years old, had been subjected to an extensive studio interview when she was five years old. It found that R.'s interest in not being compelled to relive possible traumatic experiences outweighed the interest of the defence in questioning R. or having R. questioned. It took into account that the defence had had the opportunity to view the videotape of the studio interview and that four experts had examined the interview and had reported on it. The Court of Appeal considered that this constituted sufficient compensation for the lack of the opportunity for the defence to question R. on appeal. The hearing was adjourned in order for a number of other witnesses and experts to be summoned.

18. By letter of 7 March 2006 counsel for the applicant repeated the request for R. to be called as a witness.

19. In the course of the second hearing, which took place on 13 March 2006, R.'s mother and grandmother were heard, L., A.R. and W. were heard as expert witnesses, and part of the videotape of the studio interview with R. was played back. Counsel for the applicant requested that a developmental-psychological examination of R. as advised by the experts C. and W. be carried out, and he repeated the request for R. to be heard, if need be by means of a studio interview in the course of which the defence would have the opportunity to put questions to her, or to have questions put to her. The Court of Appeal adjourned the hearing in order to consider counsel's requests.

20. At the third hearing, held on 20 March 2006, the Court of Appeal considered that a decision on counsel's requests first required an examination of the question whether the hearing or a developmental-psychological examination of R. would be harmful to her health and well-being. It therefore appointed an expert. On 29 April 2006 this expert, L.-W., submitted a report in which she concluded that it might be possible for R. to be interviewed again, and especially if the treatment and/or therapy she was apparently receiving was related to the alleged sexual abuse, unless a new interview was considered prejudicial to the therapeutic process. It was for the therapist treating R. to assess whether a second interview would be harmful to R.'s health and well-being. However, on the point of the usefulness of a second interview, L.-W. considered that after three years it would be extremely difficult, and perhaps even impossible, to determine which parts of R.'s new statement would be based on accurate recollections

and which would be coloured by the different conversations R. had had about the alleged abuse. In these circumstances, L.-W. advised against R. undergoing a second interview. As to the question whether a developmental-psychological examination would be harmful to R.'s health and well-being, L.-W. also referred to the therapist treating R.

21. A fourth hearing was held before the Court of Appeal on 15 May 2006 in the course of which the Court of Appeal requested the Advocate General to contact the therapists treating R. in order to be informed whether R. undergoing a new interview or a developmental-psychological examination would be harmful to her health and well-being. By letter of 21 June 2006 the two therapists treating R. informed the Advocate General that in their opinion a second studio interview would not be desirable in view of the developmental process R. was currently going through. Such an interview would put her in a position of once more having to identify her father as perpetrator of sexual abuse entailing the possible consequence of him being prosecuted. This would place too much pressure on R. and be harmful for her healing process. A second interview would disturb R.'s balance whereas peace and quiet and the building up of trust and stability in the family situation were of more importance for R.'s further general development. The therapists further informed the Advocate General that for the purpose of R.'s treatment a psychological examination was being conducted. They proposed that, if the mother agreed, the results of that examination could be submitted to the Court of Appeal.

22. At the fifth hearing, held on 3 July 2006, the Court of Appeal refused the request of the defence to hear R. as a witness, considering that – in view of the letter of 21 June 2006 from the therapists treating R. – there were serious reasons to presume that hearing her once more would be harmful to her health and well-being and that the prevention of that harm outweighed the importance of a new interview. The Court of Appeal did accede to counsel's request for a developmental-psychological examination of R. to be carried out. This examination was to focus on the questions whether the sexualised behaviour displayed and comments made by R. prior to the weekend of 17-19 January 2003 were age-inappropriate and/or excessive, and whether indications of sexual abuse of R. having been committed by someone other than R.'s father could be deduced from R.'s sexualised behaviour and comments and/or from the environment in which she was growing up and/or from her development until that weekend.

23. At the sixth hearing, on 30 October 2006, the Court of Appeal appointed two psychologists and a psychiatrist to carry out the developmental-psychological examination. They issued a report on 20 November 2006. This report has not been submitted to the Court but it appears from other documents in the case file that it concluded that R. was not suffering from psychiatric problems and did not appear traumatised in her psycho-sexual development. Due to the passage of time and

subsequent events it had not been possible to reply to the Court of Appeal's questions relating to R.'s behaviour and experiences prior to the weekend of 17-19 January 2003.

24. At the final hearing before the Court of Appeal on 4 December 2006, counsel for the applicant repeated the request to call R. as a witness, given that in view of the conclusions reached in the developmental-psychological examination it did not appear that a new interview would be harmful to R.'s health and well-being. Counsel further argued that not hearing R. constituted a breach of Article 6 § 3 (d) of the Convention in that the defence had not been afforded the opportunity to put questions to R. whereas a conviction of the applicant would solely or to a decisive degree be based on R.'s statement. Moreover, insufficient counterbalancing measures had been taken, having regard to the fact that the expert C. had advised back in 2003 to conduct a developmental-psychological examination whereas such an examination had not been carried out until 2006, by which time it was no longer possible for certain questions to be answered.

25. On 18 December 2008 the Court of Appeal delivered its judgment. It maintained its decision as regards the hearing of R., considering that the fact that R. was apparently not suffering from psychiatric problems and did not appear traumatised in her psycho-sexual development did not alter the conclusions reached by the therapists treating her who had advised against a second interview. It further considered that, on the whole, sufficient compensation had been provided for the fact that R. had not been heard again and that the defence had not been given the opportunity of putting questions to her. This compensation consisted in particular of the studio interview conducted with R. by a specialised police sergeant – which interview had been found to be of good quality by the experts L, A.R., C. and W. and the video-tape of which had been put at the disposal of the defence as well as the experts and had been partially played back in court –; the reports drawn up by the experts C., L. and A.R., W. and the two therapists treating R.; and the appearance at hearings before the Court of Appeal of the experts L, A.R. and W. According to the Court of Appeal, the present case could be distinguished from those of *P.S v. Germany* (no. 33900/96, 20 December 2001) and *Bocos-Cuesta v. the Netherlands* (no. 54789/00, 10 November 2005), because in those cases the interviews with witnesses whom the defence was not able to question had not been videotaped. Conversely, it appeared from *S.N. v. Sweden*, (no. 34209/96, in particular § 52, ECHR 2002-V) that the existence and the viewing of a videotape of the interview of a minor might constitute important compensation enabling the defence to challenge the statements and the credibility of the witness. The developmental-psychological examination only having taken place in 2006 and, as a result, the obtaining of (uncoloured) information having been rendered more difficult, did not

detract from the fact that this examination had provided insight into R.'s development and thus information relevant for the assessment of the studio interview. The Court of Appeal also took into account that the defence had only requested that R. be heard again as from 2005.

26. As to R.'s statement, the Court of Appeal considered that it was sufficiently clear from R.'s mother's and grandmother's statements that R. had not been pressured to denounce her father; that she had told her mother about the events on the same day they took place; and that it was unlikely that R. had been mistaken about the events and the person in issue so few hours after they had taken place. It further considered that, even though an assessment of the statement based on the method of CBCA could not give a decisive answer about the reliability of R.'s statement, it was, at least, likely that the statement had not been a deliberate lie (*bewust gelogen*). In this regard, the court also attached weight to the clinical assessment by the experts L. and A.R. that it was highly unlikely that R.'s statements had been made up or that words had been put into her mouth. Consequently, and having itself viewed the videotape, the Court of Appeal found R.'s statement to be reliable.

27. The Court of Appeal quashed the judgment of the Regional Court, convicted the applicant of an attempt to perform acts with a child under the age of twelve, consisting of the sexual penetration of that child's body, and of sexual abuse of his minor child, and sentenced him to a partially suspended term of imprisonment of twenty months. It based this conviction on R.'s statement made during the studio interview, the statement of the applicant that during the weekend in question he had been alone with R. and had lain next to her in bed, and the statement of R.'s mother and grandmother about what R. had told them after the weekend and the way in which R. had told it.

D. Proceedings before the Supreme Court

28. On 18 December 2006 the applicant lodged an appeal on points of law (*cassatie*) alleging a breach of Article 6 of the Convention in that he had not been afforded an opportunity to put questions to R. He also complained that his conviction had wrongly been based on the statement of R., while sufficient supporting evidence was lacking.

29. By judgment of 17 November 2009 the Supreme Court rejected the appeal on points of law. As regards the complaint that the applicant's request to examine R. as a witness had been refused, the Supreme Court noted that pursuant to article 288 § 1 sub (b) of the Code of Criminal Procedure (*Wetboek van Strafvordering*), a court may decide not to proceed to the hearing of a witness if there are serious reasons for presuming that the making of a statement at a hearing of the court would be harmful to the health and well-being of the witness and if the prevention of that harm

outweighed the importance of the possibility to have the witness examined at the hearing. The Supreme Court continued as follows:

> "3.3 [...] If, as a consequence, the accused has not had the opportunity to question the witness or to have the witness questioned, it does not automatically follow that Article 6 of the Convention stands in the way of the statement made by that witness to police being used in evidence. In a case like the present – where the involvement of the accused in the offences with which he is charged is insufficiently supported by other means of evidence concerning those parts of the incriminating statement disputed by him – the accused who wishes to challenge the reliability of the statement has to be provided with compensation, complying with the requirements of a proper and effective defence, for the inability to examine the witness (directly). The way in which such compensation can be provided in practice will depend on the circumstances of the case. In cases like the present, the playing back at a court hearing of the videotape which contains the incriminating statement made to police by the victim and if necessary the ordering of an examination of the recorded interview by an expert may constitute possible options in this respect [...]
>
> 3.4.1. The Court of Appeal has not negated the above ... In its considerations about the evidence it has set out the reasons why it found that compensation enabling an effective defence was provided for the inability to examine the victim as a witness. Seen also against the background of that finding ... the rejection of the request [to examine the victim as a witness] has been sufficiently reasoned.
>
> 3.4.2. The Court of Appeal has based that rejection on its opinion that there were serious reasons for assuming that another interview could be harmful to the health and well-being of the victim. In reaching that opinion the Court of Appeal based itself on the views of the experts treating the victim. The Court of Appeal further considered that the contents of the subsequent report of the [developmental-psychological examination] did not lead to a different conclusion, but that, on the contrary, it supported the views of the abovementioned experts."

30. The Supreme Court rejected the complaint about the use of R.'s statement in evidence, considering that that complaint overlooked the finding of the Court of Appeal – which finding had not been disputed in the appeal on points of law and had been confirmed by the Supreme Court – that sufficient compensation had been provided for the lack of opportunity to examine the witness.

31. Finally, the Supreme Court found *ex proprio motu* that the proceedings before it had exceeded the reasonable time requirement and for that reason it quashed the judgment of the Court of Appeal in so far as the imposed sentence was concerned. It sentenced the applicant to a partially suspended prison term of eighteen months.

COMPLAINT

32. The applicant complained under Article 6 of the Convention that he had not been afforded an opportunity to put questions to the witness on whose statement to police his conviction was to a decisive extent based.

THE LAW

Article 6 of the Convention

33. The applicant complained that he had lacked the opportunity to examine the witness whose statement had been decisive for his conviction. He argued that the refusal of his request to hear the main witness against him constituted a violation of Article 6 of the Convention. This Article provides, in its relevant part, as follows:

> "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;"

1. The Government's preliminary objection

34. The Government argued that the applicant had failed to exhaust domestic remedies because – even though the applicant had taken, throughout the course of the domestic proceedings, the position that his right to examine witnesses against him, as protected by Article 6 § 3 (d) of the Convention – he had failed to challenge the Court of Appeal's judgment that sufficient measures had been taken to counterbalance the lack of opportunity to hear R.

35. The applicant replied, *inter alia*, that he had made his complaint in substance before the Supreme Court. His complaint concerning the absence of the opportunity to question the decisive witness implicated that he did not agree with the counterbalancing measures taken by the Court of Appeal.

36. The Court notes that the core of the applicant's complaint lays in the absence of the possibility to question the witness whose statements were decisive for his conviction. The Court considers that the applicant, invoking Article 6 of the Convention, complained about this issue in substance before

the Supreme Court (see paragraph 28 above) and that the issues of examination of witnesses and counterbalancing measures taken in the absence of such examination were both addressed by the Supreme Court (see paragraph 29 above) (see, among many other authorities and *mutatis mutandis*, *Fressoz and Roire v. France* [GC], no. 29183/95, §§ 37-39, ECHR 1999-I and as a more recent example, *A.G. v. Sweden* (dec.), no. 315/09, 10 January 2012).

37. It follows that this objection must be dismissed.

2. The parties' submissions

38. As to the substance of the applicant's complaint, the Government noted that the applicant had not requested the hearing of R. during the preliminary judicial investigation or the proceedings at first instance, even though this possibility had been open to him. It had been not until the appeal proceedings that the applicant had made his request. The Government further noted that the Netherlands did not have an established practice of routinely rejecting requests to examine minors as witnesses in general, or minor victims of incest in particular, but that in the present case the request had been rejected because of the well-founded reason to believe that R.'s health or well-being would be jeopardised when being subjected to another interview.

39. The Government maintained that the applicant's request to examine R. had been counterbalanced by the following measures: R. had been interviewed in a child-friendly studio by a specialised police officer and a video recording had been made of the interview which had been available to the defence; the investigating judge had appointed the experts C., L. and A.R., who had reported on the interview and the credibility of R.'s statements respectively; three experts had been heard in the course of the proceedings; the video of R.'s interview had been shown at one of the hearings before the Court of Appeal; and the Court of Appeal had granted the applicant's request for a developmental-psychological examination of R.

40. The Government further submitted that the appeal proceedings had included seven hearings and that the assessment made by therapists treating R. had been a decisive factor for the Court of Appeal in rejecting the applicant's request. According to the Government, the Court of Appeal had treated the assessment of the reliability and credibility of R.'s statements with the utmost scrupulousness and had taken every possible measure to counterbalance the handicap under which the defence had laboured.

41. The applicant submitted, in relation to the moment the request had been made, that the appeal proceedings should have entailed a new determination of the facts; that he should not become the victim of poor legal assistance – during the proceedings in first instance the applicant had

been represented by different counsel –; and that the Supreme Court had not considered the time of the first request made to be an issue.

42. The applicant also argued that, contrary to the Court's case-law (in *A.S. v. Finland*, no. 40156/07, § 56, 28 September 2010), the defence had not been invited to be present during R.'s interview in a child-friendly studio even though, by that time, he had already been a suspect in his case, and that he had been denied the opportunity to cross-examine R. during a later stage of the proceedings.

43. The applicant further submitted that the measures taken at the domestic level had not sufficiently counterbalanced the handicap under which his defence had laboured. Since R.'s statement was virtually the sole evidence against him, the counterbalancing measures should have provided a higher level of protection of his rights. Referring to the Court's case-law, the applicant stated that in a number of cases the presentation of a video recording of the witness' interview had not even been considered to constitute a counterbalancing measure and that in other cases also expert statements had not been found to constitute sufficient counterbalancing measures. Lastly, referring to *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, ECHR 2011), the applicant stated that in the *Al-Khawaja* case there had been more victims with incriminating statements; that in his case the main witness was still alive; and that – unlike in the *Al-Khawaja* case – there was a possibility that R. had been influenced by her mother to make the incriminating statements.

3. *The Court's assessment*

44. The Court recalls that the admissibility of evidence is primarily governed by domestic law and that, as a rule, it is for the national courts to assess the evidence before them. Moreover, it is normally for the national courts to decide whether it is necessary or advisable to hear a witness. The task of the Court is to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities and *mutatis mutandis*, *Doorson v. the Netherlands*, 26 March 1996, § 67, *Reports of Judgments and Decisions* 1996-II, *S.N. v. Sweden*, cited above, § 44, *Al-Khawaja and Tahery*, cited above, §118 and *Aigner v. Austria*, no. 28328/03, § 35, 10 May 2012).

45. The Court reiterates that, as a general rule, the accused must be given an adequate and proper opportunity to challenge and question a witness against him, either when the witness makes his statement or at a later stage (see, among many others authorities, *Saïdi v. France*, 20 September 1993, § 43, Series A no. 261-C; *S.N.*, cited above, § 44, *B. v. Finland*, no. 17122/02, § 41, 24 April 2007; and *Aigner*, cited above, § 35). However, this general rule is not absolute; where such a statement is the sole or decisive evidence against a defendant, its admission in evidence

will not automatically result in a breach of Article 6 § 1 (see, *mutatis mutandis*, *Al-Khawaja and Tahery*, cited above, § 147).

46. Following the Grand Chamber's judgment in *Al-Khawaja and Tahery*, cited above, the Court will consider whether there was a good reason for the rejection of the applicant's request to hear R.; whether the evidence given by her was the sole or decisive basis for the applicant's conviction; and whether there were sufficient counterbalancing factors, including the existence of strong procedural safeguards, which permitted a fair and proper assessment of the reliability of that evidence to take place (see also, *mutatis mutandis*, *Salikhov v. Russia*, no. 23880/05, §§ 112 and 113, 3 May 2012; *McGlynn v. the United Kingdom* (dec.), § 21, no. 40612/11, ECHR 16 October 2012; and *Lawless v. the United Kingdom* (dec.), § 25, no. 44324/11, 16 October 2012).

47. In these considerations, regard must be given to the special features of criminal proceedings concerning sexual offences. Such proceedings 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 perceived victim (see *S.N. v. Sweden*, cited above, § 47; *Bocos-Cuesta*, cited above, § 69; and *Aigner*, cited above, § 37).

48. Turning to the circumstances of the case, the Court notes that the Court of Appeal carefully assessed whether R. could be examined during a second studio interview. In this assessment it paid special attention to the particular features of the criminal proceedings and the young age of the victim. Moreover, it ordered an expert to report on the question whether R. could be heard. This expert, subsequently, referred the court to R.'s therapists. The latter stated that a second studio interview would not be desirable in view of the developmental process R. was going through at that moment; that it would place too much pressure on R. and be harmful for her healing process; and that a second interview would disturb R.'s balance. The Court therefore finds that there was good reason for the rejection of the applicant's request to hear R.

49. As to the second consideration, i.e. whether the evidence given was the sole or decisive basis for the conviction, the Court notes that the applicant's conviction was based to a decisive extent on the statements made by R. and that such was not contested by the Government.

50. As to the third consideration, i.e. whether sufficient counterbalancing measures were taken to safeguard the rights of the defence, the Court notes that, even though the applicant lacked the possibility to question R. at any point of the domestic proceedings, the studio interview with R. had been videotaped, which recording had been made available to the defence. Moreover, this video recording was partially

shown during one of the hearings before the Court of Appeal, which enabled the court to obtain a clear impression of R.'s evidence and the defence to bring up any issues regarding the credibility of her statement. The Court of Appeal also used in evidence the statements of R.'s mother and grandmother, to whom R. had related the events at issue almost directly after her return from the weekend spent with her father. These witnesses were heard at the trial and the applicant had been able to provide his own version of the events and point out any incoherence in R.'s statements or inconsistencies with the statements of the other witnesses heard.

51. The Court further notes that in the course of the domestic proceedings multiple experts reported on the studio interview with R. and that the applicant had been given the opportunity to question three of these experts in court. Furthermore, when it appeared to the Court of Appeal that it would not serve best the well-being of R. to conduct a second studio interview, it granted the applicant's request for a developmental-psychological examination of R. to be carried out. Subsequently, the applicant had the opportunity to discuss and challenge the findings of this examination. Furthermore, the Court notes that on 3 July 2006, when the Court of Appeal again rejected the applicant's request to hear R. and granted the request for a developmental-psychological examination, the applicant did not suggest any other counterbalancing measures to be taken.

52. Against the background of the careful scrutiny of the evidence by the Court of Appeal, and viewing the fairness of the proceedings as a whole, the Court finds that the abovementioned counterbalancing measures taken were sufficient. It therefore concludes that the applicant was afforded the protection of his rights safeguarded by Article 6 §§ 1 and 3 (d).

53. It follows that the application is manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President