

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

SECOND SECTION

# CASE OF B.G. v. NORTH MACEDONIA

*(Application no. 7870/25)*

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Examination of witnesses • Applicant's conviction for sexual abuse of a minor based on victim's testimony given during pre-trial stage in his and his lawyer's absence • Evidence decisive for conviction • Playing of audiovisual recording of pre-trial interview at trial not sufficient to protect defence rights in case circumstances • Insufficient counterbalancing factors • No indication that defence's exclusion from pre-trial interview was required to protect the victim's interests • Constraints affecting applicant's defence rights irreconcilable with fair trial guarantees

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 November 2026

*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 B.G. v. North Macedonia,**

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Gediminas Sagatys,
Juha Lavapuro,
Hugh Mercer*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 7870/25) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian/citizen of the Republic of North Macedonia, Mr B.G. ("the applicant"), on 3 March 2025;

the decision to give notice of the application to the Government of North Macedonia ("the Government");

the decision not to disclose the applicant's name;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated in private on 6 October 2026,

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

# INTRODUCTION

1. The case concerns criminal proceedings against the applicant in which he was convicted of sexual abuse of a minor. Relying on Article 6 of the Convention the applicant complained of a violation of the principle of equality of arms and a violation of his defence rights, in that his conviction had mainly been based on the untested evidence given by the alleged child victim during the pre-trial stage in the absence of the applicant and his lawyer.

# THE FACTS

2. The applicant was born in 1948 and lives in Bitola. He was represented by Mr N. Glavinche, a lawyer practising in Bitola.

3. The Government were represented by their Agent, Ms D. Djonova.

4. The facts of the case may be summarised as follows.

5. The applicant lived together with his adult son, his adult daughter S. and his granddaughter K., who was friends with E. The two girls often played

together, as E.'s grandparents lived in the neighbourhood. E. was ten years old at the time.

## I. CRIMINAL PROCEEDINGS AGAINTS THE APPLICANT

### A. Pre-trial proceedings

6. On 3 August 2021 at 9 a.m. E.'s father lodged a complaint with the Ministry of the Interior ("the Ministry") regarding the sexual assault of a minor. He submitted that on 1 August 2021, at around 6 p.m., E. had gone to K.'s apartment to look for her. The applicant had told her that K. had not been home and invited her to wait for K.'s return. After E. had entered the apartment, the applicant had locked the front door and asked whether she had a boyfriend, kissed her cheeks, caressed her legs and asked her whether she had a mobile phone so that they could keep in touch and be secret friends. E. had started to cry, and the applicant had allowed her to leave after she had promised not to tell anyone about what had happened. E. had been upset when she had arrived home and had told her family about the incident.

7. Subsequently, on the morning of 3 August 2021, E. was interviewed in the public prosecutor's office in the presence of a public prosecutor, her father, her lawyer (who had been appointed by the public prosecutor), a representative of the Social Work Centre and an expert in psychiatry (Dr F.). She was warned that giving a false testimony was a criminal offence. E. was asked questions by the public prosecutor and Dr F. The interview was recorded using audiovisual equipment and ended at 11.15 a.m. E. stated that she had gone to K.'s apartment to look for her. The applicant, whom she had known from beforehand, had opened the door. He had told her that K. was out and invited her to wait inside. E. had entered the apartment and sat on the bed. The applicant had asked her whether she had a boyfriend, and she had replied that she did not. He had then asked whether she had kissed anyone, and she had replied that she had not. The applicant had offered to show her how to kiss and had kissed her cheeks several times. He had then asked her whether she played any sports and complimented and caressed her legs. The applicant had asked E. whether she had a mobile phone so that they could keep in touch and be secret friends. E. had replied that she only wanted to be friends with K. and had started crying and told him she wanted to leave. The applicant had asked her to promise that she would not tell anyone as they could get into trouble. He had then unlocked the front door and waited for a neighbour, whose voice E. had heard, to pass by. E. had recounted everything to her grandfather and, later, to her parents.

8. Also on 3 August 2021, at 2.50 p.m., the applicant was taken into police custody. He appointed S.T. as his lawyer, who arrived at the station at 2.55 p.m. In the presence of his lawyer, the applicant told the police that on 1 August 2021, K. had gone to a swimming pool with her mother (S.) – they

had arrived back in the evening. His son had been at work until 7 p.m. E. was his granddaughter's friend – they often played in their apartment. He could not remember the exact time E. had arrived at their building, shouting and asking for K. He had stepped out onto the balcony and told her that K. had not returned yet. Later, E. had returned and asked for K. again, but he had told her that K. was still away. The applicant denied that E. had entered their apartment. He had neither caressed her nor kissed her. He had not asked her to be secret friends.

9. On the same day the Ministry lodged a criminal complaint against the applicant with the public prosecutor.

10. On 4 August 2021 the public prosecutor ordered an investigation against the applicant on suspicion of sexual assault of a minor

11. On the same day, 4 August 2021, the applicant repeated his statement (see paragraph 8 above) before a public prosecutor. He also stated that on the day of the incident he had been vomiting and felt sick.

12. As from 4 August 2021 the applicant was placed in pre-trial detention, which was continuously extended throughout the pre-trial proceedings.

13. On 9 August 2021 E.'s father gave a statement before the prosecutor. He stated that he knew the applicant as K.'s grandfather. He confirmed that E. had been upset and described what she had told him. He had gone to the applicant's apartment and confronted his son and S. The latter had gone to their home and talked with E., who had explained what had happened. Since then, E. had refused to discuss the incident and became nervous whenever it was brought up.

14. The prosecutor asked Dr F., the expert that had been present during E.'s previous interview (see paragraph 7 above), to assess the truthfulness of E.'s testimony and the impact of her further involvement in the criminal proceedings. On 25 August 2021 Dr F. interviewed E. in the presence of her father, except for the part of the interview relating to the alleged offence, which was conducted in his absence. In her written assessment dated 29 August 2021, Dr F. found that E. was a healthy ten-year-old girl with adequate capacities for her age, who had grown up in a traditional family structure with adequate parental roles. Dr F. noted that E.'s three statements in relation to the event (given to her father, before the prosecutor and during the assessment) had been consistent and showed that she had been able to react adequately to a potential threat. She considered that E. had no motive to fabricate a false accusation. She also excluded the possibility that E.'s family had encouraged her to give a false account, given the lack of any indication that there were strained relations between the two families. Dr F. concluded that there was a high probability that E.'s statement had been truthful. She advised against E.'s further involvement in the criminal proceedings, considering the risk of E. reliving the negative aspects of the event, her age and the beginning of puberty.

15. The prosecutor asked a psychiatric expert (Dr M.) to assess the applicant and to determine whether he suffered from any illness that might have impacted his capacity to understand and manage his actions. Dr M.'s written assessment concluded that the applicant was in advanced years (73 years old) and suffered from psycho-organic syndrome (a permanent condition caused by old age and several chronic illnesses such as, *inter alia*, diabetes, elevated blood pressure and heart weakness) that affected his cognitive abilities. Dr M. noted that the applicant's critical judgment and memory had been reduced. He considered that the applicant had difficulties in perceiving the consequences of his actions as a whole and had significantly reduced capacity. He also noted that the applicant's sexual urge was reduced owing to his old age and chronic health condition and that he had no paedophilic tendencies. Lastly, Dr M. deemed that the applicant was able to take part in the criminal proceedings. Dr M.'s additional expert assessment recommended in-home treatment for the applicant.

16. In the meantime, Mr Glavinche, the applicant's representative before the Court (see paragraph 2 above) became the applicant's lawyer. In that capacity, he proposed two medical experts (Dr P. and Dr K.) as technical advisors for the defence. On 24 August 2021 a pre-trial judge allowed Dr P. and Dr K. to examine the applicant in pre-trial detention for the purpose of conducting a medical assessment of his physical and mental health.

17. In his assessment of the applicant (dated 17 December 2021), Dr P. agreed with Dr M. (see paragraph 15 above), namely that the applicant's capacity had been significantly reduced and his cognitive and retention functions had been diminished. Dr P. found that the applicant could participate in the trial, but he might have difficulty in understanding the process. He also noted that the applicant was able to plead his guilt or innocence. Dr P. further noted that the applicant was aware that such actions were impermissible and for that reason it could not be considered that he had been fully incapacitated. The only point of disagreement with Dr M.'s assessment had been regarding the recommended treatment – Dr P. recommended compulsory hospitalisation in a closed psychiatric clinic, considering the nature of the alleged offence and the fact that the applicant lived with his young granddaughter K., while his adult children were frequently absent for work.

18. On 4 October 2021 the public prosecutor informed the applicant's lawyer that all the files from the investigation were available for consultation at the prosecutor's office and that the defendant was entitled, within 15 days of the receipt of the notice, to submit evidence or to ask the prosecutor to collect further evidence, in accordance with section 302(4) of the Law on Criminal Procedure (see paragraph 50 below). The applicant's lawyer inspected the case file on the same day.

19. On 25 October 2021 the public prosecutor issued an indictment charging the applicant with sexual abuse of a minor under Article 188 § 1 of

the Criminal Code (see paragraph 56 below). The list of the prosecution evidence included a CD with the audiovisual recording of E.'s interview on 3 August 2021 (see paragraph 7 above).

20. On 4 November 2021 the applicant objected to the indictment, complaining, among other things, that it had been solely based on the statement given by E., whose reliability was questionable. In the alternative, if the objection would not be granted, the defence proposed a list of evidence that included, *inter alia*, the examination of the applicant's daughter S. and the medical assessment commissioned from Dr P. (see paragraph 17 above). The list neither included a proposal for E.'s examination at the trial, nor a request to put questions to her in writing.

## B. The first trial and the Supreme Court's remittal of the case for fresh examination

21. At a hearing held on 24 January 2022 before the Bitola Court of First Instance (hereinafter "the trial court") the parties gave their opening remarks. The defence maintained their previously proposed evidence (see paragraph 20 above) and pleaded that the charges had been based on E.'s statement given solely in the presence of the prosecutor and that its admission into evidence handicapped the defence.

22. At the same hearing E.'s father was examined in the presence of the applicant and his lawyer. He described what E. had told him regarding the incident and confirmed that she had been distressed and crying. He confirmed that the two families did not have a strained relationship.

23. At the same hearing Dr F. was examined. She maintained her findings from the written expert report (see paragraph 14 above).

24. At a hearing held on 25 January 2022 the CD with the audiovisual recording of E.'s pre-trial interview (see paragraph 7 above) was played. The defence objected to the quality of the recording. They also objected to the use of E.'s pre-trial statement as evidence on grounds that it had been given in the absence of the defence, who had not been notified of the interview, and in breach of the procedural guarantees under Article 6 of the Convention. The prosecutor disagreed, noting that the defence had received a copy of the recording and therefore could have reacted to any technical issues beforehand. She argued that the recording should be allowed into evidence in view of the court's duty of care towards vulnerable victims and Dr F.'s advice to avoid further questions being put to E. The trial court, other than confirming with the defence that they had received a copy of the recording, did not respond to the objections.

25. Owing to a change in the judicial panel of the trial court, at a hearing held on 3 March 2022, a fresh trial began with all the previously adduced evidence being read out and the recording of E.'s pre-trial interview was once again played. Subsequently, the two medical experts, Dr M. and Dr P., were

examined. Both experts maintained their findings from their written reports (see paragraphs 15 and 17 above). Dr P. stated that he fully subscribed to Dr M.'s findings regarding the applicant. He also noted that in his view both experts agreed that the applicant suffered from a progressive health condition that could lead to severe dementia.

26. At a hearing held on 14 March 2022 the applicant's daughter S. was examined as a witness for the defence. She testified that the applicant had reduced mobility on account of his health condition. He spent his days resting at home. She also stated that the applicant had never shown any deviant behaviour, and he had a good relationship with his granddaughter. S. testified that she had learned of some previous times where E. had behaved inappropriately towards her daughter. She had therefore asked K. not to spend time with E. and the same request had been made by other parents in the neighbourhood. S. described another event in which E. had broken some of K.'s belongings. She submitted that the two children had broken off their friendship before the event of 1 August 2021. Two weeks before that day, E. had insisted on playing with K. in their home. When her daughter had called her to ask for her permission, S. had reacted strongly against the idea. E. had been able to hear her over the telephone. Despite that episode, E. had called K.'s mobile phone on 1 August 2021 and K. had told her that they were not at home at the time. Upon their return, she had found the applicant lying down and feeling unwell, as usual. He had told her that E. had stopped by twice under the balcony, asking for K. After E.'s father had accused the applicant of abuse, she had gone with E.'s father to talk to E. S. stated that E. had told her that she had entered their apartment, and the applicant had said that they should be secret friends, after which she had felt scared and escaped. Subsequently, S. had asked the applicant about E.'s allegations – he had been surprised and repeated that E. had only stopped by under their balcony and he had told her that K. had not been home. S. believed that the allegations had been concocted to influence her ongoing custody dispute with her ex-partner regarding their daughter K.

27. With a written submission dated 1 April 2022 the applicant's lawyer asked the trial court to order a fresh expert assessment of E. to be conducted by a team of experts specialised in psychiatry, psychology and the sociology of children from an academic institution, considering the nature of the alleged criminal offence, the victim's young age and possible external influences.

28. At a hearing held on 21 April 2022 the applicant, who remained in detention throughout the proceedings, gave his statement. He denied the allegations and maintained that E. had never entered the apartment – he had only seen her from the balcony. The trial court dismissed the request for a fresh expert assessment of E., finding that Dr F. had been examined at the trial and her assessment had not revealed any contradictions.

29. At a hearing held on 29 April 2022 the parties gave their closing arguments. The applicant's lawyer emphasised that the charges had been

based solely on E.'s testimony, whom only the prosecutor had heard in person. There had been no evidence that E. had been medically treated after the event, and there were no witnesses and no material evidence to support her account.

30. On 12 May 2022 the trial court convicted the applicant as charged and sentenced him to ten years' imprisonment. It found that at the time of the event the applicant had had a significantly reduced capacity to understand and manage his actions. The trial court placed the applicant under compulsory hospitalisation as a preventive measure. By a separate decision the applicant's detention was further extended until his conviction became final. It dismissed the applicant's defence and his daughter's testimony as contradictory to the other evidence adduced at the trial.

31. The applicant's lawyer appealed. He complained about the way in which the recording of E.'s pre-trial interview had been adduced at the trial and its quality, and that the defence had been unable to challenge her account. He submitted that E. had been interviewed solely in the presence of the prosecutor, contrary to section 232(4) of the Law on Criminal Procedure (see paragraph 49 below), and that the defence had not been able to ask her questions. He also complained about the trial court's refusal to order a further expert assessment of E., reiterating that it had been necessary owing to the nature of the offence. Dr F. had considered neither E.'s medical history nor any other medical report regarding E., and there had been no evidence that E. had received any treatment regarding the event. He further noted that no other witness had been proposed, nor any other material evidence had been collected to support E.'s account.

32. On 31 August 2022 the Bitola Court of Appeal (hereinafter "the Court of Appeal") dismissed the applicant's appeal as unfounded. It held that E.'s statement had been taken in accordance with sections 54 and 232 of the Law on Criminal Procedure and sections 145, 146, 147, 149 and 150 of the Law on Children's Justice (see paragraphs 48, 49 and 51-55 below). Those provisions provided special procedural protections for vulnerable persons, such as child victims of sexual abuse, and aimed to avoid their secondary victimisation during the trial. The prosecutor provided the defence with a copy of the recording of E.'s testimony and therefore the defence had been able to familiarise themselves with that evidence and had had an opportunity to submit questions in writing. The relevant facts had been established on basis of E.'s statement, which had been assessed as truthful by Dr F., and her father's testimony. The trial court had had no reason to doubt Dr F.'s expert evidence and the defence had not commissioned their own technical adviser for an expert assessment of E.'s statement. As to the complaints concerning the lack of material evidence, the Court of Appeal observed that the applicant's family had entered the apartment shortly after E. had left.

33. The applicant's lawyer lodged a request for an extraordinary review of a final judgment with the Supreme Court. He repeated his complaints from

the appeal (see paragraph 31 above) and maintained that the defence had not been provided with an opportunity to question E. He also alleged that it had been unclear to what opportunity to submit questions to E. the Court of Appeal had referred.

34. On 30 November 2022 the Supreme Court quashed the judgments of the first and second-instance courts and remitted the case to the trial court, finding a violation of the rights of the defence because the recording of E.'s testimony, which had carried decisive weight, had not been properly adduced as evidence since its content had not been descriptively entered in the trial record. As a result, the defence had been unable to comment on that evidence, especially considering the fact that they had challenged the quality of the audiovisual recording (see paragraph 24 above).

35. On 28 December 2022 the applicant was placed under house arrest. From the available documents it appears that on 7 March 2023 that measure was replaced with another precautionary measure (prohibition on leaving the place of residence) for securing the applicant's presence at the trial.

### C. The second trial and the applicant's conviction

36. At a hearing held on 3 March 2023 the prosecutor reclassified the charges against the applicant, in line with the relevant amendments to the Criminal Code (see paragraph 57 below) and charged him with sexual abuse of a person under the age of 15 under Article 188 § 5 of the Criminal Code.

37. At a hearing held on 15 May 2023, in the presence of the applicant and his lawyer, the recording of E.'s interview (see paragraph 7 above) was played. The trial court descriptively entered its content in the record. The applicant stated that he could partially hear the recording. His lawyer stated that they had no objections to the way the recording had been reproduced at the trial. He also noted the Court of Appeal's position concerning putting questions in writing and stated that the defence required a copy of the hearing record to be able to analyse E.'s statement. The hearing was postponed.

38. At a hearing held on 29 May 2023 the trial court adduced the other evidence submitted by the parties. The testimonies of E.'s father, Dr F., Dr M. and Dr P., which had been given before the remittal, were read out. The defence, noting that E.'s statement had been decisive and that it contained certain contradictions, asked the trial court to allow either the direct examination of E. or an examination via technical means, in accordance with section 54(5) of the Law on Criminal Procedure (see paragraph 48 below). The prosecutor opposed, noting that two years had passed since the event and that Dr F. had advised against E.'s further participation. She also noted that the defence had not requested E.'s examination before the trial, although they had been aware of her statement. The trial court refused that request on the grounds of E.'s young age (13 years old at the time of the hearing), the fact that she had been a child victim, and the late stage in which it had been raised.

Subsequently, the defence requested the exclusion of E.'s statement from evidence. The prosecutor opposed the request, noting that the defence had previously been aware of E.'s testimony and had failed to challenge it. She also submitted that the applicant's identity had been established after E.'s interview and that he had not had a lawyer at that time. The defence objected, noting that the applicant's identity had been indicated in the criminal complaint and the prosecutor should have secured the applicant's defence rights during E.'s pre-trial interview. The trial court refused the exclusion request and stated that reasons would be provided in the judgment but noted that the Supreme Court had given instructions regarding the reproduction of the recording (see paragraph 34 above).

39. At the same hearing, the applicant's daughter S. testified again. She stated that the applicant's health had worsened, and he now required constant care. The applicant did not wish to give a statement.

40. At a hearing held on 16 June 2023 the parties presented their closing arguments. The defence, noting the applicant's deteriorating health condition, reaffirmed that the charges had been based on E.'s statement given before the prosecutor, without the participation of the defence, although the authorities had been aware of the applicant's identity at the early stages of the investigation. E.'s interview had been guided by leading questions and she had not been asked why she had insisted on checking up on K. when she had known that K. had been away that day. The defence had had no opportunity to test E.'s statement. The investigation had failed to secure any material evidence from the scene that could support E.'s allegation.

41. On 29 June 2023 the trial court convicted the applicant for sexual abuse of a person under the age of 15 and sentenced him to five years' imprisonment. It established that on 1 August 2021, at around 6 p.m., the applicant, who at the time had significantly reduced capacity owing to a permanent health condition (psycho-organic syndrome), had sexually abused the ten-year-old E. The trial court placed the applicant under compulsory hospitalisation as a preventive measure which was to be re-examined on a yearly basis. To determine the time, place and the manner in which the criminal offence had been committed, the trial court relied on E.'s statement (see paragraph 7 above), which had been supported by other evidence, such as her father's statement and Dr F.'s expert assessment and testimony (see paragraphs 22, 14 and 23 above). It dismissed the applicant's defence and his daughter's statement (see paragraph 26 above), finding that they contradicted the evidence. The trial court determined the applicant's health condition on the basis of the two medical expert assessments and referred to Dr P.'s recommendation for the applicant's compulsory hospitalisation (see paragraphs 15, 17 and 25 above).

42. The applicant's lawyer lodged an appeal. He complained, *inter alia*, that the sole and decisive evidence for the applicant's conviction had been E.'s statement given in the pre-trial stage, in the absence of the applicant or

his lawyer, and that the defence had had no opportunity to test the credibility of her statement. He repeated that E.'s interview had been dominated by leading questions.

43. In her submission to the Court of Appeal, the higher prosecutor submitted that the applicant's appeal should be dismissed. She noted, *inter alia*, that E.'s statement had been taken with the pre-trial judge's permission.

44. On 28 May 2024 the Court of Appeal dismissed the applicant's appeal and upheld the conviction. It noted that the defence had failed to request E.'s examination at the outset of or during the first trial but only did so after the remittal of the case (see paragraph 38 above). The defence had received the recording of E.'s pre-trial interview from the prosecutor, they had thus been afforded an opportunity to put questions in writing to E., but they had failed to propose any questions within the time-limit provided under the Law on Criminal Procedure. The defence had not been deprived of an opportunity to put questions to E. and the fact that they had made those requests at the later procedural stages indicated that their aim had been to delay the proceedings. The child victim's interview had been done in accordance with sections 54 and 232 of the Law on Criminal Procedure and sections 145, 146, 147, 149 and 150 of the Law on Children's Justice (see paragraphs 48, 49 and 51-55 below). Those provisions allowed the use of audiovisual recordings when interviewing vulnerable victims. The aim was to avoid their secondary victimisation at trial. The Court of Appeal further held that E.'s statement (see paragraph 7 above) had not been the sole evidence and had been assessed in correlation with the other evidence, such as her father's statement (see paragraph 22 above), Dr F.'s expert assessment and her statement at the trial (see paragraphs 14 and 23 above), Dr M.'s expert assessment and his statement at the trial (see paragraphs 15 and 25 above), and the criminal complaint record.

45. The applicant's lawyer lodged a request for an extraordinary review of the final judgment with the Supreme Court. He complained, *inter alia*, of a violation of the applicant's defence rights in that the conviction had been based on E.'s statement as the sole and decisive evidence, given in the pre-trial stage without any participation of the defence and without an opportunity to put questions to her. E.'s interview had been conducted largely through leading questions. He argued that it was unclear when the defence had been given an opportunity to submit questions in writing, and in so far as the Court of Appeal referred to the notice of the completion of the investigation (see paragraph 18 above), such a finding had been illogical.

46. On 16 October 2024 the Supreme Court dismissed the applicant's request and upheld the lower courts' judgments. It endorsed the reasoning of the Court of Appeal and considered that the applicant's allegations concerning the violation of his defence rights had been unfounded. The applicant was served with that judgment on 11 November 2024.

## II. OTHER PROCEEDINGS

47. On 19 March 2025 the Bitola Court of First Instance partly granted E.'s civil claim for damages against the applicant. It awarded her 150,000 Macedonian denars (approximately 2,500 euros) in respect of non-pecuniary damage for the violation of her personal rights in relation to the event of 1 August 2021.

# RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. DOMESTIC LAW

### A. Law on Criminal Procedure (*Закон за кривичната постапка*, Official Gazette nos. 150/10, 51/11, 100/12, 142/16 and 198/18)

48. Section 54 of the Law on Criminal Procedure provides special procedural protections for vulnerable victims when giving statements and being interviewed at all stages of the proceedings. Under section 54(2) these measures may be ordered by the court of its own motion or at the request of the public prosecutor or the victim. Under section 54(4) the court must order special protection measures, *inter alia*, for child victims of sexual abuse. Section 54(5) requires the court to use the audiovisual recording of the child victim's statement and interview as evidence, either alone or together with other special protection measures. Only in exceptional cases, owing to new circumstances, may the court order a second interview. This may occur only once and should be conducted using technical means of communication. Section 54(6) provides that the implementation of the special procedural protections for child victims is to be regulated with a separate law.

49. Under section 232(1) particularly vulnerable victims or witnesses are to be interviewed in a manner prescribed by this provision when the authority in charge of the proceedings considers that the interview on its premises could harm the victim's or witness's mental or physical health. The victim's or the witness's vulnerability is assessed in view of their age, health, the nature and effects of the criminal offence, or other circumstances, such as being a minor who is a victim of trafficking or sexual abuse. Section 232(3) states that the authority conducting the proceedings will interview the vulnerable victim or witness with special care to prevent any harm to his or her physical or mental health. Section 232(4) provides that the interview with the vulnerable victim (or witness) may be carried out with the assistance of a psychologist, social worker or other expert. The authority conducting the proceedings may order the interview to be conducted via video and audio transmission, without the parties being present in the room with the victim or witness. In that case, the parties, the defence lawyer and other persons entitled to ask questions are to do so via the authority conducting the proceedings, a psychologist, a social

worker or other expert. Section 232(6) provides, *inter alia*, that the vulnerable victim (or witness) should not be confronted with the defendant.

50. Section 302, which applies in general to the criminal proceedings, requires the public prosecutor to notify the suspect and his or her counsel that the investigation is completed and give them access to the case file and the evidence. The defendant may submit evidence or ask the prosecutor to obtain additional evidence within 15 days of the receipt of the notice that the investigation has been completed. The prosecutor must disclose both incriminating and exculpatory evidence. If the prosecutor collects certain evidence at the request of the defence, it must complete the evidence collection within 30 days of the filing of the request.

### B. Law on Children's Justice (*Закон за правда на децата*, Official Gazette nos. 148/13, 152/19, 275/19)

51. The Law on Children's Justice, in force at the material time, provided protective measures for child victims of criminal offences or children who appeared as witnesses in criminal proceedings. Section 145(1) provided that the child victim of a criminal offence had, *inter alia*, the right to be protected from secondary victimisation or re-victimisation. Section 145(3) provided that the police, the public prosecutor and the court would act with special care towards the child victim and would consider his or her interests when deciding on the defendant's criminal prosecution.

52. Section 146(1) of that law provided that the child victim was entitled to special procedural protections when giving statements and being interviewed at all stages of the proceedings. Under section 146(2) the court had to order special procedural protections in cases involving a child victim of sexual abuse. The text of section 146(3) was nearly identical to section 54(5) of the Law on Criminal Procedure (see paragraph 48 above).

53. Section 147 provided a list of special procedural protections for child victims and child witnesses. The list included, *inter alia*, giving a statement via a videoconference; using an audiovisual recording of the statement or the interview as evidence; taking a statement via an expert; and using technical means for communication.

54. Section 149(1) required the court, and all authorities involved in cases with a child victim, to provide assistance and protection and to act in a way that prevented any harm to the child's development. Section 149(2) provided that the criminal proceedings involving a child victim were conducted urgently. Section 149(4) required that the interview with a child victim as a witness be conducted in a way that avoided any adverse impact on the child's psychophysical development and applied special procedural protections. Under section 149(5) the authorities had to consider the child's personal characteristics when taking his or her statement to protect the child's interests and development.

55. Section 150 of the law prohibited, *inter alia*, confrontations between the child victim of sexual abuse and the suspect.

### C. Criminal Code (*Кривичен законик*, Official Gazette no. 96 with further amendments)

56. Article 188 of the Criminal Code, in force at time of the alleged incident, provided that a person who had had sexual intercourse or performed "other sexual acts" with a minor under the age of 14 would be imprisoned for at least 12 years.

57. In February 2023 amendments to the Criminal Code entered into force, as a result of which a non-consensual sexual act not constituting penetration is now punishable by a term of at least three years' imprisonment if committed against a person under the age of 15 (Article 188 § 5).

## II. DOMESTIC PRACTICE

58. The Government submitted two examples of relevant domestic practice. In the first one, the Ohrid Court of First Instance convicted a defendant of sexual abuse of a 16-year-old girl, relying, *inter alia*, on the written statement and the audiovisual recording of the interview of the victim at the pre-trial stage that had been done in the presence of the prosecutor, the victim's parent, a social worker, a psychologist and the defence lawyer (*К-40/25*, dated 17 March 2025). The second example referred to a judgment of the Strumica Court of First Instance in which the defendant had been convicted of sexual abuse of an 11-year-old girl (*К.бр. 471/123*, dated 15 March 2024). That conviction had been upheld by the Shtip Court of Appeal (*КЖ-170/24*, dated 4 October 2024). From the available documents it is not clear under which circumstances the statement of the child victim was given since the first-instance judgment referred to the consistency of the victim's multiple statements given before the prosecutor, the expert and the trial court, but the Government noted that the list of evidence did not include the interview with the child victim before the trial court.

## III. INTERNATIONAL MATERIAL

59. The relevant international material in respect of the need to protect victims of crimes, including children in cases concerning crimes of a sexual nature, can be found in *X and Others v. Bulgaria* ([GC], no. 22457/16, §§ 123-37, 2 February 2021) and *Vronchenko v. Estonia* (no. 59632/09, §§ 39-44, 18 July 2013).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

60. The applicant complained of a violation of the principle of equality of arms and a violation of his defence rights, in that his conviction had been mainly based on the untested evidence given by the alleged child victim E. during the pre-trial stage and without the participation of the defence. He relied on Article 6 of the Convention.

61. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 110-26, 20 March 2018), and taking into account the fact that the guarantees in paragraph 3 (d) of Article 6 represent specific aspects of the right to a fair hearing guaranteed by Article 6 § 1, considers that it would be most appropriate to examine the applicant's complaint under Article 6 §§ 1 and 3 (d) taken together (see, among many other authorities, *Schatschaschwili v. Germany* [GC], no. 9154/10, § 100, ECHR 2015). These provisions, in so far as relevant, read 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."

### A. Admissibility

62. In their initial observations the Government submitted that they raised no objections concerning the admissibility of the application. However, in their reply to the submission by the applicant and his claim for just satisfaction, the Government added in passing another point, which, given the way it was phrased, might be taken as an additional objection of non-exhaustion of domestic remedies. Specifically, with reference to the applicant's contention about the alleged leading nature of the questions during E.'s interview at the pre-trial stage, the Government stated that the applicant had failed to raise that issue in the legal remedies used in the first set of proceedings (see paragraphs 21-34 above). In reply, the applicant noted that the issue had been continuously raised in the second set of proceedings (see paragraphs 36-46 above), and that ultimately it had been of secondary importance given the inability to verify E.'s statement by putting questions to her.

63. The Court reiterates that, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party, in

so far as the nature of the objection and the circumstances so allow, in its written or oral observations on the admissibility of the application. Any omission by the Government to do so may lead the Court to conclude that they are estopped from raising those objections at a later stage in the proceedings (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 51-54, 15 December 2016). The Court notes that the Government have not explained why, in the present case, their objection concerning a non-exhaustion of domestic remedies was not raised in their initial written observations on the admissibility of the application. Nor have they provided any explanation for the delay in raising their objection. Moreover, the Court discerns no exceptional circumstances which might have exempted the Government from their obligation to raise the objection in a timely manner (ibid., §§ 52 and 53). It follows that the Government are estopped from raising this objection.

64. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

#### (a) The applicant

65. The applicant submitted that the sole and decisive evidence for his conviction had been E.'s statement given before the prosecutor in the pre-trial stage (see paragraph 7 above), without any participation of the defence. He noted that E. had been interviewed a few hours after her father had reported the incident (see paragraph 6 above) and it was clear that the applicant's identity had been known to the authorities before her interview. Moreover, the applicant had been brought into police custody on the same day that E. had given her statement (see paragraph 8 above). There had therefore been no justified reason for the refusal to afford the defence the possibility to test E.'s statement by putting questions to her. The authorities had also disregarded the fact that the acts of which the applicant had been accused had been less serious than sexual assault – the relatively minor nature of his offence had been mirrored in the amount awarded as damages in the ensuing civil proceedings (see paragraph 47 above).

66. The applicant further argued that the domestic courts' finding regarding the possibility to submit questions to E. at the pre-trial stage (see paragraphs 32 and 44 above) had been unclear and contrary to criminal procedural law. Such an approach would have only made sense if the applicant or his lawyer had been present at E.'s interview at the pre-trial stage - they could have listened to her statement and prepared questions in another room. The trial court had not had an opportunity to directly assess the truthfulness of E.'s statement. Dr F. had not examined E.'s medical records,

nor had she had access to any medical reports about how E. had experienced the incident. The domestic courts had disregarded the fact that, from 4 August 2021 until 28 December 2022, the applicant had been held in pre-trial detention (see paragraphs 12, 30 and 35 above), where he had had no means of playing the recording, especially considering his health.

67. The applicant also argued that E.'s interview had been dominated by leading questions, and she had not been asked to clarify all aspects of the event in question. In addition, the investigation had failed to secure any other evidence that could have verified E.'s account.

**(b) The Government**

68. The Government maintained that the applicant's right to a fair trial had not been breached. They submitted that there had been good reasons for E. not to attend the trial. In that connection they noted that E.'s interview at the pre-trial stage had been allowed by a pre-trial judge and had been conducted in the presence of all persons who had been required to attend in their official capacity, except a lawyer for the defence, who had not yet been appointed (see paragraphs 7 and 8 above). The Government argued that E.'s interview in the absence of the applicant's lawyer had been considered acceptable owing to a pressing need to examine the complaint of a vulnerable victim. The applicant's absence at that stage had been justified owing to the risk of secondary victimisation in the event of direct contact with E., which she might have perceived as tantamount to confrontation, which was prohibited under domestic law (see paragraphs 49 and 55 above). Domestic law required procedural protections for child victims of sexual abuse, such as the use of a recording of their testimony at trial (see paragraphs 48 and 52 above). In the present case, there had also been an expert recommendation against E.'s further involvement in the trial (see paragraph 14 above).

69. The Government further submitted that the applicant's conviction had been based to a significant, or in the alternative to a decisive extent, on E.'s statement. However, they argued that E.'s statement had been corroborated by her father (to whom she had immediately reported the incident) and by an expert Dr F., who had also been examined during the trial (see paragraph 23 above).

70. The Government maintained that there had been sufficient counterbalancing factors which had ensured that the applicant's trial had been fair within the meaning of Article 6 § 1 and 3 (d) of the Convention. In particular, E. had been warned about the consequences of giving false testimony (see paragraph 7 above); the reliability of E.'s statement had been assessed by Dr F., who had been examined at the trial; an audiovisual recording of E.'s statement had been made available to the defence at the pre-trial stage and had been played during the trial (see paragraphs 24, 25 and 37 above); E.'s statement had been corroborated by her father, and partly by the applicant's daughter S. – both of whom had been examined at the trial (see

paragraphs 22 and 26 above); the applicant had been represented by a lawyer throughout the proceedings; the applicant had been able to cast doubt on the credibility of the absent witness by examining E.'s father and Dr F.; the defence had been able to appoint their own expert witnesses who had also been examined during the trial (see paragraph 25 above); the applicant's request for the exclusion of E.'s statement from evidence had been duly considered by the domestic courts; and the domestic courts had assessed E.'s statement with caution and had given detailed reasoning why they had found her account reliable.

71. The Government further argued that the applicant had failed to use some of the available procedural safeguards. In particular, at the pre-trial stage, the applicant had failed to ask the prosecutor to put questions to E. in writing, despite being informed of the option to propose evidence (see paragraph 18 above). Subsequently, the applicant had failed to request E.'s examination either by proposing to put questions in writing to her as part of the evidence included in the list submitted with the objection to the indictment (see paragraph 20 above) or by making such a request during the first trial. Moreover, even though he had been informed of the option of putting questions to E. in writing by the Court of Appeal's judgment of 31 August 2022 (see paragraph 32 above), he had failed to request such a method of examination during the re-examination of the case. The Government submitted that the criminal procedure in the respondent State had been adversarial in nature, and it had been essentially the parties' obligation to propose evidence and, if needed, to make pertinent requests in that connection.

### *2. The Court's assessment*

#### (a) General principles

72. The general principles with regard to right to obtain the attendance and examination of prosecution witnesses can be found in the Grand Chamber judgments of *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, ECHR 2011) and *Schatschaschwili* (cited above). They have been recently restated in *Vasile Pruteanu and Others v. Romania* (no. 9308/18, §§ 54-57, 14 January 2025, with further references). According to these principles, the Court should first examine the preliminary question of whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give evidence during the trial and that all reasonable efforts should be made to secure their attendance. In the context of absent witnesses, where a conviction is based solely or decisively on the evidence of such witnesses, the Court must subject the proceedings to the most searching scrutiny. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and

proper assessment of the reliability of that evidence. The extent of the counterbalancing factors necessary in order for a trial to be considered fair would depend on the weight of the evidence of the absent witness. The more important the evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair (ibid., §§ 55-57).

73. In *Schatschaschwili* (cited above) the Court identified some of the counterbalancing factors which would compensate for the impediments under which the defence might labour as a result of the admission of evidence given by a prosecution witness who is absent from the trial. These include the following: the question of whether the domestic courts approached the statement of an absent witness with caution; the possibility of projecting at the trial of a video-recording of the absent witness's questioning at the investigation stage; the availability at trial of corroborative evidence supporting the witness statement at issue; the possibility for the defence to put their own questions to the witness indirectly; and the possibility for the applicant or defence counsel to question the witness at the investigation stage (ibid., §§ 125-31, and *Vasile Pruteanu and Others*, cited above, § 57).

74. The Court must also have regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often perceived 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 (see *A.S. v. Finland*, no. 40156/07, § 55, 28 September 2010; *S.N. v. Sweden*, no. 34209/96, § 47, ECHR 2002-V; and *Vronchenko,* cited above, § 56). In particular, in such cases Article 6 § 3 (d) cannot be interpreted as necessarily requiring that questions be put directly by the accused or his or her defence counsel, through cross-examination or by other means (see *S.N. v. Sweden*, cited above, § 52). Having said that, it should be possible to reconcile the measures taken for the purpose of protecting the victim with an adequate and effective exercise of the rights of the defence (see *Vronchenko*, cited above, § 56).

**(b) Application of those principles in the present case**

*(i) Whether there was a good reason for the non-examination of E. at the trial*

75. At the outset, the Court notes that the applicant was convicted on charges of sexual abuse of E., who was ten years old at the time of the incident and was a friend of the applicant's granddaughter (see paragraph 5 above). Shortly after E.'s father filed a criminal complaint, specifying the applicant

as the alleged perpetrator (see paragraph 6 above), the authorities arranged for her to be interviewed. E. was asked questions in the presence of the public prosecutor, her father, her lawyer, a representative of the Social Work Centre and the expert in psychiatry Dr F. (see paragraph 7 above). There was an audiovisual recording made of the interview. The applicant was taken into police custody a couple of hours after E. had been interviewed (see paragraph 8 above). He was not informed of E.'s interview, which had taken place in his absence and in the absence of his lawyer. While neither party included E. as a witness in their list of evidence for the trial (see paragraphs 19 and 20 above), the recording of her testimony was listed as evidence in the indictment. It was subsequently adduced as evidence at the trial and served as the basis for the applicant's conviction (see paragraphs 24, 25, 37 and 41 above). In this connection, the Court observes that the relevant domestic law exceptionally allowed, as a special protective measure for child victims of sexual abuse, the use as evidence of the recording of their statements or interviews (see paragraphs 48 and 51-55 above). As explained by the Court of Appeal, the aim of those provisions was to safeguard the victim (see paragraphs 32 and 44 above). The Court further observes that the expert report, commissioned by the prosecutor and prepared by Dr F. at the pre-trial stage, advised against E.'s further participation in the criminal proceedings (see paragraph 14 *in fine* above). After the remittal of the case, at the hearing held on 29 May 2023, the trial court refused the defence's request for E. to be examined at the trial, on the grounds of her young age, the fact that she was a child victim and the late procedural stage at which the request had been submitted (see paragraph 38 above).

76. The Court notes that when refusing the defence's request to examine E. at the trial, the trial court did not explicitly rely on Dr F.'s expert report from the pre-trial stage, nor on any other expert assessment (compare *D.T. v. the Netherlands* (dec.), no. 25307/10, § 48, 2 April 2013, where the domestic courts carefully assessed whether the child victim could be examined on the basis of several expert assessments). Having said that, the Court observes that the Court of Appeal emphasised the need to protect vulnerable witnesses like E., and referred to the aim of avoiding their secondary victimisation at trial (see paragraph 44 above). Considering the need to take specific measures for the purpose of protecting minor victims in criminal proceedings concerning sexual offences (see the case-law quoted in paragraph 74 above), the Court can accept that in the present case there were good reasons for the non-examination of E. at the trial and for her pre-trial interview recording to be admitted into evidence (see, *mutatis mutandis*, *Vronchenko*, cited above, § 58, and *Przydział v. Poland*, no. 15487/08, § 51, 24 May 2016).

*(ii) Whether the evidence was the sole or decisive basis for the conviction*

77. In the present case, in the first set of proceedings, the Supreme Court considered that E.'s testimony constituted decisive evidence on which the applicant's conviction had been based. In the second set of proceedings, it did not give an assessment regarding the weight of that evidence (see paragraphs 34 and 46 above). The Court sees no reason to depart from the Supreme Court's assessment made in the first round of the proceedings, since all other witnesses examined at the trial had no direct knowledge of the acts in issue, and only testified on what E. had told them.

*(iii) Whether there were sufficient counterbalancing factors*

78. It remains for the Court to determine whether there were sufficient counterbalancing factors which would compensate for the impediments under which the defence laboured as a result of the admission of evidence given by E., who was not examined at the trial (see the case-law quoted in paragraph 73 above). The Court reiterates that where, as in the instant case, a conviction is based decisively on the evidence of a witness who has not been examined by the defence, the Court must subject the proceedings to the most searching scrutiny (see *Al-Khawaja and Tahery*, cited above, § 147, and *Süleyman v. Turkey*, no. 59453/10, § 86, 17 November 2020).

79. The Court begins by observing that the relevant domestic law allowed, in the situation such as the present one, for the interview with the victim to be conducted via audiovisual transmission, without the parties being present, and provided that the vulnerable victim should not be confronted with the defendant (see paragraphs 48-49 and 51-55 above). In such cases, the defence lawyer and other persons entitled to ask questions were required to do so via the authority conducting the proceedings, a psychologist, a social worker or other experts (see paragraph 49 above). The audiovisual recording of the victim's interview could be used as evidence during the trial and a second interview was only exceptionally possible (see paragraphs 48 and 52 above). The Court finds no fault with the above-mentioned provisions of the domestic law, which were clearly intended to protect the interests of particularly vulnerable victims (see, in this connection, the relevant international standards referred to in paragraph 59 above). However, it must examine whether the manner in which these provisions were applied in practice in the present case afforded sufficient protection to the applicant's defence rights and ensured a fair trial (see the case-law quoted in paragraph 74 above)

80. The Court observes that in the present case the playing of the audiovisual recording of E.'s pre-trial interview at the trial enabled the trial court to obtain an impression of her evidence and the defence to bring up issues regarding the credibility of her statement. However, while acknowledging the importance of this factor, the Court considers that, in the circumstances of the present case, it cannot on its own be regarded as

sufficient to protect the rights of the defence (see, *mutatis mutandis*, *Vronchenko*, cited above, § 65, and *Rosin v. Estonia*, no. 26540/08, § 62, 19 December 2013, with further references), for the following reasons.

81. Firstly, as already noted in paragraph 77 above, E.'s testimony was decisive evidence for the applicant's conviction. Although E.'s father and Dr F. had been examined at the trial (see paragraphs 22 and 23 above), and could be questioned by the defence, their accounts only provided indirect support to E.'s testimony as they could only testify about what E. had told them and about their observations of her behaviour.

82. Secondly, as regards the possibility of putting questions to E. in writing, the Court, while taking note of the position of the domestic courts and the Government (see paragraphs 32, 44, 46 and 71 above), finds that that opportunity was not made available to the applicant with sufficient clarity. In this connection, it observes that the Court of Appeal considered that the applicant, who had received the recording of E.'s pre-trial interview, had been afforded an opportunity to put questions to E. in writing within the time-limit provided under the Law on Criminal Procedure, without specifying any provision of that law. This reasoning was endorsed by the Supreme Court (see paragraphs 44 and 46 above). The applicant maintained before the domestic courts that such a finding had been unclear and illogical (see paragraphs 33 and 45 above). In that regard, the Government argued that the applicant could have submitted questions for E. in response to the prosecutor's notice given to the defence in accordance with section 302 of the Law on Criminal Procedure (see paragraphs 18 and 71 above). The Court understands that the above-mentioned provision concerns a notification by the prosecutor to the defence in which they are informed about the closure of the investigation; their right to examine the case file (including all evidence gathered by the prosecutor in the course of the investigation); and their right to propose further evidence or ask the prosecutor to collect additional evidence within 15 days of the receipt of the notice (see paragraph 50 above). There is no indication, nor has it been argued by the Government, that the failure to comply with that time-limit would have precluded the exercise of the right in question at trial. The Court reiterates that before an accused can be said to have impliedly, through his or her conduct, waived an important right under Article 6, it must be shown that he or she could reasonably have foreseen what the consequences of his or her conduct would be (see *A.S. v. Finland*, cited above, § 71).

83. The Court further notes that the domestic legal provision referred to by the Government is of a general nature and the prosecutor's notice, which was issued several weeks after E.'s pre-trial interview (see paragraphs 7 and 18 above), included no explicit invitation to put questions to E. in writing (contrast *Sarkizov and Others v. Bulgaria*, nos. 37981/06 and 3 others, §§ 16 and 57, 17 April 2012, where the applicants could put questions to the anonymous witnesses immediately after their interviews in the pre-trial stage

and stated in writing that they had no questions to put; also contrast *S.N. v. Sweden*, cited above, §§ 49-50; and *B. v. Finland*, no. 17122/02, §§ 7 and 44-45, 24 April 2007, where the defence had been afforded but had turned down an opportunity to have questions put to the child victim).

84. As regards the Government's assertion that the applicant could have asked to put questions to E. in writing at the trial (see paragraph 71 above), the Court notes that at the hearing held on 29 May 2023 the applicant's request for E.'s examination was dismissed by the trial court (see paragraph 38 above). The trial court did not suggest that, instead of a direct examination of E., the applicant could put questions in writing to her (contrast *Dončev and Burgov v. the former Yugoslav Republic of Macedonia*, no. 30265/09, § 57, 12 June 2014, where the trial court gave specific instructions to the applicants that they could put questions in writing to a protected witness).

85. Thirdly, the Court notes that, in addition to requiring special procedural protections for vulnerable witnesses and victims, the domestic law also provided that the authorities should afford to both parties an opportunity to put questions to those witnesses (see paragraphs 49 and 79 above). Notwithstanding these requirements, the applicant was not afforded such an opportunity (see *A.S. v. Finland*, cited above, § 63; and compare *Accardi and Others v. Italy* (dec.), no. 30598/02, ECHR 2005-II, where the applicants and their lawyers could follow the interview with the child victims in a separate room via a two-way mirror and could ask questions via the investigating judge). In this context, the Court finds it particularly important to note that the authorities must have been aware that the pre-trial interview of E. would likely be the only opportunity to put questions to her considering the above-mentioned safeguarding obligations that the domestic law imposed on them (see paragraphs 48, 52 and 79 above). Nonetheless, they organised an interview with E. which was led by the prosecutor who, in addition to the expert, was putting questions directly to her without the participation of the defence. That situation at the very least created a perception of an unfair advantage in favour of the prosecution (see, *mutatis mutandis*, *Ürek and Ürek v. Turkey*, no. 74845/12, § 63, 30 July 2019). Although mindful of the Government's argument that there had been a pressing need to interview E. as a vulnerable victim (see paragraph 68 above), the Court observes that the domestic courts' decisions, other than referring to the relevant domestic law provisions which, *inter alia*, required a certain urgency on behalf of the authorities when conducting criminal proceedings involving a child victim (see paragraphs 32, 44 and 54 above), did not elaborate on any particular urgency which, in the circumstances of the case, would have justified dispensing with the need to secure the participation, at least indirectly, of a defence lawyer when E. was interviewed at the pre-trial stage as possible under the domestic law (see paragraph 49 above). In particular, the Court observes that the applicant was identified when E.'s father reported the

alleged abuse to the police, and nothing has been put forward to indicate that the authorities were at that moment concerned of not being able to secure his arrest. Indeed, the applicant was arrested and appointed a lawyer on the same day the criminal complaint was made and E.'s interview was held (see paragraphs 6, 7 and 8 above). Furthermore, while the Court is ready to accept that the confrontation between E. and the applicant would not be appropriate in the circumstances (see *Vronchenko*, § 65; and *Rosin*, § 62, both cited above), neither the domestic courts nor the Government argued that the indirect participation of the applicant's defence lawyer in her interview would run counter to the protection of E.'s interests. The Court reiterates that when the authorities have taken the reasonable view that the witness concerned would not be examined at the trial hearing, it is essential for the defence to have been given an opportunity to put questions to the witness at the pre-trial stage (see *Schatschaschwili*, cited above, § 157).

86. In response to the domestic courts' suggestion that the applicant should be reproached for not requesting E.'s examination during the first round of the proceedings (see paragraph 44 above), the Court notes that, aside from the fact that such a possibility was clearly limited by domestic law (see paragraphs 48 and 79 above), E.'s testimony was included in the list of evidence for the prosecution (see paragraph 19 above). She was therefore a "prosecution witness" and, unlike defence witnesses, the applicant was not required to demonstrate the importance of personal appearance and questioning of a prosecution witness (see *Süleyman*, cited above, § 92, with further references; see also *Vronchenko*, cited above, § 62). It further observes that the applicant objected to E.'s statement during the first and second examination of the case, and at the second examination, when all the evidence was adduced anew, he unsuccessfully sought E.'s examination and the exclusion of her pre-trial interview from evidence (see paragraphs 24 and 38 above). He also raised the issue in the legal remedies he used throughout the proceedings (see paragraphs 31, 33, 42 and 45 above). The Court does not consider that the applicant's behaviour throughout the proceedings indicated that he waived his right to examine E. It suffices to say that the domestic courts' attention was sufficiently drawn to the handicaps under which the defence was labouring, on account of interviewing a decisive witness at the pre-trial stage without the participation of a defence lawyer, and were required to take measures to compensate for that handicap. The Court reiterates that the Contracting States are required to take positive steps, in particular to enable the accused to examine or have examined witnesses against him or her (see *Süleyman*, cited above, § 77). Such measures form part of the diligence which the Contracting States must exercise in order to ensure that the rights guaranteed by Article 6 are enjoyed in an effective manner (see *A.S. v. Finland*, cited above, § 53).

87. Lastly, the Court cannot but observe that, despite the disadvantage caused to the defence during the pre-trial examination of E. (see paragraph 85

above), there is no indication in the domestic courts' judgments that they approached E.'s statement with any specific caution. Although the applicant's lawyer repeatedly complained that E.'s interview had been dominated by leading questions (see paragraphs 40, 42 and 45 above), it does not appear that this matter was given due consideration by the domestic courts in order to show that they had applied the necessary care in the evaluation of E.'s pre-trial interview (contrast *S.N. v. Sweden*, cited above, § 53). The mere fact that Dr F., who had been appointed by the prosecutor, gave an assessment of the credibility of E.'s account (see paragraphs 14 and 23 above), could not, in the view of the above circumstances, sufficiently counterbalance the handicap for the defence (see, *mutatis mutandis*, *A.S. v. Finland*, cited above, § 60; *A.L. v. Finland*, no. 23220/04, § 40, 27 January 2009; and *D. v. Finland*, no. 30542/04, § 44, 7 July 2009; and contrast *D.T. v. the Netherlands,* cited above, § 51).

88. The Court is therefore of the opinion that the defence was not offered sufficient counterbalancing factors which would compensate for the impediments resulting from the admission of evidence given by E.

*(iv) Conclusion*

89. In view of the foregoing, and weighing, on the one hand, the applicant's defence rights – having regard also to the substantial prison sentence he faced (see paragraphs 30 and 41 above; see also *Vronchenko,* cited above, § 65) – and, on the other hand, the absence of any indication that the exclusion of the defence from E.'s pre-trial interview was in fact required for the protection of her interests (see paragraph 85 above), the Court concludes that, in the circumstances of the case, the constraints affecting the applicant's exercise of his defence rights in relation to the examination of E. were irreconcilable with the guarantees of a fair trial.

90. Accordingly, the Court finds that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant did not make a claim under this head. Accordingly, the Court is not called upon to award any sum under this head.

### B. Costs and expenses

93. The applicant submitted that the costs and expenses incurred in the proceedings before the Court had amounted to 1,750 euros (EUR), notably for the lawyer's fees for the application and two subsequent submissions to the Court. That amount also included the value added tax (VAT).

94. The Government argued that the claim should be dismissed as the applicant had failed to properly substantiate it since he had not submitted any contract, invoice or proof of payment for the amounts claimed. Furthermore, they noted that only one submission had been made in reply to the Government's initial observations and they objected against the inclusion of the VAT amounts since the Court's awards were tax-free.

95. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, 28 November 2017). That is to say, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation (see, for example, *K.M. v. North Macedonia*, no. 59144/16, § 85, 4 March 2025). In the present case, regard being had to the above criteria and the absence of any supporting documents to show that the applicant paid the amounts claimed or was under an obligation to do so, the Court rejects the claim under this head as unsubstantiated.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 November 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Andrea Tamietti<br>Registrar | Arnfinn Bårdsen<br>President |