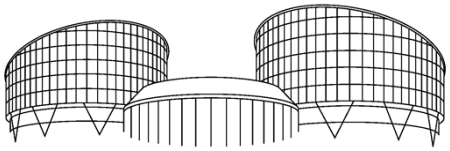

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF T.K. v. LITHUANIA

(Application no. 14000/12)

JUDGMENT

STRASBOURG

12 June 2018

FINAL

03/12/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of T.K. v. Lithuania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Georges Ravarani,
Péter Paczolay, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 15 May 2016,

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

PROCEDURE

1. The case originated in an application (no. 14000/12) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr T.K. ("the applicant"), on 29 February 2012. Pursuant to Rule 47 § 4 of the Rules of the Court, the Court decided of its own motion to grant anonymity to the applicant.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant firstly alleged that the taking of his spectacles by the police after his arrest amounted to inhuman and degrading treatment. He further complained that he had not had a fair trial, in particular given that he had not been able to ensure examination of certain witnesses.

4. On 9 July 2015 the complaints concerning the applicant's right not to be exposed to degrading treatment as well as fairness of the applicant's trial, including his right to examine witnesses, were communicated to the Government, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and is serving a prison sentence in Vilnius.

6. The applicant lived with V.K. They raised two boys, Ra.K. and Ro.K. (also see paragraphs 54-58 below), born in 2002 and 2004 respectively.

7. In April 2011 the applicant's and V.K.'s family was put on the list of families at social risk. Both parents were later warned for not having fulfilled their parental duties properly. According to the social services, later that year V.K. was allocated social housing; she had no property of her own.

8. By a judgment of 20 October 2011, the Kaunas City District Court convicted the applicant of having caused physical pain to each of the boys (Article 140 § 2 of the Criminal Code) and of attempting to influence a witness (Article 233 § 1 of the Criminal Code – see paragraph 69 below). The court established that in 2009 the applicant had several times been physically violent towards Ra.K. and Ro.K. The court relied on statements given by social workers who had seen bruises on the boys' bodies and in whom the children – who since 15 October 2009 had been living in a care institution – the "Pastogė" children's home, because V.K. could not guarantee their safety at home – had confided. The court also referred to the testimony which the children had given to forensic psychiatrists, statements given by police officers, and V.K.'s testimony. The psychiatrists had concluded that the children were afraid of the applicant; they had openly told them that he had been beating them. The psychiatrists recommended that the children not be questioned further [during those criminal proceedings] in order to avoid the applicant exerting an influence on the children's testimony, bearing in mind the fact that – while visiting the children in the children's home – he had already asked them not to recount his actions. The psychiatrists had no objective or subjective information indicating that V.K. had exerted any influence on the children's testimony.

9. The Kaunas City District Court also established that on 4 November 2010 the applicant had caused negligible health impairment to V.K. by inflicting bruises and scratches to her head, belly, elbow and knee, and that although a pre-trial investigation in that regard had been discontinued, V.K. had been informed that it was possible for her to bring a private prosecution against the applicant under Article 140 of the Criminal Code (see paragraph 69 below). The court also established that the applicant had attempted to influence V.K. to change her testimony by threatening her, even after the start of the court proceedings in the case concerning the alleged physical violence against the two boys. Having noted that the applicant had three prior convictions, the records of which had not yet expired, the court found him guilty and sentenced him to deprivation of liberty for ten months. However, given that pending the trial the applicant had been detained from 29 November 2010 until 20 October 2011, the court deemed that he had already served his sentence. Accordingly, the applicant was released in the courtroom.

A. Criminal proceedings against the applicant on charges of sexual assault and possession of pornography

1. The pre-trial investigation

10. As it transpires from the documents in the case file, in July 2011 V.K. lodged a complaint with a prosecutor, alleging that the applicant had shown pornographic films to their children and had sexually abused their children in their home. When questioned by the pre-trial investigator on 29 July 2011, V.K. stated that the abuse had taken place during the period between 24 April 2009, when V.K. had been treated as an in-patient in hospital for an illness unrelated to this case, and 15 October 2009, when V.K. had moved to a social care home (*nakvynės namai*) in Kaunas and the children had been placed in the Pastogė children's home. V.K. also stated that she had learned about this abuse on 27 May 2011, when her sons had confided in her after confiding in her family members Z.S. and V.F. (see also paragraph 14 below).

11. On 29 July 2011 V.K. confessed to the pre-trial investigator that Ra.K. was not the biological son of the applicant and that she and the applicant had only agreed that they would give the applicant's surname to Ra.K. in order to obtain social benefits (see also paragraphs 54-58 below).

12. V.K. was again questioned on 18 August 2011. She confirmed that she had known about her obligation to deliver the children for questioning on 22 August 2011 and promised to deliver them (see paragraph 17 below).

13. In summer 2011 the investigators found in the applicant's possession a number of DVD disks of pornographic content, containing one file depicting a child under the age of fourteen, and fifteen files depicting a child under the age of eighteen.

14. On 5 August 2011 the investigator questioned a number of witnesses. Among those witnesses was Z.S. (the mother of the husband of V.K.'s sister). Another witness was V.F. (Z.S.'s daughter). These two witnesses stated that they had learned on 27 May 2011 from Ra.K. and Ro.K. that the applicant had showed them pornographic films and that he had also abused them sexually by asking them to perform oral sex on him – as shown in those films. Also on 27 May 2011 Z.S. and V.F. had given the same information to the boys' mother, V.K.

15. When questioned, A.A., one of the boys' schoolteacher, told the pre-trial investigator that she had not noticed any alarming changes in the boys' behaviour. Neither had she observed any improper behaviour on the part of the applicant towards that boy. Another witness, a former work colleague of the applicant, stated that the applicant had raised the boys together with V.K.; he added that they had had family quarrels, but that that was nothing exceptional. According to that witness, the applicant had taken good care of the two boys.

16. On 17 August 2011 the prosecutor wrote to V.K., informing her that the two boys were to be questioned by the pre-trial investigation judge. V.K. was informed that she had an obligation to bring her sons for questioning and that she had a right to be present during that questioning.

17. On 22 August 2011 the applicant's sons were questioned at the premises of the Kaunas police. The records indicate that persons who arrived at the police station were: a Kaunas City District Court judge, the prosecutor, the pre-trial investigator, a representative of the child welfare authority, a psychologist from Kaunas police and the boys' mother, V.K. Those people agreed that the boys would be questioned and that a video and audio recording would be made. The questioning itself took place in a special room for the questioning of children (*vaikų apklausos kambarys*); the boys were questioned by the psychologist, and it appears that no other person was in that room during the boys' questioning. The psychologist assured the boys that the content of their testimony would be known only to the judge. The boys described the details of how the applicant had sexually abused them in 2009. One of them, Ro.K., who at that time was seven years old, stated that "I am aware that I should not perjure myself (*žinau, kad nebūtų melagingų parodymų*)" because "my mother said so". He also told the psychologist that the mother had also told him that "if I and my brother say nothing, and are silent, then our father [the applicant] would be released from prison, and our mother would be put in prison". The boy said that he was not angry with his father; he only wanted for his father not to know where he and his brother lived.

18. On 31 August 2011 the applicant was charged with the sexual assault of a young child (Article 150 § 4 of the Criminal Code). On 26 May 2012 final criminal charges under Articles 150 § 4, 153 and 309 §§ 2 and 4 were served on the applicant (see paragraph 69 below).

19. On 23 September 2011 the Kaunas City District Court ordered a forensic psychological examination of Ra.K. and Ro.K. Two forensic experts – a child psychologist and a child psychiatrist – then questioned the boys in Vilnius between 20 October and 21 November 2011. The experts concluded that the children were able to remember events that had taken place in 2009. The children had no tendency to fantasise or to imagine things. The psychologists, however, emphasised that the boys' testimony could have been affected by the long period of time – two years – that had elapsed since the events in question. Moreover, both parents exerted both direct and indirect sway over the children: V.K.'s direct and indirect influence was illustrated by Ro.K.'s statements that his mother would go to prison if he stayed silent (see paragraph 17 above), and the applicant's indirect impact on the children was illustrated by the fact that they feared physical violence. The psychologists recommended that the boys not take part any further in the pre-trial investigation, and nor in the court proceedings, because this would be too stressful for them.

20. On 23 November 2011 the applicant was arrested. He was searched and placed in pre-trial detention, where he remained until his conviction was upheld by the Court of Appeal on 9 December 2013 (see paragraph 51 below).

21. When questioned by the pre-trial investigator on 24 November 2011, V.K. stated that she was very much afraid of the applicant. She noted that in the past he had been physically violent towards her and the children. Having learned that he had been released from prison on 20 October 2011 (see paragraph 9 *in fine* above), she feared retaliation and that he would search for her and for the children in order to make them change their testimony in the proceedings regarding the alleged sexual violence.

22. On 25 November 2011 V.K. gave her agreement to the child welfare authority that both children would be placed in a care institution.

23. As later confirmed by the child welfare authority during the criminal proceedings in respect of the applicant, on 5 December 2011 the Kaunas Municipality gave temporary guardianship of Ra.K. and Ro.K. (*laikinoji globa*) to a children's home (*vaikų globos namai*) in Kėdainiai, because from 1 December 2011 onwards V.K. could not be located and the children's parents could not take care of them. The children were placed in the children's home in Kėdainiai.

24. In December 2011 the applicant asked the prosecutor to organise a confrontation (*akistata*) between him and V.K. The prosecutor refused the request, considering that there were no essential discrepancies between their respective testimony. Moreover, according to the prosecutor, "V.K.'s testimony [was] not the only evidence on the basis of which the question of the applicant's criminal liability would be decided". The prosecutor likewise denied the applicant's request that a confrontation be staged between him and the witnesses V.F. and J.S., deeming that there were no essential contradictions between their and the applicant's respective versions of events. By a final ruling of 8 February 2012 a pre-trial investigation judge of the Kaunas City District Court upheld the prosecutor's decision.

25. On 11 January 2012 the applicant asked the prosecutor to be allowed to take a polygraph test, in order to prove that he had been "smeared" by V.K. The prosecutor dismissed the request, stating that the Code of Criminal Procedure did not permit polygraph test results to count as evidence.

26. On 20 March 2012 the applicant lodged a written request for the prosecutor to stage a confrontation between him and the two children. He argued that they had incriminated the applicant when questioned by the experts only because they had been swayed by their mother. The applicant accordingly requested that a new forensic examination of the children be undertaken now that the boys resided at the children's home and were free of their mother's influence. He drew the prosecutor's attention to the civil court's decision of 2 November 2011 whereby the court had acknowledged

that V.K. had acted dishonestly (see paragraphs 54-58 below). The applicant also asked the prosecutor to obtain the applicant's previous criminal file (see paragraphs 8 and 9 above), alleging that already in the course of those proceedings witnesses had stated that V.K. had been "coaching" (*moko*) the children what to say to the authorities, as was the case in the present proceedings. The applicant emphasised that the case-file material in respect of the previous criminal case also contained the records of the questioning of his children, and that from that material it was plain that V.K. had been lying. He also asserted that the earlier material proved that in autumn 2009 V.K. had already planned to accuse the applicant of sexually abusing his children. The applicant requested that a psychiatric examination (*psichiatrinė ekspertizė*) be performed on V.K.

27. On 6 April 2012 the prosecutor refused the applicant's requests. He considered that a confrontation between the applicant and the two children could be a traumatic experience for the latter. The prosecutor also considered that there were no grounds for ordering a fresh psychiatric examination of the two boys, because, in his view, the earlier expert reports had been properly reasoned, comprehensive, and had raised no doubts. The prosecutor also refused the applicant's request that the material relating to his previous criminal conviction be added to the file pertaining to the instant case, noting that the judgment regarding his earlier conviction (*nuosprendis*) had been added to his case file, but holding that other material from the earlier criminal case file had not constituted evidence directly relevant to the circumstances being investigated in the instant criminal case. Lastly, the prosecutor considered that there was no information in the file which could lead one to doubt the testimony of V.K. or her credibility.

28. On 23 April 2012 that decision was upheld by the pre-trial investigation judge of the Kaunas County District Court, whose decision was non-appealable. The judge considered that the prosecutor was free to choose which pre-trial investigation actions to undertake, and that he did not have to comply with the parties' requests which were not obligatory to him (Article 178 of the Code of Criminal Procedure, see paragraph 70 below). For the judge, the prosecutor's decision refusing the applicant's request had been properly reasoned and lawful.

29. In reply to the applicant's complaint about V.K.'s lack of interest in her sons, in April 2012 the Children's Rights Ombudsman, E.Ž., informed him that as at that time V.K. had not visited their sons at the children's home, she was not interested in their lives, and she was keeping her residential address secret. The child welfare specialists of Kaunas and Kėdainiai tried to establish V.K.'s residential address and intended to ask a court to limit V.K.'s parental rights in respect of the two boys.

30. On 28 May 2012 the pre-trial investigator repeatedly refused to join the material contained in the applicant's earlier case file (see paragraphs 8 and 9 above) to the file relating to the instant case of sexual violence. She

reasoned that joining the two sets of material "[was] not possible because in [the earlier] criminal case the pre-trial investigation had been terminated and that case [had] already been examined in court".

31. By a final decision of 1 June 2012 the Kaunas City District Court refused the applicant's request for the prosecutor to be removed as not impartial.

32. On 9 August 2012 the prosecutor drew up a bill of indictment, charging the applicant with having systemically and on an unknown number of occasions using physical violence towards his sons and then, having subjected them to his will, forced them to orally appease his passion, which amounted to a crime under Article 150 § 4 of the Criminal Code. The prosecutor also charged the applicant under Article 309 §§ 2 and 4 of the Criminal Code with possession of pornographic materials depicting children and with showing those materials to Ro.K. and Ra.K. (see paragraph 69 below).

2. The trial court's judgment

33. Once the criminal file was transferred to the Kaunas Regional Court, the applicant – during a hearing of 17 September 2012 – complained that the prosecutor had ignored his numerous requests, including a request for him to ensure that V.K. would not accompany their children to their examination by the experts (see paragraphs 16 and 17 above). He maintained that V.K. should be questioned in court.

34. On 4 October 2012 the Kaunas Regional Court considered that V.K. should be questioned, "because her testimony [was] important for the criminal case". When V.K. did not appear at three court hearings held on 17 September, 27 September and 4 October, the court ordered the police to find her and bring her in.

35. In October 2012 the police informed the court that they could not locate V.K., because since 15 February 2012 she had been on the list of persons without a place of residence and no one had answered the door at V.K.'s last known place of residence. She could not be reached by telephone either. The police noted that "recently" V.K. had been hiding from the pre-trial investigator in the applicant's case and had not given details of how she could be reached.

36. On 20 September 2012 the applicant asked the trial court for two social workers, J.J. and A.P., who had seen his family in 2009, be summoned and examined. The trial court secured their attendance, and on 4 October 2012 those two social workers testified that they had not observed the children talking about sex or stating that they had been violated sexually. On the same day the applicant asked that another witness, D.V., who was a family friend, be examined. The court granted the request and D.V. testified in court that there had been fights between the applicant

and V.K., but that the children had not shown any interest of a sexual nature.

37. On 23 November 2012, in court proceedings that were closed to protect the rights of the children, the Kaunas Regional Court found the applicant guilty of sexual violence against his children. The applicant and his lawyer took part in the court hearings. The applicant questioned the two witnesses, Z.S. and V.F., the cross-examination of whom the prosecutor had refused earlier (see paragraphs 14 and 24 above). Other witnesses – Ra.K.'s and Ro.K.'s teachers and their guardians at the children's home – testified in court that the two boys were serious and honest. Those witnesses stated that the boys had told them that the applicant had been physically violent, but that they had not mentioned having been abused sexually. The applicant did not confess to committing sexual abuse. However, the court found him guilty on the basis of the testimony that Ra.K. and Ro.K. had given to the pre-trial investigation judge on 22 August 2011 (see paragraph 17 above). The trial court also gave weight to the testimony that the boys had given to the child psychologist and the child psychiatrist (see paragraph 19 above). The trial court noted that, according to those experts, Ra.K. and Ro.K. were not prone to fantasising; the children were also able to understand and remember the facts on which the charges of sexual assault against the applicant were based. The court's verdict was also based on the testimony of Z.S. and V.F. In reply to the applicant's argument that V.K. had pressured her sons to testify against him, the trial court noted that Z.S. and V.F. had been the first people the boys had told about the abuse; they had only told their mother later. There was no evidence in the file that V.K. had influenced the boys' testimony. Lastly, the trial court noted that the applicant had acknowledged having been physically violent towards his sons, which was confirmed by the earlier judgment under which the applicant had been convicted of acts of violence (see paragraphs 8 and 9 above).

38. The trial court convicted the applicant of committing sexual assault against a young child (Article 150 § 4 of the Criminal Code) and of possession of pornographic material depicting a child or presenting a person as a child (Article 309 § 2 of the Criminal Code). He was sentenced to eleven years of deprivation of liberty.

39. However, the trial court acquitted the applicant of crimes listed under Articles 153 and 309 § 4 of the Criminal Code because the applicant had denied committing those crimes and it was impossible to establish from the children's testimony which pornographic films the applicant had shown to the children and when he had shown them.

3. The proceedings before the Court of Appeal

40. The applicant appealed, insisting that the trial court should not have relied on his sons' testimony because they had been swayed by their mother,

who had been living with them at the relevant time and who had accompanied them to the questioning of 22 August 2011 (see paragraph 17 above). The applicant emphasised the fact that V.K. had "consciously (*sąmoningai*)" avoided coming into contact with the law enforcement authorities. He was also dissatisfied with the fact that during both the pre-trial investigation and the trial the authorities had denied him the possibility to add to the new criminal file the material from the previous criminal proceedings (see paragraphs 8 and 9 above). The applicant claimed that the reports by child psychiatrists ordered during proceedings in respect of the earlier case against the applicant contained information about the applicant's behaviour towards his children in 2009. He stated that in those reports the psychologists had confirmed that the children had described the situation openly, without hiding anything. He could be understood as implying that at that time the children had not mentioned any sexual violence exerted against them by the applicant. The applicant also submitted that the expert reports produced in 2011 had been inconclusive, but had not been examined at the courtroom.

41. By letters of 28 December 2012 and 20 May and 23 August 2013, as well as during the appellate court hearing of 25 October 2013, the applicant asked the Court of Appeal to make sure that V.K. would be summoned to appear before the Court of Appeal so that he could question her. The applicant pointed out that he had been wrongfully accused of exerting sexual violence towards his children by V.K., and that, because he had not been able to have her cross-examined, he had not had a fair trial.

42. On 20 May 2013 the applicant also provided the Court of Appeal with (i) a number of documents from the Pastogė children's home and (ii) V.K.'s written explanations to the child welfare authorities. The applicant submitted that those documents proved that V.K. had intended to wrongfully accuse the applicant, and that she had "got rid of the children (*atsikratė*) immediately after (*vos tik po*)" they had been questioned and the expert examinations had been concluded, on 23 November 2011 (see paragraphs 19, 22 and 23 above). The applicant asked the Court of Appeal to add those documents to the case file.

43. During the hearing of 6 June 2013 before the Court of Appeal the applicant reiterated his request that V.K. be summoned for examination. He provided documents relating to V.K.'s place of work and the conclusions reached by the Children's Rights Ombudsman (see paragraph 29 above). The appellate court added those documents to the file. The prosecutor agreed with the applicant's request for V.K. to be summoned and examined. The prosecutor noted that since the applicant had provided documents regarding V.K.'s place of work, "it was possible to take measures to determine V.K.'s place of residence and to try to summon her for examination before the court". The Court of Appeal decided to examine the

evidence, and to grant the applicant's request and to summon V.K. for examination.

44. Exercising his right to conduct his defence, the applicant also lodged a number of other requests. However, the Court of Appeal refused each and every one of them. In particular, the court considered irrelevant the applicant's request for the summons of one of his children's school teacher, his neighbours, and doctors who had treated V.K. because although those people could provide information about interaction within the applicant's family, "none of them could provide information about the circumstances of the crime committed". Similarly, although requested by the applicant, so far it had not been necessary to call and question the forensic experts who had examined the two children (see paragraph 19 above), because the reports issued by those experts had been provided and the court had a right to examine them and to rely on them. The Court of Appeal considered that it could always come back to the applicant's request for the cross-examination of the experts in court, should it consider that those expert reports needed clarifying. As for the applicant's request that certain documents be added (see paragraph 42 above), the appellate court stated that those concerned only V.K.'s personality, and were therefore unrelated to the applicant's crime. Lastly, the appellate court deemed that the applicant's request for the addition to the current case file of materials – the minutes of court hearings and the children's psychological reports from the applicant's earlier criminal case file (see paragraph 8 above) – was without purpose (*netikslingas*) because those materials concerned the applicant's earlier crime.

45. During the appellate court hearing of 25 October 2013 the applicant repeated his request for V.K. to be cross-examined in court, stating that this was indispensable if his right to a fair trial were to be respected. In his view, she had accused him of committing sexual crimes against the children and had coached them to lie in this respect. He underlined that he had had no possibility to question V.K. before the trial court.

46. The Court of Appeal noted that a summons had been sent to V.K. to two different addresses in Kėdainiai and in Kaunas, but that these had been returned to the court marked "does not live at this address (*negyvena*)" and "uncollected (*neatsiėmė*)". Another summons had been sent to V.K.'s workplace; however, the office administrator had explained in writing that V.K. was on maternity leave. The Court of Appeal also had information that V.K. was registered as living within the Kaunas Municipality, but no specific residential address for her was registered. The social insurance authorities informed the court that V.K. was on maternity leave and was receiving maternity benefits, but there was no information about her place of residence.

47. The applicant's lawyer also asked the appellate court to take measures to ensure that V.K. be found. He noted that the Court of Appeal

had initially realised (*suprato*) that V.K. had to be examined (see paragraph 43 above), but had later backtracked on that issue. The lawyer also considered that the Court of Appeal should have reopened the examination of the experts' conclusions, because, in his view, they also contained certain statements by the experts acquitting the applicant.

48. The prosecutor considered that the case could be heard without V.K., "because the court [had] exhausted all the possibilities" for ensuring that she be found and examined before the court.

49. Having discussed the issue, the Court of Appeal decided that the proceedings could continue without V.K.'s participation, deeming that the court had taken all possible measures to locate her. The Court of Appeal also stated that the trial court had not relied on V.K.'s testimony when finding the applicant guilty.

50. The appellate court then proceeded to examine the evidence in the case, which, as it transpires from the minutes of the Court of Appeal hearing, consisted of reading out the forensic expert reports (see paragraph 19 above). It also dismissed the applicant's request for the court records (*bylos teisiamojo posedžio protokolus*) of the applicant's criminal case of 2011 (see paragraph 8 above) to be added to the evidence. Although the applicant submitted that those records showed that at that time V.K. had lied to the court, and also asserted that at that time the prosecutor had noted that V.K. had had a prior conviction for perjury, the Court of Appeal considered that that document had no direct connection with the present case. Furthermore, the copies of the court records, as provided by the applicant, had not been certified as authentic, which constituted further grounds for rejecting the applicant's request.

51. By a ruling of 9 December 2013 the Court of Appeal rejected the applicant's appeal. It observed that notwithstanding the trial court's and the appellate court's efforts to summon V.K. for questioning, she could not be located. Even so, the applicant's guilt was proved by other pieces of evidence in the case, all which were consistent with each other. According to the psychologists, Ra.K. and Ro.K. did not have a tendency to fantasise, which would have precluded them from accurately depicting the facts. When questioned by the pre-trial investigation judge and by forensic experts, the boys were mature enough to understand what had happened to them, given that they were then seven and nine years old. Even though the applicant asserted that Ra.K. and Ro.K. had been influenced by their mother, V.K., the applicant's power over them was equally strong. The court dismissed the applicant's accusation that V.K. had had a motive for inciting the boys to accuse their father of sexual violence and for influencing their testimony. For the appellate court, even though V.K. had accompanied the boys to their questioning, she had not taken part either in the boys' questioning by the pre-trial investigation judge or in their questioning by the forensic experts. Likewise, although the pre-trial

investigation had been opened on the basis of a complaint by V.K. in July 2011, the charges against the applicant had been brought only after the boys' questioning in August 2011, when credibility of V.K.'s complaint had been verified. Even so, the trial court had not relied on V.K.'s testimony in finding the applicant guilty. The Court of Appeal also found that the statements given by the witnesses Z.S. and V.F. about what the applicant's children had told them were basically identical and consistent with other evidence, such as psychiatrists' reports; therefore, there was no reason not to believe those statements. Even though the applicant had tried to challenge those two witnesses as not being impartial, asserting that they were members of V.K. family, the appellate court found no objective basis for believing that those two witnesses had had any motive for incriminating the applicant. Moreover, neither of the two witnesses was a "close relative" of V.K. within the meaning of that term under Lithuanian criminal law (see paragraph 69 below). Lastly, it was the court's prerogative to decide what evidence to take into account. As for the applicant's request that his neighbours, his sons' teachers and his work colleagues be questioned in order to prove that in 2009 he had worked long hours and had therefore had no practical opportunity to sexually abuse his children, the Court of Appeal deemed that there was no reason to believe that the testimony given by those people would outweigh the entirety of the rest of the incriminating evidence in the case, which for that court was consistent.

4. The Supreme Court's decision

52. On 15 January and on 26 February 2014, the applicant lodged two appeals on points of law, which he drafted himself. He argued, *inter alia*, that there had been a violation of Article 6 § 3 (d) of the Convention, in that the trial and appellate courts had refused his request that the witnesses for the defence be summoned and examined under the same conditions as those under which the prosecutor's witnesses had been examined. In particular, even though the Kaunas Regional Court had ordered that V.K. be summoned to the hearing, the police had never executed that instruction, notwithstanding the fact that V.K. had been receiving welfare benefits from the Kaunas social care authorities. As a result, V.K. had never been examined in the courtroom. The applicant also pointed out the fact that V.K. had only come to the police three months after she had learned about the alleged abuse of their children; later, she had abandoned their children immediately after they had been questioned by the authorities. The applicant reiterated his contention that his conviction had mainly been based on the testimony of witnesses who were V.K.'s relatives. The applicant's appeals on points of law also indicate that he had added to them the court records from his 2011 trial where, according to the applicant, the prosecutor had mentioned V.K.'s prior conviction for perjury.

53. On 19 February and 11 April 2014 the Supreme Court refused to examine the applicant's appeals on points of law, holding that they did not raise questions of law.

B. The civil proceedings regarding the child support

54. In July 2011 V.K. started civil court proceedings, asking that the applicant be required to pay child support in respect of her two children, Ro.K. and Ra.K. During the court hearings it came to light that the applicant was the biological father of only one of those children – Ro.K. In court V.K. confessed to having lied in her civil lawsuit, and acknowledged that the biological father of Ra.K., born in June 2002, was a certain man whose surname she did not remember. V.K. also stated that she had started closely communicating (*artimai bendrauti*) with the applicant in August 2002, and had asked him to agree to give his surname to the boy so that she could receive social benefits. Afterwards, on 3 May 2004 a son, Ro.K., had been born to them. V.K. testified that the applicant had taken care of both children. V.K. also stated that she did not work, received social benefits, and lived not in the social housing allocated to her in Kėdainiai, but in a rented flat in Kaunas. She acknowledged that from October 2009 until February 2011 both boys had lived in the Pastogė children's home and that they had been taken care of by the State, but nevertheless asked that the applicant should be ordered to pay her child support in respect of the previous three years.

55. In its decision of 2 November 2011 the Kėdainiai District Court held that V.K. had been "dishonest (*nesąžininga*)", because she had misled the authorities about the true paternity of her son Ra.K. in order to cheat them into granting her social benefits. To make matters worse, she had also withheld from the court the fact that the boys had been in the care of the State between 2009 and 2011, and had claimed child support for this period during which she had not been actually taking care of them.

56. The court nevertheless awarded V.K. monthly child support of 300 Lithuanian litai (LTL – approximately 90 euros (EUR)) in respect of the applicant's child, Ro.K., to be paid by the applicant until he came of age, as well as child support in the amount of LTL 1,200 (EUR 350) due for the four-month-period between March and July 2011 (that is to say from the day on which the boy had ceased to be cared for by the State until the day on which V.K. had lodged her lawsuit). As to the other child, Ra.K., the court held that V.K.'s claim had to be dismissed because, in the light of the established circumstances, the record in the case file testifying to the applicant being Ra.K.'s father was not sufficient to give rise to legal consequences, since the purpose of that record was not to confirm the paternity but to obtain welfare benefits.

57. In 2012, the child welfare authority in Kėdainiai lodged a civil claim, seeking that the applicant be required to reimburse it for the money it had spent in respect of Ro.K. The authority pointed out that on 25 November 2011 V.K. had brought both boys to them and had signed an agreement that both children would be placed in the children's home in Kėdainiai (see paragraph 22 above), stating that she planned to move abroad. For that reason, in December 2011 the Kėdainiai Municipality had granted temporary guardianship (*laikinoji globa*) in respect of both boys to the children's home. The representative of the child welfare authority also stated that during the hearing of 2 November 2011 V.K. had confessed that the applicant was not Ra.K.'s biological father (see paragraph 55 above). Despite being aware of this fact, the applicant had taken no steps to challenge or to annul his status as Ra.K.'s father. On the contrary, he had written letters in which he recognised both boys as his sons and promised to live with them and to take care of them when he was released from prison. The representative of the child welfare authority also pointed out that V.K. had placed the children in the children's home in Kėdainiai "by deceit (*apgaule*)"; she had also refused the social housing offered to her and deregistered from her official place of residence in Kėdainiai. According to information received from the charity organisation Caritas, V.K. had also stolen things (*dirbdama apsivogė*) at her workplace; she lived somewhere in Kaunas and did not work, and she also was keeping her actual residential address secret.

58. On 23 July 2012 the Kėdainiai County District Court allowed the claim. It noted that the applicant was detained pending the criminal case, and V.K. would not visit her children in the children's home – she "was not interested in their lives (*nesidomi jų gyvenimu*)" and was hiding her place of residence. Given that the applicant had not challenged his paternity of Ra.K., he had all the paternal rights and obligations provided by the law, including the duty to financially support the children (see paragraph 71 below). The court thus ruled that the applicant and V.K. should each pay LTL 300 in respect of each child to the children's home, until the children came of age.

C. The civil proceedings regarding the taking away of the applicant's spectacles

59. During the course of the applicant's arrest on 23 November 2011 (see paragraph 20 above), a body search was performed on him and certain objects, such as his telephone, comb and spectacles were taken. The applicant was placed in pre-trial detention in Kaunas.

60. It transpires from 25 January 2012 letter from the prosecutor to the applicant that as early as in November 2011 the applicant wrote to the Committee on Legal Affairs (*Teisės ir teisėtvarkos komitetas*) of the

Seimas, complaining about the non-return of his spectacles. The Committee forwarded the applicant's complaint to the prosecutors, and it reached the Kaunas regional prosecutor's office on 2 January 2012. Afterwards, on 25 January 2012 the prosecutor wrote to the applicant that a pre-trial investigation officer would resolve the issue.

61. As can be seen from later court rulings, on 20 March 2012 the applicant submitted a number of requests to the prosecutor, including a repeated request that his spectacles be returned to him. On 6 April 2012 the prosecutor ordered the pre-trial investigator to look into the matter, and the investigator returned that item to the applicant on 20 April 2012.

62. The applicant later started civil proceedings for damages, claiming that the taking away of his spectacles had caused him physical and emotional suffering. He asserted that without spectacles he had had difficulties in reading and writing, and that therefore his eyesight had deteriorated. The absence of spectacles had also resulted in difficulties in communicating with others.

63. By a decision of 26 February 2015, the Vilnius City District Court allowed the applicant's claim, and awarded him EUR 1,000 in compensation for non-pecuniary damage. It held that by taking away the applicant's spectacles the authorities had breached the applicant's property rights, as protected under Article 23 of the Constitution and Article 1 of Protocol No. 1 to the European Convention on Human Rights. Moreover, taking away the applicant's spectacles had been not only unlawful, but had also caused him inconvenience in his private life, which in itself had been "a traumatic experience" and had also "degraded his human dignity (*sumenkino žmogiškąjį orumą*)", although the court did not elaborate further.

64. The applicant appealed. He argued that the pre-trial investigator had intentionally ignored his numerous oral and written requests for the spectacles to be returned to him because she had understood that without spectacles he would have difficulties in reading the documents in his criminal file. The applicant also stated that the Kaunas remand facility had not had an ophthalmologist on its staff, and that the pre-trial investigator had not allowed him to be sent to Lukiškės Remand Prison in Vilnius (which had had an ophthalmologist) on the grounds that this would extend the criminal investigation. Being detained, he had had only limited possibilities to defend his rights, and his complaints to the State authorities for a long time had remained unanswered. The applicant asked that the sum awarded in non-pecuniary damages be raised.

65. The State authorities responsible for the applicant's conditions of detention asked that the applicant's civil claim be dismissed.

66. On 22 February 2016 the Vilnius Regional Court partly amended the lower court's decision. The appellate court noted at the outset that certain provisions of the Civil Code and the Code of Civil Procedure applied to the

applicant's civil claim (see paragraphs 72 and 73 below). The appellate court acknowledged that there had been no legal grounds for the applicant's spectacles being taken away. However, the court also pointed out that there was no information in the file to the effect that the spectacles which had been taken away during the applicant's search had been prescribed by a doctor. The court noted that, pursuant to Article 45 of the Law on the Execution of Pre-trial Detention (see paragraph 74 below), people in detention were entitled to the same level of medical care as those outside prison, and that healthcare services operated in remand facilities. Accordingly, if the applicant had had problems with his vision, he could have asked the authorities to have his eyesight checked, an opportunity of which he had not availed himself. In this connection the appellate court dismissed as unproven the applicant's argument that, in order to be seen by an ophthalmologist, he would have had to be transferred from a remand facility in Kaunas to Lukiškės Remand Prison in Vilnius, and that the investigator had refused to send him there for examination. Moreover, it was clear from the criminal case file that he had been able to write during the period in detention that he spent without his spectacles. The court noted that on 9, 12, 20 and 27 December 2011 the applicant had submitted various requests to the pre-trial investigator. He also had corresponded with other persons. Having small handwriting, the applicant had successfully managed to write between the lines of a small-squared page. The court also underlined that the applicant's claim that his eyesight had become worse had not been substantiated by medical documents. Lastly, the duration of the time when the applicant had been without spectacles could have been significantly shorter had he acted in a proactive manner and asked the authorities to return them in a timely fashion. The court considered that there was no proof in the file that the applicant had asked for the return of his spectacles earlier than on 20 March 2012. In sum, since the inconvenience caused to the applicant could have been easily resolved had he shown some initiative, and given that his need for spectacles had not been proved, the appellate court considered that an acknowledgement that the spectacles had been taken away constituted sufficient compensation for the damage suffered.

67. The applicant lodged an appeal on points of law. He submitted, *inter alia*, that the pre-trial detention facility in Kaunas had not had an eye doctor on its staff, and that therefore he had had no opportunity to obtain spectacles in detention. This had caused the applicant serious physical suffering. The applicant relied on the Court's judgments in *Kudła v. Poland* ([GC], no. 30210/96, ECHR 2000-XI) and *Mandić and Jović v. Slovenia* (nos. 5774/10 and 5985/10, 20 October 2011).

68. By a ruling of 17 May 2016 the Supreme Court refused to accept the applicant's appeal on points of law for examination, as not raising questions of law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

69. The Criminal Code at the material time read:

Article 140. Causing Physical Pain or a Negligible Health Impairment (*Fizinio skausmo sukėlimas ar nežymus sveikatos sutrikdymas*)

"1. A person who, by beating or other violent actions, causes a person to suffer physical pain or negligible bodily harm or a short-term illness

shall be punished by community service or by restriction of liberty or by arrest or by imprisonment for a term of up to one year.

2. A person who commits the act indicated in paragraph 1 of this Article in respect of a young child or by torturing the victim

shall be punished by imprisonment for a term of up to two years.

3. A person shall be held liable for an act listed in paragraph 1 of this Article only in the event of a complaint being lodged by the victim or a statement being made by his authorised representative or at the prosecutor's request."

Article 150. Sexual Assault (*Seksualinis prievartavimas*)

"1. A person who, against a person's will, satisfies his sexual desires through anal, oral or interfemoral intercourse by using physical violence or by threatening the immediate use thereof or by otherwise depriving the victim of the possibility of resistance or by taking advantage of the helpless state of the victim

shall be punished by arrest or by imprisonment for a term of up to seven years.

...

3. A person who carries out the actions listed in paragraph 1 of this Article in respect of a minor

shall be punished by imprisonment for a term of between two and ten years.

4. A person who carries out the actions listed in paragraph 1 of this Article in respect of a young child

shall be punished with imprisonment for a term of between three and thirteen years.

5. A person shall be held liable for an act listed in paragraph 1 of this Article only in the event of a complaint being lodged by the victim or a statement [being made] by his authorised representative or at the prosecutor's request. ..."

Article 153. Sexual Molestation of a Child (*Mažamečio asmens tvirkinimas*)

"A person who molests a child

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years."

Article 233. Influencing a Witness, Victim, Expert, Specialist or Translator

"1. A person who, in any manner, seeks to influence a witness, victim, expert, specialist or translator to give false testimony or to present false conclusions, clarifications or incorrect translations during a pre-trial investigation or in court or before the International Criminal Court or before another international judicial

institution or hinders their arrival when summoned to appear before a pre-trial investigation officer, a prosecutor, a court or the International Criminal Court or another international judicial institution

shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years. ..."

Article 248. Interpretation of Concepts

"1. Close relatives [means] parents (or adoptive parents), children (or adopted children), brothers, sisters, grandparents and grandchildren.

2. Family members of the perpetrator [means] the parents (or adoptive parents), children (or adopted children), brothers, sisters and their spouses ... and also the spouse of the perpetrator or the person living with him in a common-law [partnership] and the parents of that spouse ..."

Article 309. Possession of Pornographic Material

"...

2. A person who produces, acquires, stores, demonstrates, advertises or distributes pornographic material displaying a child or presenting a person as a child

shall be punished by a fine or by imprisonment for a term of up to two years.

...

4. A person who demonstrates or advertises pornographic material shall be considered to have committed a misdemeanour and

shall be punished by community service or by a fine or by restriction of liberty or by arrest. ..."

70. Under Article 178 of the Code of Criminal Procedure, a pre-trial investigator or a prosecutor had authority to choose to perform certain procedural actions, such as to question witnesses. Although a suspect could have asked a prosecutor to perform those actions, such a request was not binding on the prosecutor. A refusal, however, could be appealed against to the pre-trial investigation judge, whose decision would be final.

71. Under the Civil Code both parents have a duty to financially support their underage children (Article 3.192). If the parents (or one of the parents) fail in that duty to financially support their underage children, a court may issue a maintenance order in an action brought by one of the parents or the child's guardian or the State institution for the protection of the child's rights (Article 3.194).

72. As regards civil liability for damage, Article 6.272 § 1 of the Civil Code provides that compensation for damage caused as a result of unlawful arrest as a measure of oppression, of unlawful detention, or of the application of unlawful procedural measures of enforcement, will be afforded fully by the State, irrespective of whether the officials involved in the preliminary investigation or prosecution were at fault.

73. The Code of Civil Procedure reads that the parties have the obligation to substantiate their claims by providing evidence. If that

evidence is not sufficient, the court may propose that the parties provide supplementary evidence. As a rule, a court does not gather evidence on its own initiative (Articles 178 and 179).

74. The Law on Execution of Pre-trial Detention (*Suėmimo vykdymo įstatymas*) at the material time read as follows:

Article 45. Health care of Detainees

"1. Health care at remand prisons shall be organised and carried out according to a procedure prescribed by law. Detainees shall be provided with the same quality and level of treatment as people at liberty.

2. Health-care services shall operate in remand prisons. ...

4. Any urgent medical assistance which the Prison Department Hospital is unable to provide to a detainee may be provided in a State or municipal health-care institution, while ensuring security related to the detainee. ..."

III. RELEVANT EUROPEAN AND INTERNATIONAL MATERIAL

75. The relevant 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 *Vronchenko v. Estonia*, no. 59632/09, §§ 39-44, 18 July 2013.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. The applicant complained that during his arrest the authorities had taken away his spectacles and returned them only five months later. He claimed that this had debased his human dignity and resulted in the impairment of his eyesight. The applicant relied on Article 3 of the Convention, which reads as follows:

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

A. The submissions by the parties

77. On 3 November 2015, in their observations to the Court, the Government noted that the civil proceedings regarding the applicant's complaint under Article 3 of the Convention were pending before the Vilnius Regional Court. In their further observations, in reply to the applicant's observations and claims for just satisfaction, the Government noted, on 5 April 2016, that the Vilnius Regional Court had dismissed the

applicant's claim for compensation (see paragraph 66 above). They pointed out that the applicant could lodge an appeal on points of law regarding that decision, and that failure to do so would constitute failure to exhaust all domestic remedies. Responding to a request by the Court that they provide the most recent information, on 4 September 2017 the Government wrote to the Court that on 17 May 2016 the applicant's appeal on points of law had been dismissed by the Supreme Court.

78. Alternatively, and relying on the reasoning of the Vilnius Regional Court (see paragraph 66 above), the Government admitted that taking away the applicant's glasses had been unlawful. However, they considered that the applicant's complaint under Article 3 of the Convention was manifestly ill-founded, since the inconvenience caused to him had not reached the minimum level of severity necessary in order to amount to "inhuman or degrading" treatment.

79. The applicant disputed the Government's arguments. He pointed out, among other things, that he had already asked the authorities to return to him his spectacles in 2011, and that the delay in returning them had been unjustified.

B. The Court's assessment

1. Admissibility

80. The Court firstly observes that the applicant has raised, up to the Supreme Court, the complaint that taking away his spectacles caused him suffering and humiliation, in breach of Article 3 of the Convention (see paragraphs 62, 64 and 67 above). Accordingly, it dismisses the Government's preliminary objection regarding his failure to exhaust the available domestic remedies (see paragraph 77 above).

81. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

82. The Court notes that the applicant's spectacles were taken from him during his arrest on 23 November 2011 (see paragraphs 20 and 59 above). The Government admitted that the taking of the spectacles had been unlawful in domestic terms (see paragraphs 63, 66 and 77 above). However, this does not automatically make the authorities responsible for a breach of Article 3 of the Convention. The Court reiterates in this respect that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. Previously the Commission has held that a few days spent in detention without glasses does not amount to

ill-treatment (see *A.K. v. the Netherlands* (dec.), no. 24774/94, 6 April 1995), and the Court does not see any reason to disagree with that. Therefore, if the glasses had been returned to the applicant quickly, no issue under Article 3 would have arisen (see *Slyusarev v. Russia*, no. 60333/00, § 34, 20 April 2010).

83. As opposed to the case of *A.K. v. the Netherlands* (cited above), in the case at hand the applicant did not have his spectacles for more than four months (see paragraphs 59 and 61 above). During the domestic court proceedings the applicant alleged that this had resulted in a deterioration of his eyesight. However, the appellate court dismissed that complaint as unfounded, it not having been proved by medical evidence (see paragraphs 62 and 66 above). While the case file contains no evidence to refute that finding, the Court nevertheless observes that the Vilnius Regional Court made no efforts to properly ascertain that fact by, for example, ordering that the applicant be examined by an ophthalmologist so that it could be established whether the applicant's condition necessitated his wearing spectacles and, if so, what the degree of his visual impairment was (see paragraph 66 above; see also *Slyusarev*, cited above, § 36). Neither is the Court persuaded by the appellate court's argument that the applicant "successfully managed to write between the lines of a small-squared page", for it is not clear whether and how much time or effort the applicant had to put in to achieve such written results. Lastly, as held by the first-instance court, taking away the applicant's spectacles caused him inconvenience in his private life, which in itself was a traumatic experience and "degraded the applicant's human dignity" (see paragraph 63 above; compare and contrast *Komarova v. Ukraine*, no. 13371/06, § 67, 16 May 2013). The Court sees no convincing reason to hold otherwise. In this context it reiterates that any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention (see, *mutatis mutandis*, *Bouyid v. Belgium* [GC], no. 23380/09, §§ 89 and 101, ECHR 2015). The Court is thus ready to accept that the applicant's situation, in particular because of its considerable duration, was serious enough to fall within the scope of Article 3 of the Convention.

84. The Government subscribed to the Vilnius Regional Court's view that the applicant had himself been responsible for his situation (see paragraphs 66 and 77 above). The Court recalls that, indeed, in certain contexts the behaviour of the alleged victim may be taken into account in defining whether the authorities can be held responsible for the treatment complained of. As a rule, Article 3 prohibits ill-treatment irrespective of the circumstances and the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). That being so, if a prisoner does not receive requisite medical assistance from the authorities, it may entail the

State's responsibility only if he made reasonable steps to avail himself of such assistance (see *Valašinas v. Lithuania*, no. 44558/98, § 105, ECHR 2001-VIII, and *Knyazev v. Russia*, no. 25948/05, § 103, 8 November 2007). Therefore, in the present case the applicant's own conduct is an important element which should be assessed among other relevant factors.

85. In the present case, even though the Vilnius Regional Court considered that the applicant had not been active, the material in the case file shows otherwise. In fact, the applicant mentioned the situation concerning his spectacles in the letter that he sent, in November 2011 at the earliest, to the Seimas' Committee on Legal Affairs, and that letter reached the Kaunas regional prosecutor's office, which oversaw the pre-trial investigation, on 2 January 2012. The Court thus finds that at least as of the latter date the applicant's request warranted appropriate action on the part of the authorities (see, *mutatis mutandis*, *Aksoy v Turkey*, 18 December 1996, § 56, *Reports of Judgments and Decisions* 1996-VI; see also *Slyusarev*, cited above, § 41). Afterwards, it took the prosecutor three weeks to write to the applicant, informing him that the pre-trial investigation officer would resolve the issue (see paragraph 60 above). Apparently, the authorities still took no action, as the applicant had to repeat his request. Eventually, the spectacles were returned to the applicant only on 20 April 2012 (see paragraph 61 above). In the light of the above, the Court does not consider that the applicant remained passive.

86. Assessing further, the Court is not ready to accept the Vilnius Regional Court's argument that the applicant could have asked to be examined by an ophthalmologist if he had felt that he needed spectacles. The Court points out that the circumstances of the instant case differ from those that it examined in *Slyusarev* (cited above, §§ 7 and 42), in that Mr Slyusarev's spectacles had been partially broken and therefore the authorities had had to procure him a new pair of spectacles. The applicant in the instant case, however, already owned spectacles, and it would have been sufficient for the authorities to simply return them to the applicant. To oblige the applicant in the instant case to undergo a medical examination, which, in the applicant's words and the applicant had not been contested on this point by the Government, had not been possible in the remand facility in Kaunas where he was held, and then, possibly, also make him bear the costs of a new pair of spectacles, was therefore completely unnecessary.

87. In such circumstances the Court concludes that the treatment complained of by the applicant was imputable to the authorities. Having regard to the degree of suffering involved in this case, and, above all, to its duration and the authorities' lack of concern in respect of their attitude to his requests for the spectacles to be returned, the Court concludes that the applicant was subjected to degrading treatment.

There was, therefore, a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

88. The applicant complained of a violation of his right to a fair trial in the light of, *inter alia*, his inability to call witnesses for the defence and to examine those for the prosecution. The applicant relied on Article 6 §§ 1 and 3 (d) of the Convention, which, in so far as relevant, read as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

A. The submissions by the parties

1. The applicant

89. The applicant submitted that he had not had a fair trial, in breach of Article 6 §§ 1 and 3 (d) of the Convention. He pointed out that the prosecutor had denied the applicant's numerous requests for a number of procedural actions to be undertaken so that he could obtain objective evidence to prove his innocence. The applicant was also dissatisfied by the fact that the domestic courts had refused to summon and examine certain witnesses for the defence.

90. The applicant was also discontented that he had been denied an opportunity to participate in a confrontation with V.K. during the pre-trial investigation. To make matters worse, he had not been granted the possibility to cross-examine V.K. during the trial. He saw the authorities' efforts to locate and summon V.K. to testify in court as lacking. The applicant also insisted that his conviction had been based on Ra.K.'s and Ro.K.'s testimony, which had been inconclusive, and, above all, swayed by V.K. The applicant also pointed out that the authorities had refused to question the children again after they had been left by V.K. at a care institution, when, in his view, their testimony could have been objective. He acknowledged having "punished" them physically but only by way of disciplining them; he asserted, however, that he had never been sexually violent with them. In the applicant's opinion, the domestic courts had therefore erred in their interpretation of the children's testimony. Moreover, the applicant had never been provided a genuine possibility to contest that evidence. The proceedings had therefore not been adversarial.

2. The Government

91. The Government firstly noted that in the course of the criminal proceedings the applicant had had an opportunity to exercise his right to request that certain witnesses be summoned and examined. He had lodged such requests both during the pre-trial investigation and while he was being tried before courts at two instances. The pre-trial investigation judge and the courts at two instances had dismissed some of the applicant's requests, but they had done so for sound reasons, because those people (teachers, medics, neighbours, the applicant's work colleagues) had had no significance in respect of the charges against the applicant. In particular, the applicant had been suspected of having sexually abused his children for a considerably long time; in the absence of direct witnesses, those people had not been in a position to confirm that the applicant had never been alone with his children, and therefore had never been in a position to carry out the alleged actions. The Government nevertheless pointed out that some of the applicant's requests for certain witnesses to be summoned and examined had been granted by the prosecutor or the courts, a fact which indicated that the authorities had not acted arbitrarily (see paragraph 36 above). The applicant had not had an unlimited right to call any witness of his choosing. Moreover, he had also had to demonstrate that the evidence of the witnesses he had wished to be summoned for examination was necessary in order to establish the facts relevant to his case, which the applicant had failed to do (the Government contrasted the applicant's situation with that examined in the case of *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V).

92. With regard to the applicant's grievance that he had not been granted an opportunity to have V.K. summoned and questioned, the Government acknowledged that the applicant had not had the possibility to cross-examine her in court. That notwithstanding, they considered that the applicant had still had a fair trial. Firstly, although the court of first instance and the appellate court had taken all the available measures in order to summon V.K. and to have her delivered to the hearing to testify, it had not been possible to determine her place of residence. Secondly, according to the Government, there had been justifiable reasons for V.K. not to attend the court hearings, given that during the pre-trial investigation she had made it clear that she was afraid of the applicant (the Government relied on *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 123, ECHR 2011). Thirdly, and contrary to the applicant's assertion, his conviction had been based on other evidence, such as the testimony of the victims Ra.K. and Ro.K., the testimony of other witnesses, and forensic psychiatry reports, but not on V.K.'s initial statements to the pre-trial investigator between July 2011 and February 2012 (see paragraphs 10 and 12 above). In this respect the Government also pointed out that, as noted by the Court of Appeal, V.K. had not been present when Ra.K. and Ro.K. had been examined by the pre-trial investigation judge, nor

had she been present during the children's questioning by the forensic experts. Accordingly, she could not have influenced the children's testimony, on which the applicant's conviction had rested. In fact, the domestic courts expressly ruled out the possibility that V.K. had exerted an influence on the children's testimony (see paragraphs 37 and 51 above).

B. The Court's assessment

1. Admissibility

93. The Court finds that the applicant's complaint regarding the fairness of criminal proceedings, including his right to ensure the attendance of witnesses and to cross-examine V.K., is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

94. The Court reiterates that the guarantees in paragraph 3(d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of that Article which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see *Schatschaschwili v. Germany* [GC], no. 9154/10, § 101, 15 December 2015 and *Taxquet v. Belgium* [GC], no. 926/05, § 84, 16 November 2010, with further references therein). In making this assessment the Court will look at the proceedings as a whole, having regard to the rights of the defence but also to the interests of the public and the victim(s) that crime is properly prosecuted (see *Schatschaschwili,* cited above, § 101 and *Gäfgen v. Germany* [GC], no. 22978/05, § 175, ECHR 2010) and, where necessary, to the rights of witnesses (see, amongst many authorities, *Al-Khawaja and Tahery*, cited above, § 118). It is also notable in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the Court's only concern is to examine whether the proceedings have been conducted fairly (see *Gäfgen*, cited above, § 162, and the references therein).

95. In *Al-Khawaja and Tahery v. the United Kingdom*, cited above, §§ 119‑147 the Grand Chamber clarified the principles to be applied when a witness does not attend a public trial. These principles may be summarised as follows:

(i) 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;

(ii) typical reasons for non-attendance are, like in the case of *Al‑Khawaja and Tahery* (cited above), the death of the witness or the fear of retaliation. There are, however, other legitimate reasons why a witness may not attend trial;

(iii) when a witness has not been examined at any prior stage of the proceedings, allowing the admission of a witness statement in lieu of live evidence at trial must be a measure of last resort;

(iv) the admission as evidence of statements of absent witnesses results in a potential disadvantage for the defendant, who, in principle, in a criminal trial should have an effective opportunity to challenge the evidence against him. In particular, he should be able to test the truthfulness and reliability of the evidence given by the witnesses, by having them orally examined in his presence, either at the time the witness was making the statement or at some later stage of the proceedings;

(v) according to the "sole or decisive rule", if the conviction of a defendant is solely or mainly based on evidence provided by witnesses whom the accused is unable to question at any stage of the proceedings, his defence rights are unduly restricted;

(vi) in this context, the word "decisive" should be narrowly understood as indicating evidence of such significance or importance as is likely to be determinative of the outcome of the case. Where the untested evidence of a witness is supported by other corroborative evidence, the assessment of whether it is decisive will depend on the strength of the supportive evidence: the stronger the other incriminating evidence, the less likely that the evidence of the absent witness will be treated as decisive;

(vii) however, as Article 6 § 3 of the Convention should be interpreted in the context of an overall examination of the fairness of the proceedings, the sole or decisive rule should not be applied in an inflexible manner;

(viii) in particular, where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. At the same time, where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. Because of the dangers of the admission of such evidence, it would constitute a very important factor to balance in the scales and one which would require sufficient counterbalancing factors, including the existence of strong procedural safeguards. 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 to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance to the case.

96. Those principles have been further clarified in *Schatschaschwili v. Germany*, cited above, §§ 111–131, in which the Grand Chamber confirmed that the absence of good reason for the non-attendance of a witness could not, of itself, be conclusive of the lack of fairness of a trial, although it remained a very important factor to be weighed in the balance when assessing the overall fairness, and one which might tip the balance in favour of finding a breach of Article 6 §§ 1 and 3 (d). Furthermore, given that its concern was to ascertain whether the proceedings as a whole were fair, the Court should not only review the existence of sufficient counterbalancing factors in cases where the evidence of the absent witness was the sole or the decisive basis for the applicant's conviction, but also in cases where it found it unclear whether the evidence in question was sole or decisive but nevertheless was satisfied that it carried significant weight and its admission might have handicapped the defence. 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 that evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair (see *Seton v. the United Kingdom*, no. 55287/10, § 59, 31 March 2016).

97. The Court must also have regard 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 of whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the private life of the alleged victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence (see *Aigner v. Austria*, no. 28328/03, § 37, 10 May 2012, with further references). In securing the rights of the defence, the judicial authorities may be required to take measures which counterbalance the handicaps under which the defence labours (see *S.N. v. Sweden*, no. 34209/96, § 47, ECHR 2002-V, and *A.S. v. Finland,* no. 40156/07, § 55, 28 September 2010).

(b) Application of the principles to the present case

98. The Court will consider whether there was a good reason for the rejection of the applicant's request for the cross-examination of Ra.K. and Ro.K. or their mother V.K., whether the evidence given by any of those persons 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 (see *Vronchenko v. Estonia*, no. 59632/09, § 57, 18 July 2013, as well as the case-law cited therein).

(i). Whether there was good reason for the non-attendance of Ra.K., Ro.K. and V.K. and whether their testimony was "sole or decisive"

99. The Court observes that in the criminal case against the applicant he was charged with committing sexual crimes against Ra.K. and Ro.K., who had lived with him, one of whom was his biological son and the other of whom bore the applicant's family name. Both boys were interviewed by a psychologist at the police station, as directed by the prosecutor (see paragraph 17 above). Afterwards, when a judge ordered the boys' psychological forensic examination, they were also examined by a psychologist and a psychiatrist (see paragraph 19 above). Pursuant to their expert opinions it was not considered psychologically safe for the boys to take part in further pre-trial investigative actions or to be cross-examined at the trial (see paragraph 19 above). The prosecutor later refused the applicant's request for a confrontation to be held between him and the children, deeming that such a confrontation would be a traumatic experience for them (see paragraph 27 above). In this context the Court also recalls that in 2011 the applicant had already been convicted of an attempt to influence Ra.K. and Ro.K. and for having been physically abusive towards them (see paragraphs 8 and 9 above). Considering the need to take specific measures for the purpose of protecting victims in criminal proceedings concerning sexual offences, particularly in cases involving minors (see *S.N. v. Sweden*, cited above, § 47), the Court is ready to accept that in the present case there was good cause for not permitting the applicant to cross-examine Ra.K. and Ro.K., while still allowing their pre-trial statements to be admitted in evidence (see *Aigner*, cited above, §§ 38-39, and *Vronchenko*, cited above, § 58).

100. The Court considers, and this was not disputed by the Government, that the testimony which Ra.K. and Ro.K. gave constituted decisive evidence on which the domestic courts' convictions of the applicant were based. Examining further, the Court thus has regard to the following. During the preliminary investigation Ra.K and Ro.K. were interviewed on two occasions: on 22 August 2011 and in the autumn of 2011 (see paragraphs 17 and 19 above). As to the first examination, the Court notes that it was the boys' mother who had been obliged by the authorities to bring them for examination, and who accompanied them to that examination (see paragraphs 10, 16 and 17 above). It does not escape the Court's attention that during the impugned examination of 22 August 2011 one of the boys, Ro.K., who at that time was seven years old, not only used such legal terms as "perjury", but also openly stated that if he were to be silent, his mother would go to prison (see paragraph 17 above). Accordingly, and while being careful not to hold that V.K. instructed the boys what to say, the

Court does not find preposterous the applicant's argument that V.K.'s testimony had been pertinent in those criminal proceedings and that therefore V.K. should have been brought to the court for cross-examination. In fact, this initially was the view not only of the trial court, which had granted the applicant's request for V.K. to be summoned, but also that of the prosecutor and of the Court of Appeal, which also considered that fresh examination of evidence, with the participation of V.K., was indispensable (see paragraphs 34 and 43 above).

101. The Government insisted that because of the established fact that the applicant had in the past been violent towards her V.K. had been afraid to attend court and to testify. Given the applicant's prior conviction for attempting to influence V.K. as a witness (see paragraphs 8 and 9 above), and V.K.'s statements to the pre-trial investigator (see paragraph 21 above), the Court does not rule out this argument as implausible. Be that as it may, it observes that these arguments were not employed by the Court of Appeal when it decided to continue the examination of the case without V.K.'s attendance (contrast *Al-Khawaja and Tahery*, cited above, § 124). In fact, it transpires that the Court of Appeal simply satisfied itself with the mere fact that V.K. could not be located (see paragraph 49 above). In a situation like this, the Court reiterates its case-law to the effect that the fact that the domestic courts are unable to locate a witness is not sufficient in itself to satisfy the requirements of Article 6 § 3 (d) (see *Schatschaschwili*, cited above, §§ 117 and 119-121, with further references). In the present case, the Court also observes that although V.K. was in hiding, she continued to receive maternity benefits, thus maintaining a certain link with the State authorities (see paragraph 46 above). The Court therefore considers that the State authorities could have been more resourceful in their attempts to find her (see, *mutatis mutandis*, *Seton*, cited above, § 61 *in fine*).

(ii). Whether there were sufficient "counterbalancing factors"

102. Having regard to the importance of the testimony of Ra.K. and Ro.K., whom for legitimate reasons the applicant was unable to examine, the Court must examine whether this was counterbalanced by other means in order to ensure the applicant's defence rights. The Court observes, however, that the Court of Appeal essentially dismissed all the applicant's requests, such as: for the summons of the experts who had questioned the children, for the obtaining of materials from the applicant's earlier criminal file concerning the applicant's behaviour during the year 2009, when the applicant had allegedly sexually abused his children, for the addition to the case file of the documents from the child welfare authority, and for the Court of Appeal to examine the court documents establishing that V.K. had acted "dishonestly" (see paragraphs 41, 44 and 45 *in fine* above). On this last point the Court also is not ready to unreservedly accept the Court of Appeal's view that V.K.'s character was manifestly irrelevant to the

applicant's criminal case (see paragraph 44 above). The Court further notes that no corroborative evidence supporting Ra.K.'s and Ro.K.'s statements was adduced during the pre-trial investigation (compare *Al-Khawaja and Tahery*, cited above, § 165, and *Rosin v. Estonia*, no. 26540/08, §§ 61 and 62, 19 December 2013). As regards the experts, the Court notes that, unlike in the case of *D.T. v. the Netherlands*, in the present case the experts who examined the children merely gave their opinions in writing without their being questioned at the court hearing (compare and contrast *D.T. v. the Netherlands* (dec.), no. 25307/10, § 51, 2 April 2013). Weighing, on the one hand, the applicant's defence rights – regard being had to the substantial prison sentence he faced – and, on the other hand, the zero impact there would have been on the children if the applicant's requests mentioned above had been granted, the Court considers that the investigating authorities and the courts should have paid due attention to the applicant's defence rights (see, *mutatis mutandis*, *Rosin*, cited above, § 62), and all the more so in the absence of direct witnesses as to the crime the applicant was charged with.

103. The Court also considers that although several other witnesses had testified to the pre-trial investigator or were examined at the court hearings and the applicant was able to put questions to them, those statements only provided indirect support to the boys' testimony. Those other witnesses examined at the hearings only testified in respect of what the two boys had told them, or made more general statements about their behaviour (see paragraph 14 above; see also *Vronchenko*, § 59, cited above). Indeed, even though Z.S. and V.F. testified to having learned from the two boys that the applicant had abused them sexually two years previously, the other witnesses, such as the boys' school teacher and social workers, testified that there had been nothing strange or sex-related in the behaviour of the children (see paragraphs 15 and 36 above).

104. The foregoing considerations are sufficient to enable the Court to conclude that there were no such counterbalancing factors present which permitted a fair and proper assessment of the reliability of Ra.K.'s and Ro.K.'s testimony.

(iii). Conclusion

105. The Court appreciates that organising criminal proceedings in such a way as to protect the interests of very young victims, in particular in cases involving sexual offences, is a consideration to be taken into account for the purposes of Article 6 (see *A.S. v. Finland*, cited above, § 68). However, it concludes that in this case the use of the complainant children's account as the only direct evidence leading to the applicant's conviction, without giving him any real opportunity to test the credibility of that testimony, involved such limitations on the rights of the defence that the proceedings could not be said to have complied with the requirement of a fair trial.

106. Thus, there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicant claimed 150,000 euros (EUR) in respect of pecuniary damage, which he argued to have suffered because his conviction in breach of Article 6 of the Convention had resulted in the loss of his apartment due to the fact that he had not been able to pay the bank loan, and because he also had had to pay maintenance for his children. The applicant also claimed EUR 700,000 in respect of non-pecuniary damage because he had to live without his spectacles and because of his wrongful trial and the fact that his conviction had caused him great despair and had ruined his life.

109. The Government argued that the applicant had failed to substantiate any causal link between the pecuniary damage alleged and a breach of the Convention. Accordingly, any claims for pecuniary damage caused by the loss of his apartment had to be rejected as unproven by evidence. They also submitted that the claim for non-pecuniary damage was wholly unreasoned and excessive.

110. In the present case, the Court has found a violation of Article 6 §§ 1 and 3 (d) of the Convention in so far as the Lithuanian authorities did not give the applicant a fair trial. However, it cannot speculate as to whether the outcome of proceedings would have been different if no violation of the Convention had taken place (see *Papadakis v. the former Yugoslav Republic of Macedonia*, no. 50254/07, § 111, 26 February 2013). That being so, the Court does not consider it appropriate to compensate the applicant for his alleged pecuniary losses, no causal link having been established between the violation found and the alleged impact on the applicant's property rights. The Court accordingly makes no award under this head.

111. As to the applicant's claim in respect of non-pecuniary damage, the Court reiterates that it has found a violation of Article 3 and Article 6 §§ 1 and 3 (d) of the Convention. The Court considers that the applicant must have suffered distress and anxiety which the finding of a violation of the Convention in this judgment does not suffice to remedy. Making its assessment on an equitable basis, the Court awards the applicant EUR 13,000 under this head.

B. Costs and expenses

112. The applicant also claimed EUR 600 for postage, paper, writing instruments and copying services, costs which he incurred in connection with the Court proceedings.

113. The Government asked the Court to reject this claim on the ground that it has not been substantiated by supporting documents, such as receipts or invoices.

114. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, and in the absence of the documents supporting the applicant's claim, the Court rejects the claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;

3. *Holds*, by six votes to one, that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

4. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 13,000 (thirteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 12 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge De Gaetano is annexed to this judgment.

G.Y.
A.N.T.

SEPARATE PARTLY DISSENTING OPINION OF JUDGE DE GAETANO

1. I regret that I cannot agree with my colleagues that there has been a violation of Article 6 of the Convention in this case (point 3 of the operative provisions, with the consequent disagreement also on the quantum of non-pecuniary damage to be awarded, point 4).

2. My scepticism about the usefulness of the principles laid down in *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, ECHR 2011) has been documented in the separate opinions in *Fąfrowicz v. Poland*, no. 43609/07, 17 April 2012; *Kostecki v. Poland*, no. 14932/09, 4 June 2013; *Scholer v. Germany*, no. 14212/10, 18 December 2014; and *Denivar v. Slovenia*, no. 28621/15, 22 May 2018. That scepticism has not been mollified by *Schatschaschwili v. Germany* ([GC], no. 9154/10, ECHR 2015).

3. In the instant case the main (one can call it decisive) evidence was the boys' testimony before the pre-trial investigation judge. The examination was also recorded on video, which means that the trial court had material at its disposal enabling it to see the boys' demeanour – something that is very important for assessing the credibility of a witness. As such the boys' evidence was not hearsay – what was hearsay was the evidence of Z.S. and V.F., and these two were examined during the actual trial and cross-examined. Other witnesses gave evidence as to the boys' character and whether or not they had a tendency to fantasise. There was also the circumstantial evidence of the child pornographic material found in the possession of the applicant, and the fact that the children had told Z.S. and V.F. that the abuse they had suffered had been carried out as depicted in those videos. Whenever the domestic courts – leaving aside the prosecutor, because his decision could in many cases be overturned at some stage by the courts – rejected a request by the applicant, relevant and sufficient reasons were adduced in the decision, the most common ground for refusal of the applicant's requests being that the evidence he proposed to adduce lacked relevance. As regards V.K. – who, in any case, was never a witness to the sexual abuse, as she had become aware of it for the first time through Z.S. and V.F. – no evidence was heard from her at the appeal stage because it was impossible to find her.

4. Does the search for, or the application of, "sufficient counterbalancing factors" imply that evidence or procedures that are, on the face of it, irrelevant must be admitted and/or pursued simply to accommodate the rules enunciated in *Al-Khawaja*? It is trite knowledge that an aggressive defence strategy in criminal trials often involves clutching at straws as a diversionary tactic which enables defence counsel to side-track the court – like the issue of V.K. being "dishonest" in her application for social benefits (the logic possibly being that underpinning the old and now largely

discredited common law doctrine *falsus in uno falsus in omnibus*), or the fact that during the questioning by the investigating judge one of the boys, in order to explain that he was telling the truth, used the technical word "perjury", adding that his mother had told him that he should not perjure himself. The domestic courts did not take the bait. I am not sure that the same can be said of this Court.