

The Criminal LAWYER

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- Editor – Sally Ramage, MPhil, MCIJ
Email: legal_consultant@btinternet.com
Address: Copehale, Coppenhall, Stafford, ST18 9BW, UK.
Tel: 01785 244725
Fax: 01785 228281
- Published bi-monthly by Bloomsbury Professional Limited, Maxwelton House, 41-43 Boltro Road, Haywards Heath, West Sussex RH16 1BJ
- Telephone: 01444 416119
- Fax: 01444 440426
- Email (customer services): customerservices@bloomsburyprofessional.com
- Please send submissions to the editor

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Case comment: *G v UK*

In *G v UK*¹ the applicant was convicted of an offence of rape of a child under the age of 13, contrary to s 5 of the Sexual Offences Act 2003. He complained to the European Court of Human Rights (ECtHR) that his conviction was not compatible with the presumption of innocence and that the criminal proceedings amounted to a disproportionate interference with his right to respect for private life.

Circumstances of the case

In September 2004, when the applicant was 15, he had sexual intercourse with a 12 year old girl and was subsequently charged with rape of a child under 13, contrary to s 5 of the Sexual Offences Act 2003. He was advised that he had no defence to the charge. The applicant pleaded guilty on the basis that he willingly had sexual intercourse with the complainant and at the time had believed her to be 15 as she had told him so on an earlier occasion. He pleaded guilty, having been advised that the complainant was under 13 years of age at the time of the offence. The offence was committed irrespective of consent, reasonable belief in consent or a reasonable belief as to age. The applicant was sentenced to a 12 month detention and training order and appealed to the Court of Appeal on the grounds that his conviction violated his right to a fair trial and the presumption of innocence under Article 6, ECHR, because the offence was one of strict liability; and that his conviction also violated his right to respect for private and family life under Article 8 ECHR, because it was disproportionate to charge him with rape under s 5 when he could have been charged with a less serious offence under s 13 of the 2003 Act (which deals with sex offences committed by persons under 18).

The Court of Appeal found that no issue arose under Article 6 of the Convention as it did not prevent a state from creating

1 37334/08 [2011] ECHR1308.