3/2010

STUDIO LEGALE CANESTRINI

DIRITTO DI CRONACA, PRESUNZIONE DI INNOCENZA, GIUSTO PROCESSO

RIFLESSIONI SU NORMATIVA NAZIONALE ED INTERNAZIONALE

L'obbligatorietà dell'esercizio dell'azione penale prevista dagli artt. 112 della Costituzionel l'indipendenza della magistratura, ed il dirito di cronaca sancito dall'art. 21 della medesima Carta costituzionale ("*pietra angolare del sistema democratico*") sono principi connaturati allo stato di diritto, caratterizzato dalla separazione tra poteri, con controllo dell'opinione pubblica sull'esercizio del potere per l'insostituibile tramite dei mezzi di informazione.

Detti principi vanno peraltro coordinati con altri beni giuridici tutelati dalla nostra Costituzione come dalle primarie convenzioni internazionali che sanciscono diritti fondamentali; nella pratica, si pone il problema del conflitto fra il diritto di cronaca ed il principio di presunzione di innocenza.

Si pensi alla pratica delle forze di polizia di fare conferenze stampa, presentando ipotesi investigative come se fossero sentenze definitive, fornendo particolari e foto degli arrestati, senza alcun contraddittorio con le difese, che nella migliore delle ipotesi vengono interpellate nei giorni successivi, dovendo affrontare una opinione pubblica prevenuta, e senza aver nemmeno visto tutti gli atti.

Dette notizie sono purtroppo troppo spesso recepite acriticamente da parte degli operatori dell'informazione, ridotti a megafoni della ipotesi investigativa, senza che i giornalisti esercitino alcun **controllo critico delle affermazioni**.

Detta pratica, spesso giustificata in nome del diritto di cronaca (che notoriamente discende dall'articolo 21 *Grundnorm*) non trova, a ben vedere, "automatica" copertura costituzionale né da parte della convenzioni internazionali.

In conformità a una giurisprudenza più che consolidata della Suprema Corte, a partire dal noto arresto del 18 ottobre 1984, n. 5259, per considerare la divulgazione di notizie lesive dell'onore lecita espressione del diritto di cronaca ed escludere la responsabilità civile per diffamazione, devono ricorrere tre condizioni consistenti:

a) nella **verità oggettiva** (o anche soltanto putativa, purché frutto di un serio e diligente lavoro di ricerca) che non sussiste quando, pur essendo veri i singoli fatti riferiti, siano, dolosamente o anche soltanto colposamente taciuti altri fatti, tanto strettamente ricollegabili ai primi da mutarne completamente il significato; ovvero quando i fatti riferiti siano accompagnati da sollecitazioni emotive ovvero da sottintesi, accostamenti, insinuazioni, allusioni o sofismi obiettivamente idonei a creare nella mente del lettore (o ascoltatore) rappresentazioni della realtà oggettiva false: principi sintetizzati nella formula secondo cui «*il testo va letto nel contesto*», il quale può determinare un mutamento del significato apparente della frase altrimenti non diffamatoria, dandole un contenuto *allusivo*, percepibile dall'uomo medio (Cass. sez. III, 14-10-2008, n. 25157);

b) nella **sussistenza di un interesse pubblico all'informazione**, vale a dire nella c.d. pertinenza (*ex multis*: Cass. n. 5146/2001; Cass. 18.10.1984, n. 5259; Cass. n. 15999/2001; Cass. 15.12.2004, n. 23366);

c) nella **forma «civile» dell'esposizione dei fatti e della loro valutazione**, e cioè nella c.d. continenza, posto che lo scritto non deve mai eccedere lo scopo informativo da conseguire; deve essere improntato a serena obiettività, con esclusione di ogni preconcetto intento denigratorio; deve essere redatto nel rispetto di quel minimo di dignità cui ha pur sempre diritto anche la più riprovevole delle persone (Cass. 18 ottobre 1984 n. 5259).

In sostanza soltanto la correlazione rigorosa tra fatto e notizia dello stesso soddisfa l'interesse pubblico all'informazione, che è la *ratio* dell'art. 21 della Cost., di cui il diritto di cronaca è estrinsecazione, riportando l'azione nell'ambito dell'operatività dell'art. 51 cod. pen. e rendendo la condotta non punibile nel concorso degli altri due requisiti della *continenza* e *pertinenza*.

Invero il potere-dovere di raccontare e diffondere a mezzo stampa notizie e commenti, quale essenziale estrinsecazione del diritto di libertà di informazione e di pensiero, incontra limiti in altri diritti e interessi fondamentali della persona, come l'onore e la reputazione, anch'essi costituzionalmente protetti dagli artt. 2 e 3 Cost. dovendo peraltro, **in materia di cronaca giudiziaria, confrontarsi anche con il presidio costituzionale della presunzione di non colpevolezza di cui all'art. 27 Cost.[1].**

In tale ordine concettuale la giurisprudenza anche penale della Corte di Cassazione è costante nel sottolineare il **particolare rigore** con cui deve essere valutata la prima delle condizioni sopra indicate, precisando che la verità di una notizia mutuata da un provvedimento giudiziario sussiste ogniqualvolta essa sia fedele al contenuto del provvedimento stesso, senza alterazioni o travisamenti di sorta, dovendo il limite della verità essere restrittivamente inteso (v. Cass. pen sez. V, 3.6.98, Pendinelli; sez. V, 21.6.97, Montanelli, n. 6018).

L'esimente, anche putativa, del diritto di cronaca giudiziaria di cui all'art. 51 cod. pen., va, dunque, esclusa allorché manchi la necessaria correlazione tra fatto narrato e fatto accaduto, il che implica l'assolvimento dell'obbligo di verifica della notizia e, quindi, l'assoluto rispetto del limite interno della verità oggettiva di quanto esposto, nonché il rigoroso obbligo di rappresentare gli avvenimenti quali sono, senza alterazioni o travisamenti di sorta, risultando inaccettabili i valori sostitutivi, quale quello della verosimiglianza, in quanto il sacrificio della presunzione di innocenza richiede che non si esorbiti da ciò che è strettamente necessario ai fini informativi (Cass. pen., Sez. V, 14/02/2005, n. 12859; cfr. anche Cass. civ., Sez. III, 17/07/2007, n. 15887).

Il punto è che i rapporti fra giustizia ed informazione necessitano di un ragionevole bilanciamento di valori.

Il processo è infatti un insieme molto complesso e molto sofisticato, caratterizzato da precise regole che l'azione indiscriminata dei mezzi di informazione sovente fa andare in frantumi.

La **fase investigativa, quella che culmina nelle conferenze stampa "spettacolo", è appunto solo una fase del processo**, che solo cronologicamente precede le altre fasi: non è affatto la più importante delle fasi processuali.

E' infatti il dibattimento il luogo della formazione della prova, il momento del convincimento del giudice, è il dibattimento il luogo del contraddittorio, delle deposizioni dei testi che dovranno rispondere ad entrambe le parti processuali, è il dibattimento che con la sua pubblicità garantisce un processo equo.

[1] Testualmente, Cassazione, III civile, - sentenza 16 giugno - 20 luglio 2010, n. 16917Presidente Morelli - Relatore Amendola, Ricorrente Vespa e altro.

La fase investigativa deve poter *ipotizzare*, *supporre*, *insinuare*: ma solo se tali sospetti, illazioni, supposizioni reggeranno il vaglio del processo si formerà la verità processuale.

Ma i tempi della giustizia sono lunghi, e dunque la resa giornalistica dell'arresto è maggiore di quella della sentenza, che interviene a distanza di tempo rispetto al fatto reato.

E' stato efficacemente scritto[2] che più il processo si dilata cronologicamente e più il principio della presunzione di innocenza, che trova altissimo fondamento nell'articolo 27/2 della Costituzione, tende fatalmente a sbiadire nella coscienza collettiva, influenzata da "sentenze di colpevolezza giornalistiche", alimentate da ipotesi investigative presentate come accertamento definitivo, con linguaggio poco sorvegliato e dunque percepite dalla collettività in chiave negativa, di stigmatizzazione sociale, lasciando spazio ad anticipati giudizi di reità, i quali si ripercuotono a loro volta sulla vicenda giudiziaria.

Nel processo virtuale condotto sui mezzi di informazione, l'accusato è costretto a discolparsi se vuole contrastare la deriva giustizialista.

In *dubio contra reum*, dunque.

A nulla sono valse le normative costituzionali o internazionali: si pensi all'articolo 111 della Costituzione che sancisce il diritto ad essere informati "**riservatamente**" dei motivi dell'accusa, ma anche alle pronunce della Corte europea dei diritti dell'uomo.

Il 26 aprile 1979 la Corte europea dei diritti dell'uomo ha pronunciato la sentenza "*Sunday Times contro Regno Unito*", affermando il principio che la stampa non solo può dare informazioni sui procedimenti pendenti, purché siano rispettate talune condizioni, in particolare la presunzione d'innocenza, ma che ciò è anzi uno dei suoi compiti[3].

Ma la stessa Corte europea più volte statuì come l'attività di informazione dei mezzi di comunicazione di massa di autorità pubbliche rispetto a procedimenti penali in corso debba essere svolta "**con tutta la discrezione e con tutto il riserbo imposti dalla presunzione di innocenza**" ("*with all the discretion and circumspection necessary if the*

---

[2] Ci si riferisce all'ottimo "La presunzione di non colpevolezza dell'imputato", di Pier Paolo Paulesu, Giappichelli, Torino 2008; in particolare sub sez.II, "Il divieto di far apparire l'imputato come colpevole", p. 159 ss.

[3] "*Freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (p. 23, para. 49).*
These principles are of particular importance as far as the press is concerned. They are equally applicable to the field of the administration of justice, which serves the interests of the community at large and requires the co-operation of an enlightened public. There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialised journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them (see, mutatis mutandis, the Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 26, para. 52)..

presumption of innocence is to be respected" , testualmente Allenet de Ribemont vs. Francia, 10 febbraio 1995, par. 38)[4].

Nell'importante sentenza "*Worm contro Austria*", del 29 agosto 1997, la Corte Europea dei Diritti dell'Uomo ha ribadito che anche i giornalisti devono rispettare la presunzione d'innocenza, quale definita dall'articolo 6 della Convenzione europea dei diritti dell'uomo, e che essa tutela anche le personalità pubbliche e gli uomini politici[5].

(..) public figures are entitled to the enjoyment of the guarantees of a fair trial set out in Article 6, which in criminal proceedings include the right to an impartial tribunal, on the same basis as every other person. This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice[6].

---

4 "Freedom of expression, guaranteed by Article 10 (art. 10) of the Convention, includes the freedom to receive and impart information. Article 6 para. 2 (art. 6-2) cannot therefore prevent the authorities from informing the public about criminal investigations in progress, **but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected**." Al riguardo, si segnalano senza pretesa di completezza alcune pronunce rilevanti della Corte Europea: 26.4.1979, *Sunday Times* v. the United Kingdom (cfr. nota che precede)); 1.10.1982, Piersack v. Belgium; 8.7.1986, Lingens v. Austria; 26.11.1991, *Sunday Times* v. the United Kingdom (si tratta di una seconda decisione); 24.2.1993, Fey v. Austria; 25.8.1993, Chorherr v. Austria; 23.9.1994, Jersild v. Denmark; 27.3.1996, Goodwin v. the United Kingdom

5 Il procedimento riguardava il caso di un giornalista austriaco che aveva pubblicato articoli con accuse pesantissime nei confronti di un ex ministro delle finanze sotto processo dinanzi ad una corte d'assise. In tal modo il giornalista non solo aveva notevolmente ridotto le possibilità che l'uomo politico fruisse di un giusto processo, ma aveva anche condotto una specie di pseudo processo mediatico, con il rischio, secondo la CEDU, di minare la fiducia del pubblico nel ruolo dei tribunali quali amministratori della giustizia penale.

6 Estrapolare parte delle decisioni giudiziarie significa sempre proporre una interpretazione: si riposta dunque il passo per intero:

The Court recalls that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance (see, among other authorities, the Jersild v. Denmark judgment of 23 September 1994, Series A no. 298, p. 23, § 31).
(...)
Restrictions on freedom of expression permitted by the second paragraph of Article 10 "for maintaining the authority and impartiality of the judiciary" do not entitle States to restrict all forms of public discussion on matters pending before the courts.
There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst the courts are the forum for the determination of a person's guilt or innocence on a criminal charge (see paragraph 40 above), this does not mean that there can be no prior or contemporaneous discussion of the subject matter of criminal trials elsewhere, be it in specialised journals, in the general press or amongst the public at large (see, mutatis mutandis, the Sunday Times (no. 1) judgment cited above, p. 40, § 65).
Provided that it does not overstep the bounds imposed in the interests of the proper administration of justice, reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them (ibid.). This is all the more so where a public figure is involved, such as, in the present case, a former member of the Government. Such persons inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large (see, among other authorities, the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 26, § 42).

Di più: la Corte Europea ha senza mezzi termini statuito come la presunzione di innocenza costituisca uno dei requisiti per il **giusto processo** (*fair trial*), principio violato se le dichiarazioni di un pubblico ufficiale relative ad un indagato lascia intendere che egli sia colpevole prima della sentenza di condanna (Daktaras vs. Lituania, III sezione, 10 ottobre 2000, numero di registro 42095/98[7]).

Del resto, nel 2003 il Consiglio d'Europa emanava una raccomandazione in tema di diffusione di notizie relative a procedimenti penali, stabilendo che tali notizie possono essere diffuse solo se le stesse non rechino pregiudizio alla presunzione di innocenza, imponendo alle forze di polizia di fornire solo "informazioni verificate" o "basate su assunti ragionevoli".

Il diritto - dovere di giudicare è dei giudici, non degli operatori di polizia giudiziaria, non dei giornalisti: se tutti gli attori di questo complesso meccanismo chiamato giustizia, in cui certamente anche l'opinione pubblica ha una sua importanza correlata all'interesse pubblico della notizia, si attenessero ai loro compiti, il risultato sarebbe un processo più giusto.

Accordingly, the limits of acceptable comment are wider as regards a politician as such than as regards a private individual (ibid.).
However, public figures are entitled to the enjoyment of the guarantees of a fair trial set out in Article 6, which in criminal proceedings include the right to an impartial tribunal, on the same basis as every other person. This must be borne in mind by journalists when commenting on pending criminal proceedings since the limits of permissible comment may not extend to statements which are likely to prejudice, whether intentionally or not, the chances of a person receiving a fair trial or to undermine the confidence of the public in the role of the courts in the administration of criminal justice.

[7] *The Court recalls that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial required by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty (see, mutatis mutandis, the Allenet de Ribemont v. France judgment of 10 February 1995, Series A no. 308, p. 16, § 35).*La decisione è reperibile sub http://www.echr.coe.int/echr/en/hudoc/ inserendo le chiavi di ricerca richieste..

Allegati:

1. COUNCIL OF EUROPE - COMMITTEE OF MINISTERS, Recommendation Rec(2003)13 of the Committee of Ministers to member stateson the provision of information through the media in relation to criminal proceedings
2. EUROPEAN COURT OF HUMAN RIGHTS - **CASE OF DAKTARAS v. LITHUANIA**

ALLEGATO 1

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings[8]

(Adopted by the Committee of Ministers on 10 July 2003 at the 848th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling the commitment of the member states to the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"), which constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for the development of every individual;

Recalling that the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and that they have a professional duty to do so;

Recalling that the rights to presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention constitute fundamental requirements which must be respected in any democratic society;

Stressing the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;

Considering the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention;

Recalling, furthermore, the right of the media and journalists to create professional associations, as guaranteed by the right to freedom of association under Article 11 of the Convention, which is a basis for self-regulation in the media field;

Aware of the many initiatives taken by the media and journalists in Europe to promote the responsible exercise of journalism, either through self-regulation or in co-operation with the state through co-regulatory frameworks;

Desirous to enhance an informed debate on the protection of the rights and interests at stake in the context of media reporting relating to criminal proceedings, and to foster good practice throughout Europe while ensuring access of the media to criminal proceedings;

Recalling its Resolution (74) 26 on the right of reply – position of the individual in relation to the press, its Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, its Recommendation No. R (97) 13 concerning the

8

intimidation of witnesses and the rights of the defence, and its Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance;

Stressing the importance of protecting journalists' sources of information in the context of criminal proceedings, in accordance with its Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information;

Bearing in mind Resolution No. 2 on journalistic freedoms and human rights adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994) as well as the Declaration on a media policy for tomorrow adopted at the 6th European Ministerial Conference on Mass Media Policy (Cracow, June 2000);

Recalling that this recommendation does not intend to limit the standards already in force in member states which aim to protect freedom of expression,

Recommends, while acknowledging the diversity of national legal systems concerning criminal procedure, that the governments of member states:

1. take or reinforce, as the case may be, all measures which they consider necessary with a view to the implementation of the principles appended to this recommendation, within the limits of their respective constitutional provisions,

2. disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and

3. bring them in particular to the attention of judicial authorities and police services as well as to make them available to representative organisations of lawyers and media professionals.

Appendix to Recommendation Rec(2003)13

Principles concerning the provision of information through the media in relation to criminal proceedings

Principle 1 - Information of the public via the media

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

Principle 2 - Presumption of innocence

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

Principle 3 - Accuracy of information

Judicial authorities and police services should provide to the media only verified information or information which is based on reasonable assumptions. In the latter case, this should be clearly indicated to the media.

Principle 4 - Access to information

When journalists have lawfully obtained information in the context of on-going criminal proceedings from judicial authorities or police services, those authorities and services should make available such information, without discrimination, to all journalists who make or have made the same request.

Principle 5 - Ways of providing information to the media

When judicial authorities and police services themselves have decided to provide information to the media in the context of on-going criminal proceedings, such information should be provided on a non-discriminatory basis and, wherever possible, through press releases, press conferences by authorised officers or similar authorised means.

Principle 6 - Regular information during criminal proceedings

In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly.

Principle 7 - Prohibition of the exploitation of information

Judicial authorities and police services should not exploit information about on-going criminal proceedings for commercial purposes or purposes other than those relevant to the enforcement of the law.

Principle 8 - Protection of privacy in the context of on-going criminal proceedings

The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention. Particular protection should be given to parties who are minors or other vulnerable persons, as well as to victims, to witnesses and to the families of suspects, accused and convicted. In all cases, particular consideration should be given to the harmful effect which the disclosure of information enabling their identification may have on the persons referred to in this Principle.

Principle 9 - Right of correction or right of reply

Without prejudice to the availability of other remedies, everyone who has been the subject of incorrect or defamatory media reports in the context of criminal proceedings should have a right of correction or reply, as the case may be, against the media concerned. A right of correction should also be available with respect to press releases containing incorrect information which have been issued by judicial authorities or police services.

Principle 10 - Prevention of prejudicial influence

In the context of criminal proceedings, particularly those involving juries or lay judges, judicial authorities and police services should abstain from publicly providing information which bears a risk of substantial prejudice to the fairness of the proceedings.

Principle 11 - Prejudicial pre-trial publicity

Where the accused can show that the provision of information is highly likely to result, or has resulted, in a breach of his or her right to a fair trial, he or she should have an effective legal remedy.

Principle 12 - Admission of journalists

Journalists should be admitted to public court hearings and public pronouncements of judgements without discrimination and without prior accreditation requirements. They should not be excluded from court hearings, unless and as far as the public is excluded in accordance with Article 6 of the Convention.

Principle 13 - Access of journalists to courtrooms

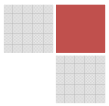
The competent authorities should, unless it is clearly impracticable, provide in courtrooms a number of seats for journalists which is sufficient in accordance with the demand, without excluding the presence of the public as such.

Principle 14 - live reporting and recordings in court rooms

Live reporting or recordings by the media in court rooms should not be possible unless and as far as expressly permitted by law or the competent judicial authorities. Such reporting should be authorised only where it does not bear a serious risk of undue influence on victims, witnesses, parties to criminal proceedings, juries or judges.

Principle 15 - Support for media reporting

Announcements of scheduled hearings, indictments or charges and other information of relevance to legal reporting should be made available to journalists upon simple request by the competent authorities in due time, unless impracticable. Journalists should be allowed, on a non-discriminatory basis, to make or receive copies of publicly pronounced judgments. They should have the possibility to disseminate or communicate these judgments to the public.



Principle 16 - Protection of witnesses

The identity of witnesses should not be disclosed, unless a witness has given his or her prior consent, the identification of a witness is of public concern, or the testimony has already been given in public. The identity of witnesses should never be disclosed where this endangers their lives or security. Due respect shall be paid to protection programmes for witnesses, especially in criminal proceedings against organised crime or crime within the family.

Principle 17 - Media reporting on the enforcement of court sentences

Journalists should be permitted to have contacts with persons serving court sentences in prisons, as far as this does not prejudice the fair administration of justice, the rights of prisoners and prison officers or the security of a prison.

Principle 18 - Media reporting after the end of court sentences

In order not to prejudice the re-integration into society of persons who have served court sentences, the right to protection of privacy under Article 8 of the Convention should include the right to protect the identity of these persons in connection with their prior offence after the end of their court sentences, unless they have expressly consented to the disclosure of their identity or they and their prior offence are of public concern again or have become of public concern again.

ALLEGATO 2

EUROPEAN COURT OF HUMAN RIGHTS
THIRD SECTION
CASE OF DAKTARAS v. LITHUANIA[9]
(Application no. 42095/98)
JUDGMENT
STRASBOURG
10 October 2000
FINAL
17/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.

In the case of Daktaras v. Lithuania,

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

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Sir Nicolas BRATZA, *appointed to sit in respect of Lithuania*,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 March and 19 September 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 42095/98) against the Republic of Lithuania lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Henrikas **Daktaras** ("the applicant"), on 11 May 1998.

2. The applicant was represented by Mr R. Girdziušas and Mr V. Sviderskis, lawyers practising in Kaunas and Vilnius respectively. The Lithuanian Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that the Supreme Court, which heard the petition to quash the appellate court's judgment, was not an impartial tribunal within the meaning of Article 6 § 1 of the Convention and that the prosecutor breached the principle of the presumption of innocence guaranteed by Article 6 § 2 in his pre-trial decision of 1 October 1996.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr P. Kūris, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28). The

[9] Hudoc database:
http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=daktaras&sessionid=57552389&skin=hudoc-en

Government accordingly appointed Sir Nicolas Bratza, the judge elected in respect of the United Kingdom, to sit in his stead (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 11 January 2000 the Chamber declared the application partly admissible and decided to hold a hearing on the merits of the case [*Note du greffe* : la décision de la Cour est disponible au greffe.].

7. The hearing took place in public in the Human Rights Building, Strasbourg, on 14 March 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr G. ŠVEDAS, Deputy Minister of Justice, *Agent*;

(b) *for the applicant*

Mr V. SVIDERSKIS, *Counsel*.

The Court heard addresses by them.

8. On 3, 4, 8 and 24 February, 20 March and 19 June 2000, the parties produced a number of documents, either at the Court's request or of their own accord.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 18 February 1996 a prosecutor at the Organised Crime Division of the Office of the Prosecutor General instituted criminal proceedings against the applicant. He was suspected of being an accomplice to the offence of demanding and obtaining a ransom of 7,000 United States dollars for returning the stolen car of a certain J.M.

10. On 1 April 1996 the applicant was charged on four counts, including blackmail (*turto prievartavimas*) and inciting the victim (*poveikis nukentėjusiajam*) to make false statements.

11. The pre-trial investigation in the case was conducted by prosecutors at the Organised Crime Division of the Office of the Prosecutor General. It was concluded on 26 September 1996. From that date until 1 October 1996 the applicant and his counsel were given access to the case file.

12. After having access to the case file, the applicant and his counsel requested the prosecution to discontinue the case, arguing that the charges against the applicant were ill-founded and that the case file "contained no evidence [of his] guilt".

13. On 1 October 1996 a prosecutor of the Organised Crime Division dismissed the applicant's requests. In his decision the prosecutor stated, *inter alia*:

"After having access to the case file, [the applicant] ... submitted [requests] to discontinue the criminal case on the ground that he had not committed the offences alleged ... and that his guilt ... had not been proved [*kaltė ... neįrodyta*]. [These] allegations must be dismissed as ill-founded because it has been established [*kaltė ... įrodyta*] from the evidence collected in the course of the pre-trial investigation that the applicant is guilty of [these] crimes.

Although Henrikas **Daktaras** has not admitted having committed the alleged offences, his guilt has been proved by the witnesses' evidence, ... video and audio records ... and other material collected in the course of the pre-trial investigation. The fact that H. **Daktaras** concealed an offence ... is proved by the evidence [given by witnesses S.Č., V.V. and A.L.] ... The fact that H. **Daktaras** threatened [the victim J.M.] by force to obtain property ... is proved by the evidence [given by S.Č. and the material evidence] ... The fact that H. **Daktaras**conspired with persons who had committed the theft [of the car] ... is proved by [his own statements] ... The fact that H. **Daktaras** ... intimidated the victim is fully proved by the evidence [given by J.M., S.Č. and material evidence] ... [The above evidence] is assessed by the prosecution as an incitement to make [J.M.] give false statements ...

Against the above background, in accordance with Article 229 of the Code of Criminal Procedure, it is decided

1. to dismiss [the applicant's] requests entirely, and

2. to inform the persons concerned about the decision."

14. On 2 October 1996 the Chief Prosecutor at the Organised Crime Division confirmed the bill of indictment and sent the case to the Supreme Court.

15. On the same date the President of the Criminal Division of the Supreme Court transmitted the case to the Vilnius Regional Court.

16. On 18 November 1996 a judge of the Vilnius Regional Court committed the applicant for trial.

17. On 13 February 1997 the judge found the applicant guilty of blackmail and inciting the victim to make false statements. He was convicted as the principal offender on the blackmail charge. He was acquitted on two other counts. The applicant was sentenced to seven years and six months' imprisonment. He was also fined 15,000 litai and his property was confiscated.

18. The applicant appealed, relying on various errors of domestic substantive and procedural law. He pleaded, *inter alia*, that he had been presumed guilty and that he had been deprived of a fair trial by an independent and impartial court.

19. On 27 May 1997 the Court of Appeal held a full appeal hearing. It amended the judgment of 13 February 1997 in so far as it concerned the applicant's conviction for blackmail, ruling that the applicant was a secondary party, not the principal offender. The sentence remained unchanged.

20. The applicant lodged an appeal with the Supreme Court, pleading that both lower courts had erred in fact and law and that he had not committed the alleged offences.

21. On 3 July 1997 the judge of the Vilnius Regional Court who had delivered the first-instance judgment wrote a letter to the President of the Criminal Division of the Supreme Court in which he contested the conclusions reached by the Court of Appeal as to the level of the applicant's participation in the blackmail offence. In that letter the judge maintained that the applicant ought to have been convicted as the principal offender. The judge requested the President to lodge a petition (*kasacinis teikimas*) to quash the Court of Appeal's judgment.

22. On 27 August 1997 the President of the Criminal Division of the Supreme Court lodged a petition with the Criminal Division of the Supreme Court to quash the Court of Appeal's judgment. In the petition the President stated, *inter alia*:

"The judgment of the Court of Appeal should be quashed ... [The appellate court] ... wrongly interpreted and applied the law ... On the basis of the material ... it established that H.**Daktaras** ... executed the will of the group of persons ... and was the principal offender on the blackmail charge ...

In accordance with Article 417 of the Code of Criminal Procedure, I petition

to quash the judgment of the Court of Appeal of 27 May 1997 ... and to uphold the judgment of the Vilnius Regional Court of 13 February 1997."

23. On 8 September 1997 the same President of the Criminal Division of the Supreme Court appointed a judge rapporteur in the case. On 23 September 1997 the President also appointed a Chamber of three judges of the Criminal Division of the Supreme Court to examine the case.

24. A hearing was held on 2 December 1997 during which the Chief Prosecutor of the Organised Crime Division requested the Chamber to uphold the petition on behalf of the prosecution, which had not lodged an appeal itself in the case. The applicant requested the Supreme Court to uphold his appeal and reject the petition.

25. On the above date the Supreme Court quashed the judgment of the Court of Appeal and upheld the judgment of the Vilnius Regional Court, rejecting the applicant's appeal and upholding the petition. The Supreme Court found that the applicant had been the principal offender on the blackmail charge.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. Relevant provisions are as follows:

A. IMPARTIALITY AND INDEPENDENCE OF JUDGES

ARTICLE 14 OF THE CODE OF CRIMINAL PROCEDURE (THE CCP")

"In administering justice in criminal matters judges are independent and beholden only to the law. Judges decide criminal cases in accordance with the law and their conscience in conditions which make it impossible for them to be affected by outside matters. Any interference with the judges' or courts' actions in administering justice is prohibited and gives rise to liability under the law."

ARTICLE 76 OF THE CCP

"A court ... shall assess evidence according to [its] inner conviction, based on an extensive, full and objective review of all the circumstances of the case, in accordance with the law and legal conscience.

No evidence shall have a prejudicial influence on a court ..."

Under the terms of Article 31 a judge in respect of whom there are lawful grounds to fear a lack of impartiality must withdraw. On the same ground the judge can be challenged by the defendant and other parties to the case.

B. STATUS OF JUDGES AND OF THE PRESIDENT OF THE CRIMINAL DIVISION OF THE SUPREME COURT

Under section 13 of the Courts Act and Article 2 of the Statute of the Supreme Court, the Supreme Court is composed of the President, Presidents of the Civil and Criminal Divisions and other judges.

Under sections 24 and 35 of the Courts Act and Articles 16 to 18 of the Statute of the Supreme Court, judges of the Supreme Court are professional and permanent judges appointed by Parliament.

According to section 39 of the Courts Act, presidents of divisions are officers having power over the "organisational sphere" of the courts' work. Under the third paragraph of section 39, presidents of divisions may also sit as judges; in such cases they perform the same judicial functions as ordinary judges.

Article 12 of the Statute of the Supreme Court provides that the President of the Criminal Division,

"(1) in examining cases, has the same rights and obligations as other judges. [He] may submit petitions to quash or amend a lower court's judgment ...;

(2) constitutes chambers of judges and appoints their presidents, ... distributes cases among judges ... [and] supervises their examination;

(3) submits proposals to the President of the Court on premiums and bonuses for judges and other officials;

(4) heads the Registry;

(5) organises the case-law research work ...;

(6) confirms the statistical survey of activities ...;

(7) executes other functions under the law and the organisational directives of the President of the Supreme Court."

Article 14 of the Statute provides that the President of the Criminal Division is responsible for the organisation of appeal hearings.

The fourth paragraph of section 39 of the Courts Act effectively prohibits presidents of courts or presidents of divisions from exerting any influence over or otherwise breaching the independence of other judges in their administration of justice.

C. PETITION TO QUASH OR AMEND A LOWER COURT'S JUDGMENT

Under Article 417 § 4 of the CCP the President of the Supreme Court, the President of the Court of Appeal, presidents of regional courts, and presidents of the criminal divisions of the above courts may submit a petition to quash or amend a particular lower court's judgment. According to Article 417 § 5 the court hearing the petition shall follow the same procedure as on a normal appeal lodged by the parties to the proceedings.

Article 418 § 2 lays down the requirements for lodging an appeal or petition: it should refer to the specific court hearing the appeal, the case and decision at issue, the substance of the decision and the grounds for quashing the lower court's judgment.

D. PRESUMPTION OF INNOCENCE

Article 31 § 1 of the Constitution provides:

"A person shall be considered innocent until proved guilty in accordance with law by a final judgment of the court."

Article 11 § 2 of the CCP provides:

"No one shall be declared guilty of having committed an offence or punished by a criminal penalty save by a court judgment in accordance with law."

E. THE ROLE OF A PROSECUTOR IN CRIMINAL PROCEEDINGS

Article 118 of the Constitution provides that prosecutors conduct, *inter alia*, criminal prosecutions and supervise those responsible for the pre-trial investigation.

Under Articles 45 and 46 of the CCP the prosecutor's role is to ensure that the criminal case is instituted lawfully and that the domestic law is complied with during the pre-trial investigation, to press charges at trial, to appeal against any procedural act and to supervise the execution of judgments.

In a decision of 5 February 1999 the Constitutional Court gave, *inter alia*, the following description of the general role of a prosecutor in the Lithuanian criminal process:

"The Constitution treats prosecutors as part of the judiciary having specific functions. A prosecutor is an officer who supervises the pre-trial investigation ...

The prosecutor can take part in the criminal case right from the outset. ... In accordance with the procedure provided for by law, he commences the criminal prosecution and pursues it by investigating the crime. One of his functions is to supervise the authorities conducting the pre-trial investigation. ... The prosecutor can himself conduct the investigation of any offence. ...

The prosecutor is therefore responsible for the pre-trial stage of the criminal proceedings. ...

The law does not provide the court ... [but] the prosecutor with the procedural means to supervise the pre-trial investigation."

Under Articles 3, 125 to 128 and 130 of the CCP, an investigator, prosecutor and court are all entitled to institute or discontinue a criminal case and to collect evidence in the case (Articles 18 and 74-76). These functions are exercised according to the stage of the proceedings.

The pre-trial investigation can be conducted by prosecutors working under the authority of the Office of the Prosecutor General, or investigators working for the Ministry of the Interior (Article 142).

Pursuant to Articles 24 and 133 of the CCP the prosecutors ensure that domestic law is complied with by the investigators at the stage of the pre-trial investigation. They are responsible for rectifying any breaches of the law. In doing so, the prosecutors "function independently from other authorities and are beholden only to the law" (Article 24 §§ 2 and 3). Under Article 24 § 4 the prosecutors' decisions are "binding on all authorities and persons".

Where the pre-trial investigation is conducted by the prosecution, an accused may, while having access to the case file (Articles 225-29 of the CCP), request the prosecutor to "supplement the investigation". The prosecutor must give a reasoned decision if he dismisses this request (Article 229 § 2). After such a decision, the bill of indictment may be prepared (Article 230).

A complaint by the accused about an act of the prosecutor at the stage of the pre-trial investigation shall be submitted to and determined by a higher prosecutor (Articles 242-44 of the CCP).

After the bill of indictment is confirmed, the case must be transmitted to a court (Article 241 of the CCP). From that stage on "any requests or complaints about the case shall be submitted directly to the court" (Article 241 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant alleged a violation of Article 6 § 1 of the Convention, according to which:

"In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

28. The applicant complained that the Chamber of the Supreme Court which heard the petition to quash the appellate court's judgment could not be considered an impartial tribunal within the meaning of Article 6 § 1 of the Convention because it had been instructed to quash the Court of Appeal's decision and reinstate the first-instance judgment following the petition lodged by the President of the Criminal Division of the Supreme Court. The applicant's fears of bias by the Supreme Court were aggravated by the fact that the President had himself appointed the judge rapporteur and the members of the Chamber in the case.

29. The Government argued that the purpose of a petition to quash or amend is to permit senior judicial officers to eliminate possible mistakes in the factual or legal assessment of a case by the lower courts, thereby ensuring coherent judicial practice. The Government also submitted that the President of the Criminal Division of the Supreme Court performed only organisational functions under the domestic statutes, that he took no part in the examination of the specific case and that he had no legal power to influence the Chamber's decision or otherwise to subject the judges hearing the petition to inappropriate pressure.

The petition to quash the Court of Appeal's judgment was subject to the same review procedure as the applicant's appeal, so the former could have no more influence on the court's decision than the latter. By reference to the Lithgow and Others v. the United Kingdom judgment (8 July 1986, Series A no. 102), the Government contended that the President's opinion in the petition had not been binding on the Supreme Court judges and therefore did not justify doubts as to the court's impartiality. Nor did the fact that the members of the appeal Chamber had been appointed by the President make any difference. In this regard the Government presented copies of eleven decisions by the Supreme Court where various petitions by the President of the Supreme Court or the President of the Criminal Division had been wholly or partially rejected, regardless of the fact that in some of those cases the same senior judicial officer had both appointed and petitioned the appeal judges.

30. The Court recalls that there are two aspects to the requirement of impartiality in Article 6 § 1 of the Convention. First, the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is presumed unless there is evidence to the contrary. Secondly, the tribunal must also be impartial from an objective viewpoint, meaning it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see *Academy Trading Ltd and Others v. Greece*, no. 30342/96, § 43, 4 April 2000, unreported).

31. As to the subjective test, the Court notes that no evidence has been produced in the present case which might suggest personal bias on the part of the individual judges of the Supreme Court.

32. Under the objective test, it must be determined whether there are ascertainable facts, which may nevertheless raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings (ibid., § 45).

33. Turning to the facts of the present case, the Court notes that the President of the Criminal Division of the Supreme Court lodged a petition with the judges of that division to quash the Court of Appeal's judgment following the request by the first-instance judge, who was dissatisfied with that judgment. The President proposed the quashing of the Court of Appeal's decision and the reinstatement of the first-instance judgment. The same President then appointed the judge rapporteur and constituted the Chamber which was to examine the

case. The President's petition was endorsed by the prosecution at the hearing and eventually upheld by the Supreme Court.

34. The Government stressed that the President's role in submitting a petition to quash or amend a lower court's judgment is in no way that of a party to the proceedings before the Supreme Court; his role is confined to giving the court hearing the petition an impartial and independent opinion on the factual and legal issues raised, drawing attention to any point on which the contested decision should be quashed.

35. However, the Court considers that such an opinion cannot be regarded as neutral from the parties' point of view. By recommending that a particular decision be adopted or quashed, the President necessarily becomes the defendant's ally or opponent (see, *mutatis mutandis,* the Borgers v. Belgium judgment of 30 October 1991, Series A no. 214-B, pp. 31-32, § 26).

In the present application the President was in effect taking up the case of the prosecution because at the hearing the President's petition was contested by the applicant but endorsed by the prosecution, which had not itself lodged an appeal (see paragraph 24 above and, *mutatis mutandis*, the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 281-82, § 74).

36. Furthermore, while it is true that the President did not sit as a member of the court which determined the petition, he did choose the judge rapporteur and the members of the Chamber from amongst those judges of the Criminal Division which he heads.

In this regard the Court recalls the above-mentioned Findlay judgment (ibid., §§ 74-76) where it found that a court martial had lacked independence and impartiality because of the significant role played by the convening officer before and during the hearing of the applicant's case, including the fact that he had convened the court and appointed its members who were subordinate to him in rank and who fell within his chain of command.

It is true that the present case is different in the sense that the Supreme Court consists of professional permanent judges (see paragraph 26 above) as opposed to certain *ad hoc* lay judges who formed part of the court martial in the Findlay case.

However, when the President of the Criminal Division not only takes up the prosecution case but also, in addition to his organisational and managerial functions, constitutes the court, it cannot be said that, from an objective standpoint, there are sufficient guarantees to exclude any legitimate doubt as to the absence of inappropriate pressure. The fact that the President's intervention was prompted by the first-instance judge only aggravates the situation.

37. The Government's argument that in some other cases the Supreme Court has rejected the appeal initiated by its President or the President of the Criminal Division makes no difference. As mentioned above, in assessing the compliance of each particular case with Article 6 § 1 of the Convention, any legitimate doubt as to the impartiality of a tribunal is itself sufficient to find a violation of that provision.

38. In the light of these circumstances, the Court finds that the applicant's doubts as to the impartiality of the Supreme Court may be said to have been objectively justified. Consequently, there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

39. The applicant complained that the prosecutor declared him guilty in the decision of 1 October 1996, in breach of Article 6 § 2 of the Convention, which provides as follows:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

40. The Government argued that the prosecutor's statements in the decision of 1 October 1996 merely described the degree of suspicion against the applicant by referring to the strength of the evidence against him in the case file, in response to the applicant's claim that there was no such evidence. It was only after this decision that the prosecutor could proceed with the bill of indictment and the conclusion of the pre-trial investigation. Otherwise, any doubt in favour of the applicant would have led to the withdrawal of the

charges against him. In this context the prosecutor was required either to adopt a reasoned decision confirming the validity of the suspicion or to discontinue the case. The Government further stressed that the decision of 1 October 1996 was not a publicly made statement warranting particular scrutiny under Article 6 § 2. Overall, having regard to the context in which it was made, the prosecutor's statement did not breach the requirements of that provision.

41. The Court recalls that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial required by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty (see, *mutatis mutandis*, the Allenet de Ribemont v. France judgment of 10 February 1995, Series A no. 308, p. 16, § 35).

In this regard the Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence.

42. Moreover, the principle of the presumption of innocence may be infringed not only by a judge or court but also by other public authorities (ibid., § 36), including prosecutors. This is particularly so where a prosecutor, as in the present case, performs a quasi-judicial function when ruling on the applicant's request to dismiss the charges at the stage of the pre-trial investigation, over which he has full procedural control (see paragraph 26 above).

43. Nevertheless, whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see, *inter alia*, the Adolf v. Austria judgment of 26 March 1982, Series A no. 49, pp. 17-19, §§ 36-41).

44. The Court notes that in the present case the impugned statements were made by a prosecutor not in a context independent of the criminal proceedings themselves, as for instance in a press conference, but in the course of a reasoned decision at a preliminary stage of those proceedings, rejecting the applicant's request to discontinue the prosecution.

The Court further notes that, in asserting in his decision that the applicant's guilt had been "proved" by the evidence in the case file, the prosecutor used the same term as had been used by the applicant, who in his request to discontinue the case had contended that his guilt had not been "proved" by the evidence in the file. While the use of the term "proved" is unfortunate, the Court considers that, having regard to the context in which the word was used, both the applicant and the prosecutor were referring not to the question whether the applicant's guilt had been established by the evidence – which was clearly not one for the determination of the prosecutor – but to the question whether the case file disclosed sufficient evidence of the applicant's guilt to justify proceeding to trial.

45. In these circumstances the Court concludes that the statements used by the prosecutor in his decision of 1 October 1996 did not breach the principle of the presumption of innocence.

There has therefore been no breach of Article 6 § 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 10,000 litai (LTL) for non-pecuniary damage suffered as a result of a violation of the Convention.

48. The Government considered this claim unjustified.

49. The Court considers that the finding of a violation of Article 6 § 1 constitutes in itself sufficient just satisfaction. Accordingly, it does not make any award under this head.

B. COSTS AND EXPENSES

50. The applicant also claimed LTL 10,354.22 for legal fees and expenses, including the travel and accommodation costs in connection with the hearing of his case in Strasbourg. He submitted the relevant documents in support of his claim.

51. The Government considered the above claim excessive.

52. The Court considers that the costs claimed under this head were actually and necessarily incurred, and awards them in full, plus any value-added tax that may be chargeable.

C. DEFAULT INTEREST

53. According to the information available to the Court, the statutory rate of interest applicable in Lithuania at the date of adoption of the present judgment is 9.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been no violation of Article 6 § 2 of the Convention;

3. *Holds* that a finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, LTL 10,354.22 (ten thousand three hundred and fifty-four litai twenty-two centai) for legal costs and expenses, plus any value-added tax that may be chargeable;

(b) that simple interest at an annual rate of 9.5% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 10 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA

Registrar President