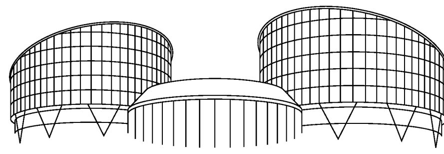

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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INTERNATIONAL CONFERENCE: FAIR TRIAL AND MEDIA REALITY

"Fair trial guarantees, the public's right to information and private and family life"

Prague, 28 November 2019

Linos-Alexandre Sicilianos, President of the European Court of Human Rights

Dear Prosecutor General,

Dear Presidents,

Excellency,

Dear Minister,

Distinguished speakers and guests,

It is a great pleasure for me to open this conference on media and fair trial guarantees. On behalf of myself and my colleagues Judges Wojtyczek and Pejchal, I would like to thank our hosts, and in particular Prosecutor General Zeman, for the kind invitation to join you in Prague.

You have chosen an extremely interesting topic for today's discussions, namely the interrelationship between fair trial guarantees and the media.

The subject of my speech will be the interplay between three different Articles of the European Convention on Human Rights. These are:

(i) the right to a fair trial and the presumption of innocence under Articles 6 § 1 and 6 § 2;

(ii) the right to private life under Article 8; and

(iii) the right to receive and impart information under Article 10.

I will begin by briefly outlining each right and its relevance to the reporting of criminal trials.

However, before I do so, I would like to refer to the Committee of Ministers of the Council of Europe's Recommendation Rec(2003)13 to member States on the *Provision of information through the media in relation to criminal proceedings*.[1]

[1] https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805df617

This text, adopted in 2013, summarises the key principles which courts and the media must take into consideration. Indeed, one can say that it is largely based on the Court's case-law.

The right to a fair trial and the presumption of innocence

Article 6 § 1 of the Convention provides for a right to a fair and public hearing. The Court has found that special protection must be given to the secrecy of a judicial investigation in view of what is at stake in criminal proceedings, both for the administration of justice generally, and for the right of persons under investigation to be presumed innocent.

Indeed, under Article 6 § 2:

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

The presumption of innocence is one of the elements of a fair trial required by Article 6 § 1. It will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law.

The Court has made a distinction between statements which reflect the opinion that the person concerned is guilty and statements which merely describe “a state of suspicion”. The former infringe the presumption of innocence, whereas the latter do not.

However, Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with *discretion* and *circumspection* in order to respect the presumption of innocence. The Court has emphasised the importance of *the choice of words* by public officials in their statements.

I will give you two examples of how the Court has dealt with the presumption of innocence.

In the case of *Allenet de Ribemont v. France*[2], some of the highest-ranking officers in the French police referred to Mr Allenet de Ribemont as one of the instigators of a murder and thus an accomplice in that murder.

[2] 10 February 1995, § 41, Series A no. 308

This was clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority. The Court has found a breach of Article 6 § 2.

In *Butkevičius v. Lithuania*[3] the Prosecutor General gave an interview to the media a few days after the applicant's arrest where he said that he had "enough sound evidence of the guilt" of the applicant. Two days later he qualified the applicant's offence "as an attempt to cheat". The applicant was subsequently convicted. in respect of the statements of the Prosecutor General the Court found that while the statements gave some cause for concern, it accepted that they might be interpreted as a mere assertion that there was sufficient evidence to support a finding of guilt by a court and, thus, to justify the application to the Seimas for permission to bring criminal proceedings. The Court took a different approach as regards the Chairman of the Parliament who was quoted in the newspaper as having referred to the applicant as a "bribetaker".

[3] no. 48297/99, § 49, ECHR 2002-II (extracts)

The right to private life under Article 8

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

An accused may also complain of a violation of his right to private life as a result of statements made by public officials in connection with pending criminal proceedings or by the media.

I will give you one example here. In *Craxi v. Italy*[4] the accused complained about the Public Prosecutor's decision to deposit material in the registry of the Court which violated his right to respect for correspondence. The Press had picked up on that material (intercepted telephone conversations) and released them into the public domain. In that case, the Court held that the national authorities were not merely subject to a negative obligation not to knowingly disclose information protected by Article 8, but that they should also take steps to ensure effective protection of an accused person's right to respect for his correspondence.

[4] *(no. 2)* (no. 25337/94, § 73, 17 July 2003)

The right to receive and impart information

Under Article 10:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Freedom of expression, guaranteed by Article 10 of the Convention, includes the freedom to receive and impart information. 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.[5]

Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them. Indeed, the public has a legitimate interest in being informed about ongoing criminal proceedings and the functioning of the judiciary. This constitutes a question of public interest.

The press plays an essential role in a democratic society. Of course, it must not overstep certain bounds, in particular in respect of the reputation and rights of others, as well as the need to prevent the disclosure of information received in confidence. Nevertheless, its duty is to impart information and ideas on all matters of public interest.

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[5] *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298

Reporting and commenting, 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.

I would like to show the interplay of these three rights by way of one particular case which concerned the dismissal of a chief prosecutor because of statements he had made about a judge in a press release and an interview given to the media. In *Brisc v Romania*[6]*,* disciplinary authorities had found that Mr. Brisc had revealed information about a pending investigation and that he had been disrespectful towards the judge as the statements he gave had made it possible for the press to identify her with a money scam.

Mr Brisc complained to the Court that his removal as chief prosecutor for imparting information to the press breached his right to freedom of expression. The Court's task was to consider the balance between the Article 10 rights of Mr Brisc, the Article 8 rights of the judge who had brought the complaint against him, and the special protection to be afforded to the secrecy of a judicial investigation under Article 6 § 1.

[6] no. 26238/10, 11 December 2018.,

The Court took into account the fact that the applicant had made the statements to the press in the context of discharging his duties as public prosecutor, where he had a professional duty to provide information to the press about investigations which attracted media attention.

The Court noted that the applicant had proceeded with caution, refraining from identifying by name any of the individuals involved. The information provided by Mr. Brisc had been "*minimal and general, but necessary so that the public could understand the facts of the case*". Accordingly, there was nothing to suggest that he had breached the secrecy of the investigation.

As to the judge's article 8 rights, the Court was also not convinced that the press release and interview could be considered as an attack reaching the requisite threshold of seriousness and capable of causing prejudice to her professional reputation.

So what conclusions should we draw about fair trial guarantees and the media? I would like to draw three.

Firstly, that the work of courts is subject to constant public debate, which is fuelled by the fact that we live in a world of communication through social media and more sophisticated media coverage. Also, that the public has a legitimate interest in being informed about ongoing criminal proceedings and the functioning of the judiciary.

Secondly, public officials can speak about pending criminal proceedings but their choice of words is important and they must do so with discretion and circumspection.

Thirdly, the right to privacy and private life of the accused must be born in mind.

The three rights I have evoked this morning may conflict. The domestic courts must balance them in view of the facts of every individual case.

Dissemination of the Court's case-law on this question and others is of vital importance to the functioning of the Convention system. That is why the idea of intensifying cooperation between member states to the Council of Europe, such as the Visegrad Group, is important. I support all efforts to reinforce such cooperation, for example by the creation of a Visegrad Centre for Comparative law.

Ladies and Gentlemen, I would like to extend my thanks once again for the opportunity to address you today. Thank you