

## THE PRESUMPTION OF INNOCENCE UNDER THE ECHR, WITH A FOCUS ON THE ROLE OF MEDIA AND PUBLIC OFFICIALS

PODGORICA, 23<sup>RD</sup> FEBRUARY 2015

It is a great pleasure for me to welcome you to this seminar on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer Foundation.

I would like to express my profound thanks to our partners: the Centre for Democracy and Human Rights, the Aire Centre, the Supreme Court of Montenegro, the Mission of the Organization for Security and Cooperation in Europe to Montenegro and the British Embassy.

I am delighted that Ms. Vesna Medenica, the President of the Supreme Court is today with us. I welcome Ms. Elisabeth Gudrun Steinacker, the German Ambassador in Montenegro and Mr. Ian Whitting, the Ambassador of the United Kingdom to our conference.

Let me say a few words about the Konrad Adenauer Foundation in general and the RLP SEE in particular.

[...]

Our topic is "The presumption of innocence under the European Court of Human Rights with a focus on the role of media and public officials".

The right to a fair trial is a core element of the principle of the rule of law. It is protected by Article 6 § 2 of the European Convention on Human Rights. Those charged in a

criminal case have the right to be informed promptly of the nature and cause of the accusation against them, to a public hearing before an independent and impartial tribunal within reasonable time, they have the right to be given adequate time and facilities to prepare their defence, they have the right to legal representation, the right to examine witnesses or have them examined and the right to the free assistance of an interpreter.

And they have the right to be presumed innocent. Everybody charged with a criminal offence shall be presumed innocent until proven guilty according to law. Thus this principle requires the prosecution to prove the guilt of a criminal defendant and relieves the defendant of any burden to prove his or her innocence.

This principle imposes to the members of a court not to start with a preconception that the suspect or the accused committed the offence, the prosecution the duty to prove anything, and the accused benefitting from the doubt.

Art 6 § 2 ECHR governs criminal proceedings in their entirety, irrespective of the outcome of the prosecution, and not solely the examination of the merits of the charge (see, among many authorities, *Poncelet v.*

Konrad-Adenauer-Stiftung e. V.

RULE OF LAW PROGRAM  
SOUTH EAST EUROPE  
THORSTEN GEISSLER

February 2015

[www.kas.de/rspsoe](http://www.kas.de/rspsoe)  
[www.kas.de](http://www.kas.de)

*Belgium*, § 50; *Minelli v. Switzerland*, § 30; *Garycki v. Poland*, § 68).

The presumption of innocence also protects individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been continued, from being treated by public officials and authorities as though they are in fact guilty of the offence with which they have been charged. Without protection to ensure respect for the acquittal or the discontinuation decision in any other proceedings, the guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public (*Allen v. the United Kingdom* [GC], § 94).

Article 6 § 2 is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings.

The presumption of innocence may be infringed not only by a judge or court but also by other public authorities (*Allenet de Ribemont v. France*, § 36; *Daktaras v. Lithuania*, § 42; *Petyo Petkov v. Bulgaria*, § 91). Article 6 § 2 prohibits statements by public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudice the assessment of the facts by the competent judicial authority (*Ismoilov and Others v. Russia*, § 161; *Butkevicius v. Lithuania*, § 53).

Let me give you an example for a violation of this principle by a state authority and the disrespect for it by parts of the media.

I am talking about the case *İrfi Çetinkaya vs. Turkey* which was published in July 2013.

So what were the principal facts of the case?

The applicant, Ürfi Çetinkaya, is a Turkish national who was born in 1949 and lives in Kocaeli (Turkey).

In March 2003 Mr Çetinkaya was accused by an informer of having spearheaded an international heroin-trafficking network

since his release from custody on medical grounds. Accordingly, the Istanbul public prosecutor's office decided to open a judicial investigation into drug trafficking by an organised gang.

On 5<sup>th</sup> November 2003, following a telephone-tapping and surveillance operation concerning Mr Çetinkaya, the Istanbul drugs squad seized more than half a tonne of heroin. Officers from the drugs squad arrested the applicant the same day. On 9<sup>th</sup> November 2003 he appeared before a judge and was remanded in custody.

In the context of another set of proceedings, a suspect who had been arrested mentioned in his statement that he had acquired 128 kg of heroin from the applicant's organisation.

On 5<sup>th</sup> December 2003, in connection with a seizure of heroin, the Gendarmerie General Command issued a press release which described the applicant as an "international drug trafficker" and stated that the investigation was pending.

The whole case received extensive coverage in the national press and the press release was reproduced in an unqualified manner.

The applicant remained in custody on the basis of orders issued by the Istanbul Assize Court for his continuing pre-trial detention in the context of the proceedings under consideration, in view of the ongoing strong suspicion of his guilt and the nature and seriousness of the drugs offence.

How did the court decide with regard to Art. 6 § 2?

In a press release issued on 5<sup>th</sup> December 2003 by the Gendarmerie Command, the authorities had stated that the case was linked to "the international drug trafficker Ürfi Çetinkaya", while at the same time saying that the investigation was in progress.

The Court observed that the applicant had never been convicted of drug trafficking and that this was precisely the offence of which he was accused in the context of various sets of judicial proceedings, including those

Konrad-Adenauer-Stiftung e. V.

RULE OF LAW PROGRAM  
SOUTH EAST EUROPE  
THORSTEN GEISLER

February 2015

[www.kas.de/rspsoe](http://www.kas.de/rspsoe)  
[www.kas.de](http://www.kas.de)

relating to the drugs seizure of 6th November 2003 mentioned in the press release.

The Court criticised the use of the term “international drug trafficker”, which had been used in an unqualified manner to describe Ürfi Çetinkaya in the press release. That description, which had been as I already mentioned reproduced without qualification by certain newspapers, had been in breach of the principle of presumption of innocence. The courts to which the applicant had applied had rejected all his requests to be granted a right of reply in the newspapers. The Court therefore held that there had been a violation of Article 6 § 2 of the Convention concerning the presumption of innocence. The court awarded the applicant the sum of 10,000 Euros in respect of non-pecuniary damage.

The Court has, however in several other cases made clear that the principle of presumption of innocence does not 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 (*Fatullayev v. Azerbaijan*, § 159; *Alenet de Ribemont v. France*, § 38; *Garycki v. Poland*, § 69).

With regard to the role of the media the Court accepts that in a democratic society, severe comments by the press are sometimes inevitable in cases concerning public interest (*Viorel Burzo v. Romania*, § 160; *Akay v. Turkey* (dec.)).

A virulent press campaign can, however, adversely affect the fairness of a trial by influencing public opinion and, consequently, jurors called upon to decide the guilt of an accused (*Kuzmin v Russia*, § 62).

National courts which are entirely composed of professional judges generally possess, unlike members of a jury, appropriate experience and training enabling them to resist any outside influence (*Craxi v. Italy (no. 1)*, § 104); *Mircea v. Romania*, § 75).

The conclusion is that judges, prosecutors, law enforcement officers and other civil servants must respect the right to presumption of innocence. They must strictly apply the provisions of the Criminal Procedure Codes that gives them the tools to investigate a crime properly while protecting the rights of the suspected or accused.

We all know that in the event of a serious crime the prosecution and the police are under pressure. The public expects that their investigation provides concrete results in short time. But this cannot justify a disrespect for the legal provisions that we are discussing. Or as the US Supreme Court put it in its decision *Berger vs. United States*: “But, while he [the prosecutor] may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Also journalists are of course under pressure. Editors-in-chief and media owners expect high circulation and high viewing figures. Boring stories don’t sell well. But this does not mean that journalists can write or broadcast whatever they want.

Let me quote two paragraphs of the Resolution on the ethics of journalism passed by the Parliamentary Assembly of the Council of Europe in 1993:

“In addition to the legal rights and obligations set forth in the relevant legal norms, the media have an ethical responsibility towards citizens and society which must be underlined at the present time, when information and communication play a very important role in the formation of citizens' personal attitudes and the development of society and democratic life.”

“In journalism, information and opinions must respect the presumption of innocence, in particular in cases which are still *sub judice*, and must refrain from making judgments.”

[Konrad-Adenauer-Stiftung e. V.](#)

**RULE OF LAW PROGRAM**  
**SOUTH EAST EUROPE**  
THORSTEN GEISSLER

I hope you will find this seminar beneficial for your work and I thank you for your participation. The Rule of Law Program South East Europe looks forward to cooperating with you also in the future.

**February 2015**

[www.kas.de/rspsoe](http://www.kas.de/rspsoe)

[www.kas.de](http://www.kas.de)