



## Man found guilty of repeat offence while challenging initial finding of guilt was denied right to presumption of innocence

In today's **Chamber** judgment<sup>1</sup> in the case of [Kangers v. Latvia](#) (application no. 35726/10) the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 6 § 2 (presumption of innocence)** of the European Convention on Human Rights.

The case concerned the applicant being found guilty of a repeat offence of driving while disqualified when his appeal against a first charge for the same crime was still ongoing.

The Court found that the courts dealing with the repeat offence had assumed the applicant was guilty of the first breach, even though an appeal in that case was still underway. That had violated his right to be presumed innocent and had breached his rights under the Convention.

### Principal facts

The applicant, Jānis Kangers, is a Latvian national who was born in 1983 and lives in Jūrmala (Latvia).

In 2008 Mr Kangers was stopped by the police and given a ticket for drink-driving. He appealed and Jūrmala City Court found in his favour and returned his licence. In February 2009 Riga Regional Court quashed that decision, fined him and banned him from driving for two years.

He was subsequently stopped by the police in July 2009 and found to be driving while disqualified. He appealed, arguing that the decision to quash the original Jūrmala City Court ruling had been invalid and so legally speaking he had not been disqualified. The courts eventually rejected his appeals, with the final decision being handed down in April 2012.

In the meantime, in September 2009, the applicant had again been stopped by the police and charged with the more serious offence of a repeat act of driving while disqualified. He appealed, citing the fact that the first case on his driving while disqualified was still ongoing. His appeal was dismissed in February 2010.

Among other things, the appeal court found that if the decision on the initial offence had not been set aside or suspended then it was legally binding and had to be taken into account when classifying the offence as a repeat violation. As a repeat offender, he was sentenced to five days administrative detention and a fine.

### Complaints, procedure and composition of the Court

Relying on Article 6 § 2 (right to the presumption of innocence), the applicant complained that he had been found guilty of a repeat offence while his appeal on the first offence was still pending.

The application was lodged with the European Court of Human Rights on 2 June 2010.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,  
Ganna **Yudkivska** (Ukraine),  
André **Potocki** (France),  
Síofra **O’Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

In the Court’s view, the fact that the initial offence, against which an appeal was still pending, was considered as constituting a basis for the finding of a repeat breach, unavoidably implied that the applicant had also committed that initial offence.

The Court noted that presumptions of fact or law in court cases were not prohibited in principle, however, they had to be confined within reasonable limits, take account of the importance of the matters at stake and maintain the rights of the defence.

In the applicant’s case, the presumption had been that he was guilty of the first offence of driving while disqualified, which was the subject of a different set of court proceedings, as the courts had felt themselves bound by the administrative offence report on the initial offence. Mr Kangers had therefore been left without any means of defence against that presumption.

The Court reiterated that the presumption of innocence prevented a finding of guilt outside the criminal proceedings before the trial court dealing with the particular case, irrespective of the procedural safeguards in the parallel proceedings.

The domestic court’s finding that the applicant was guilty of a repeat offence of driving while disqualified, even though his appeal on the first charge was still pending, had therefore been contrary to his right to be presumed innocent of the first charge and his Convention rights had been violated.

## Just satisfaction (Article 41)

The Court held that the finding of a violation was sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It awarded him 762.30 euros in respect of costs and expenses.

## Separate opinion

Judge O’Leary expressed a dissenting opinion.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.