

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

FOURTH SECTION

CASE OF BAURAS v. LITHUANIA

(Application no. 56795/13)

JUDGMENT

STRASBOURG

31 October 2017

FINAL

31/01/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Bauras v. Lithuania,

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

Ganna Yudkivska, *President,*
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 19 September 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 56795/13) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Vytautas Bauras ("the applicant"), on 28 August 2013.

2. The applicant was represented by Mr V. Barkauskas, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged, in particular, that he had been found *de facto* guilty in a case in which he had been a witness, thereby prejudging the ongoing criminal proceedings against him, contrary to Article 6 § 2 of the Convention.

4. On 29 September 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Vilnius.

6. In 1989 the applicant and R.Ž. started a company which imported and sold various goods. D.A., who was the stepson of the applicant's sister, sometimes worked as a security guard on the company's premises and as the applicant's bodyguard.

7. In July 1993 R.Ž. and another individual, A.Č., were found murdered in R.Ž.'s flat in Vilnius.

8. In August 1993, while the applicant was in a car with D.A., the latter threatened him with a firearm. When the applicant tried to escape, D.A. hit him with the barrel of the gun, fired some shots into the ground, took the applicant's Rolex watch and fired at several passers-by, injuring them.

9. On an unspecified date the authorities opened a pre-trial investigation into the murder of R.Ž. and A.Č. (see paragraph 7 above) and the incident between the applicant and D.A. in the car (see paragraph 8 above).

10. In September 1993 the Lithuanian authorities issued a search warrant in respect of D.A. It appears that he had left Lithuania and lived in several different countries. In July 2009 D.A. was apprehended in Ukraine and subsequently extradited to the Lithuanian authorities.

11. In December 2007 the applicant was officially notified that he was suspected of having organised the murder of R.Ž. and A.Č. for personal gain while they were in a helpless state, as set out in Article 129 § 2 (2), (5), (6) and (9) of the Criminal Code (see paragraph 34 below). It was suspected that the applicant had acted together with D.A. Further details were subsequently added to that notice in September 2012 and March 2013.

12. In October 2009 D.A. was officially notified that he was suspected of having murdered R.Ž. and A.Č. for personal gain while they were in a helpless state. D.A. was also notified that he was suspected of having attempted to murder the applicant and several other individuals, as set out in Article 129 § 2 (5), (7), (8), (9), (10) and (11) of the Criminal Code (see paragraphs 8 above and 34 below).

13. In May 2010 the prosecutor decided to separate the pre-trial investigation against the applicant and D.A. (see paragraph 37 below). He noted that the investigation concerned two criminal offences – the murder of R.Ž. and A.Č. (see paragraph 7 above) and the attempted murder of the applicant and other individuals (see paragraph 8 above). The prosecutor observed that the applicant had been suspected of the former offence and that he had been granted victim status in respect of the latter offence, and the prosecutor considered that one person could not have dual status in the same investigation. He also noted that the investigation in respect of D.A. was almost complete and the case would soon be ready for trial, whereas the investigation in respect of the applicant was still ongoing. For those reasons, the prosecutor concluded that it was necessary to separate the investigation against the applicant from that against D.A.

A. Court proceedings against D.A.

1. The Vilnius Regional Court

14. D.A. was charged with the murder of R.Ž. and A.Č. for personal gain while they were in a helpless state (hereinafter "the first charge") and with the attempted murder of the applicant and several other individuals (hereinafter "the second charge"). The criminal case was transferred to the Vilnius Regional Court for examination on the merits. With regard to the first charge, the applicant had the status of witness, and with regard to the second charge, he had the status of victim.

15. The Vilnius Regional Court issued its judgment on 20 June 2011. It found D.A. guilty of the first charge as set out in Article 129 § 2 (2), (5) and (9) of the Criminal Code (see paragraph 34 below). The court based its conclusion on multiple witness testimonies, the examination of various material objects, and conclusions delivered by forensic experts.

16. One of the documents examined by the court was a handwritten letter which D.A. had addressed to the applicant at some point in 1993. The applicant had received that letter from D.A.'s father and presented it to the police. A forensic examination revealed that the letter had indeed been written by D.A. In the letter, D.A. stated that he had killed R.Ž. on the applicant's orders so that the applicant would get all the profit from their business. D.A. also alleged that the applicant had bought him weapons to carry out unspecified criminal activities for the applicant's benefit, and had bribed judges and prosecutors in order to help D.A. avoid criminal responsibility for some unspecified offences. D.A. further alleged that the applicant had promised to pay him for the murder, but had still not done so, and that that had been the reason for their conflict in the car (see paragraph 8 above). He threatened to forward the letter to various newspapers if the applicant failed to pay him.

17. When questioned by the court, D.A. submitted that the contents of the letter were false. He claimed that the applicant had owed him some money for another debt, so he had made up the story in the letter in order to scare the applicant into paying him back. The applicant, who was questioned as a witness in respect of that charge, also denied all the allegations in the letter and stated that he had no connection to the murder.

18. However, the court held that the letter constituted D.A.'s confession to the murder. The court considered it unlikely that D.A., who at the time of writing the letter had already been suspected of the murder, would falsely incriminate himself in the letter to the applicant, especially as their relationship at that time had not been friendly. It then stated that several of the allegations in the letter had been proved – for example, the applicant had admitted to having bought weapons for D.A., and there had indeed been several sets of criminal proceedings against D.A. which had eventually been discontinued. The court concluded:

> "As the facts laid out in the letter are consistent and objective, there are no grounds to doubt the truthfulness of the contents of the letter; the statement in the letter that [D.A.] – upon the orders of the individual in respect of whom a separate pre-trial investigation was opened – killed [R.Ž.] so that all the profit would go to that individual alone, and that all the money which they had jointly owned would belong to the individual in respect of whom a separate pre-trial investigation was opened, must be considered true."

19. The descriptive part of the judgment also stated that D.A. had killed R.Ž. and A.Č. while acting with unidentified accomplices. However, the court did not take that into account as an aggravating circumstance.

20. As for the second charge against D.A., the court changed its legal classification. The court considered that it had not been proved that D.A. had intended to kill the applicant or any of the passers-by (see paragraph 8 above). However, it found D.A. guilty of stealing the applicant's property of high value (the Rolex watch) while threatening him with a firearm, and of negligently injuring several other individuals in his attempt to escape. D.A. was given a cumulative sentence of sixteen years' imprisonment. The court also allowed the applicant's civil claim submitted in respect of the second charge in its entirety, and ordered D.A. to pay him 40,000 Lithuanian litai (LTL – approximately 11,600 euros (EUR)) in pecuniary damages for the stolen watch.

2. The Court of Appeal

21. The prosecutor, D.A., the applicant and another victim submitted appeals against the Vilnius Regional Court's judgment of 20 June 2011. In his appeal, the applicant argued that the court had *de facto* found him guilty of having instigated the murder of R.Ž. and A.Č., despite the fact that he had not been the accused in that case and had not been able to defend himself. The applicant asked the Court of Appeal to remove from the descriptive part of the judgment all the passages which alleged his involvement in the murder, in particular those which discussed D.A.'s letter (see paragraphs 16-18 above).

22. In its judgment of 12 June 2012 the Court of Appeal amended the first-instance judgment in part. It held that the Vilnius Regional Court had erred in changing the legal classification of the second charge, found D.A. guilty of the second charge as it had been originally presented (see paragraph 14 above), and increased the sentence to nineteen years' imprisonment. In addition, the court removed from the descriptive part of the judgment the phrase that D.A. had killed R.Ž. and A.Č. while acting with unidentified accomplices (see paragraph 19 above) – it held that, without identifying such individuals, *inter alia*, it could not be determined whether there had been an intention for them to act together.

23. The court dismissed D.A.'s appeal contesting his guilt in respect of both charges. With regard to the first charge, D.A. argued, *inter alia*, that

his letter to the applicant (see paragraphs 16-18 above) should not have been considered evidence of his guilt. In response to D.A.'s arguments, the court stated:

> "D.A.'s guilt in respect of the charge against him – the murder of R.Ž. and A.Č. for personal gain while they were in a helpless state – has been proved by a series of pieces of indirect evidence collected in the case and adequately assessed in the [first-instance] judgment, as well as one of the main pieces of direct evidence - D.A.'s letter to [the applicant], allowing [the court] to make well-founded conclusions regarding the nature of the convicted individual's actions and the form of his guilt.
>
> ...
>
> It is underlined that the principal statements of the letter, assessed together with the other evidence collected in the case, correspond to the events which took place at that time ... The chamber concludes that the facts indicated in D.A.'s letter are not made up, he refers to actual events which took place in his life, and there is no indication that he intended to threaten [the applicant] with that letter to make the latter pay him money."

24. As to the applicant's appeal, the court stated:

> "Contrary to what is alleged in [the applicant's] appeal, the first-instance court, while examining the evidence related to [D.A.'s] guilt in respect of the murder of R.Ž. and A.Č., did not assess [the applicant's] actions relating to the organisation of the murder of those individuals. As can be seen from the case file, on 22 December 2007 [the applicant] was notified that he was suspected of having organised the murder of R.Ž. and A.Č. ... [The applicant] is entitled to exercise his defence rights and defend himself against the accusation in that criminal investigation. Only that investigation can determine [the applicant's] guilt in respect of the criminal offence of which he is suspected ... [The applicant] essentially contests his guilt in respect of the part of the judgment in which he does not have the status of either convicted individual or victim ... and his request goes beyond his procedural rights as a witness ... [The applicant's appeal] is thereby dismissed."

3. Supreme Court

25. D.A. and the applicant submitted appeals on points of law against the Court of Appeal's judgment of 12 June 2012. The applicant raised essentially the same arguments as in his previous appeal (see paragraph 21 above).

26. On 28 February 2013 the Supreme Court dismissed the appeals. In response to the applicant's submissions, the Supreme Court stated that the criminal proceedings in question concerned D.A.'s and not the applicant's guilt in respect of the murder of R.Ž. and A.Č., and the applicant had not had victim status with regard to that charge, so he was not legally entitled to submit an appeal on points of law (see paragraph 40 below).

B. Court proceedings against the applicant

27. On 11 April 2013 the applicant was served with an indictment and charged with having incited D.A. and another unidentified individual to

murder R.Ž. and A.Č. for personal gain while they were in a helpless state, as set out in Article 24 § 5 and Article 129 § 2 (2), (5), (6) and (9) of the Criminal Code (see paragraphs 34-35 below). The case was transferred to the Vilnius Regional Court for examination on the merits.

28. When questioned by the court, the applicant denied his guilt in respect of the murder. He submitted that all the allegations against him in D.A.'s letter had been false, and that D.A. had written the letter with the purpose of blackmailing the applicant, which was why the applicant had decided to give it to the police. D.A. was questioned as a witness and gave essentially the same statements as in the previous criminal proceedings, including those relating to his letter (see paragraph 17 above).

29. On 9 October 2014 the Vilnius Regional Court acquitted the applicant. It considered that neither direct nor indirect evidence adequately proved that he was guilty of having instigated the murder of R.Ž. and A.Č. The court underlined that it had not been proved that the death of R.Ž., who had been the applicant's business partner, had been beneficial to the applicant; on the contrary, after his death, their company had suffered great losses and had eventually ceased operating. In addition, the court considered that the prosecution had not established any motive for the applicant to kill A.Č.

30. With regard to D.A.'s letter, the court stated that, although the letter included facts which were true, some of its other contents appeared to be "characteristic of blackmail", in particular those which alleged that the applicant had bought D.A. weapons specifically to commit criminal offences, or that he had bribed some officials to help D.A. avoid criminal responsibility (see paragraph 16 above). The court also considered that D.A.'s threat to forward the letter to the media further indicated that it had been written with the purpose of blackmailing the applicant. Lastly, the court underlined that the applicant had not paid D.A. the money which he had demanded, nor had he destroyed the letter, but had submitted it to the police, which confirmed that the applicant had not been connected to the murder of R.Ž. and A.Č.

31. The prosecutor appealed against that judgment. He submitted, *inter alia*, that the contents of D.A.'s letter had been examined in the previous criminal proceedings which had been concluded by a final court judgment (see paragraphs 18, 23 and 26 above), and the courts in the proceedings against the applicant should have followed that assessment.

32. On 5 March 2015 the Court of Appeal upheld the applicant's acquittal. In response to the prosecutor's arguments concerning D.A.'s letter, it stated that the courts in the criminal proceedings against D.A. had not examined the applicant's actions in relation to the murder of R.Ž. and A.Č., so the prosecutor's arguments had to be dismissed.

From the information which the parties submitted to the Court, it appears that no appeal against that judgment was lodged before the Supreme Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional and statutory provisions

1. Constitution

33. The relevant provisions of the Constitution of the Republic of Lithuania read:

Article 31

"A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment.

A person charged with committing a crime shall have the right to a public and fair hearing of his case by an independent and impartial court.

...

A person suspected of committing a crime, as well as the accused, shall be guaranteed, from the moment of his apprehension or first interrogation, the right to defence, as well as the right to an advocate."

Article 109

"In the Republic of Lithuania, justice shall be administered only by courts.

When administering justice, judges and courts shall be independent.

When considering cases, judges shall obey only the law.

..."

2. Criminal Code

34. The relevant parts of Article 129 of the Criminal Code read:

Article 129. Murder

"...

2. A person who murders:

...

2) a person in a helpless state;

...

5) two or more persons;

6) by torture or in another particularly cruel manner;

7) in a manner dangerous to the lives of other persons;

8) for reasons of hooliganism;

9) for personal gain;

10) because the victim was fulfilling his or her service [obligation] or civic duty;

11) with the aim to cover up another criminal offence;

...

shall be punished by imprisonment for a period of eight to twenty years or by life imprisonment."

35. Article 24 § 5 defines an abettor as an individual who has incited another individual to commit a criminal offence.

3. Code of Criminal Procedure

36. Article 44 § 6 of the Code of Criminal Procedure provides that anyone who has been suspected of or charged with a criminal offence shall be considered innocent until his or her guilt has been proved in accordance with the Code by a final court judgment.

37. Article 170 § 4 (1) provides that the decision to join or separate pre-trial investigations is within the exclusive competence of a prosecutor.

38. Article 255 § 1 provides that a court examines a case only in respect of those accused and those criminal acts which have been referred to it for examination.

39. Article 312 § 1 provides that an appeal against a judgment can be submitted by a prosecutor, a convicted person, a person in respect of whom a case has been discontinued, their defence counsel or legal representative, a victim or his or her representative.

40. Article 367 § 1 provides that an appeal on points of law can be submitted by a prosecutor, a victim or his or her representative, a convicted person, an acquitted person, a person in respect of whom a case has been discontinued, their defence counsel or legal representative, a civil claimant, a civil defendant, their representatives, a person who has provided security for bail, a person whose property or assets have been seized, or their representatives.

B. Domestic court practice

41. In a ruling of 29 December 2004 the Constitutional Court held:

"The presumption of innocence consolidated in Paragraph 1 of Article 31 of the Constitution is one of the most important guarantees of the implementation of justice in a democratic state. It is a fundamental principle of the implementation of justice in the process of criminal cases, an important guarantee of human rights and freedoms. A person is considered innocent of a crime until his or her guilt has been proved in accordance with a procedure established by law and he or she has been found guilty by a court judgment that has come into effect. The presumption of innocence is inseparably linked with respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights. It is especially important that State institutions and officials respect the presumption of innocence. It should be noted that public figures should in general refrain from referring to a person as a criminal until that person's guilt in respect of the crime has been proved in accordance with the procedure established by law and he or she has been found guilty by a court judgment

that has come into effect. Otherwise, human honour and dignity may be violated and human rights and freedoms may be undermined."

42. In its review of the domestic case-law, issued on 25 June 2009, the Supreme Court concluded that the requirement for a court to examine a criminal case only in respect of those accused who had been referred to it for examination, set out in Article 255 § 1 of the Code of Criminal Procedure (see paragraph 38 above), did not prohibit the court from examining whether the acts of third parties complied with the law, to the extent necessary for determining the criminal responsibility of the accused. However, a judgment could not include any phrases (*nuosprendyje negali būti formuluočių*) which established third parties' guilt in respect of criminal acts, except for individuals who had already been convicted or exempted from criminal responsibility.

THE LAW

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

43. The applicant complained that, in the criminal case against D.A., the domestic courts had *de facto* found him guilty of having instigated the murders of two individuals, and had thereby prejudged the ongoing criminal case against him. He relied on Article 6 §§ 1, 2 and 3 (a) and (c) of the Convention.

The Court, being the master of the characterisation to be given in law to the facts of a case, considers that this complaint falls to be examined solely under Article 6 § 2 of the Convention, which reads:

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

A. Admissibility

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

45. The applicant submitted that, in the criminal proceedings against D.A., the courts had drawn unambiguous conclusions that he had incited D.A. to murder R.Ž. and A.Č. and had benefited from that murder. He complained in particular about the Vilnius Regional Court's findings in respect of the letter in which D.A. had incriminated the applicant (see paragraph 16 above), and whose contents the court had held "must be considered true" (see paragraph 18 above). The applicant submitted that even though in that part of the judgment the court had only referred to him as "an individual in respect of whom a separate pre-trial investigation [had been] opened" (see paragraph 18 above), it was evident that the court had been referring to him. He also complained that, as a witness in those proceedings, he had had no opportunity to defend himself against the allegations of his involvement in the murder.

46. The applicant further argued that his acquittal had not changed the fact that his right to the presumption of innocence had been violated from December 2007, when he had officially become a suspect (see paragraph 11 above), until March 2015, when his acquittal had been confirmed by the Court of Appeal (see paragraph 32 above).

(b) The Government

47. The Government submitted that the courts which had examined the criminal case against D.A. had made it clear that they had not been assessing the applicant's criminal responsibility, in particular the Court of Appeal in its judgment of 12 June 2012 (see paragraph 24 above). They contended that D.A.'s letter had been assessed only in relation to D.A.'s criminal responsibility, and that the courts, when accepting its contents as truthful, had merely decided on the letter's overall credibility, and not whether the particular statements relating to the applicant's alleged involvement were true.

48. The Government further submitted that, even assuming that the Vilnius Regional Court in its judgment of 20 June 2011 had used "some inappropriate wording", that had been corrected by the Court of Appeal's judgment of 12 June 2012, which had used more "limited" wording when assessing D.A.'s letter (see paragraph 23 above).

49. Lastly, the Government submitted that the statements relating to the applicant, made by the courts in the criminal proceedings against D.A., had not had a *res judicata* effect in the proceedings against the applicant, as shown by the court judgments acquitting him (see paragraphs 29-32 above).

2. The Court's assessment

(a) General principles

50. The Court reiterates that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial that is required by paragraph 1 (see, among many other authorities, *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308; and *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 103, ECHR 2014 (extracts)). Article 6 § 2 prohibits the premature expression by the tribunal of the opinion that the person "charged with a criminal offence" is guilty before he or she has been so proved according to law (see, among many other authorities, *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62, and *Peša v. Croatia*, no. 40523/08, § 138, 8 April 2010). It also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II (extracts)).

51. The Court further reiterates that a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. In this connection the Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Daktaras*, cited above, § 41; *Böhmer v. Germany*, no. 37568/97, § 56, 3 October 2002; and *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008). While the use of language is of critical importance in this respect, the Court has further pointed out that 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 *Daktaras*, cited above, § 43; *A.L. v. Germany*, no. 72758/01, § 31, 28 April 2005; and *Paulikas v. Lithuania*, no. 57435/09, § 55, 24 January 2017). When regard is had to the nature and context of the particular proceedings, even the use of some unfortunate language may not be decisive. The Court's case-law provides some examples of instances where no violation of Article 6 § 2 has been found even though the language used by domestic authorities and courts was criticised (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 126, ECHR 2013, and the cases cited therein).

52. Lastly, the Court has previously acknowledged that the principle of the presumption of innocence may in theory also be infringed on account of premature expressions of a suspect's guilt made within the scope of a judgment against separately prosecuted co-suspects (see *Karaman v. Germany*, no. 17103/10, § 42, 27 February 2014). It has held that such statements, notwithstanding the fact that they are not binding with respect to the applicant, may have a prejudicial effect on the proceedings pending against him or her in the same way as a premature expression of a suspect's guilt made by any other public authority in close connection with pending criminal proceedings (ibid., § 43).

(b) Application of the above principles to the present case

53. Turning to the circumstances of the present case, the Court firstly observes that the applicant and D.A. were accused of the same criminal offence – it was suspected that D.A. had murdered two individuals at the applicant's instigation (see paragraphs 11-13 above). The Court therefore has no reason to doubt that the facts established in the proceedings against D.A. and the legal findings made therein were directly relevant to the applicant's case, which was pending at that time (see, *mutatis mutandis*, *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 103, 23 February 2016). It further observes that one of the key pieces of evidence against D.A. was his letter in which he had confessed to the murder and accused the applicant of ordering him to commit that murder (see paragraph 16 above). In such circumstances, the courts examining the case against D.A. could hardly avoid mentioning the applicant's alleged involvement in the murder (see, *mutatis mutandis*, *Karaman*, cited above, § 66). Accordingly, the Court has to assess whether safeguards were in place to ensure that the decisions taken in the proceedings against D.A. would not undermine the fairness of the subsequent proceedings against the applicant (see *Navalnyy and Ofitserov*, cited above, §§ 103-04).

54. In this connection, the Court takes note of the grounds on which the prosecutor separated the proceedings against the applicant from those against D.A. – namely the applicant having a different procedural status with regard to the two different accusations against D.A., and the case against D.A. being ready for trial, unlike the one against the applicant (see paragraph 13 above) – and sees no reason to consider those grounds unjustified (see also ibid., § 104). As to the court judgments delivered in the proceedings against D.A., the Court observes that some statements in the Vilnius Regional Court's judgment of 20 June 2011 were worded in a way which may have raised doubts as to a potential prejudgment about the applicant's guilt. In particular, that court stated "the statement in [D.A.'s] letter that [D.A.] – upon the orders of the individual in respect of whom a separate pre-trial investigation was opened – killed [R.Ž.] so that all the profit would go to that individual alone ... must be considered true" (see

paragraph 18 above). However, the Court reiterates that whether a statement is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which that statement was made (see, among other authorities, *Paulikas*, cited above, § 55). In the present case, assessing the impugned statements in their context, the Court considers that, in the proceedings against D.A., the courts made it clear that they were not determining the applicant's guilt. The Vilnius Regional Court referred to the applicant as "the individual in respect of whom a separate pre-trial investigation [had been] opened" (see paragraph 18 above), and the Court of Appeal explicitly stated that only the investigation which had been opened against the applicant could determine his guilt (see paragraph 24 above). The Court is thus satisfied that the domestic courts avoided, as far as possible, giving the impression that they were prejudging the applicant's guilt (see *Karaman*, §§ 69-70; compare and contrast *Navalnyy and Ofitserov*, § 106, both cited above).

55. The Court further observes that, in accordance with domestic law, the courts in the proceedings against D.A. were called to examine only the latter's guilt, and the legal effect of their judgments was limited to those proceedings (see paragraphs 38 and 42 above; see also *Karaman*, § 65; compare and contrast *Navalnyy and Ofitserov*, § 107, both cited above). It underlines that the courts which examined the case against the applicant carried out a new assessment of all the evidence, including D.A.'s letter, and the applicant had the opportunity to contest the truthfulness of its contents (see paragraph 28 above). Furthermore, the Court of Appeal explicitly rejected the prosecutor's argument that the findings of the courts in the proceedings against D.A. had to be followed in the proceedings against the applicant (see paragraphs 31-32 above). The Court therefore has no reason to doubt that the state of the evidence admitted in the case against D.A. remained purely relative and that its effect was strictly limited to that particular set of proceedings, as further demonstrated by the applicant's acquittal (see *Navalnyy and Ofitserov*, cited above, § 105).

56. Accordingly, assessing all the circumstances of the present case as a whole, the Court is of the view that the judgments delivered in the proceedings against D.A. did not breach the principle of the presumption of innocence and did not preclude the applicant from having a fair trial in the proceedings against him.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

57. The applicant also complained that he had been unable to submit an appeal against the judgment of the first-instance court in the criminal case against D.A. which had *de facto* found him guilty. He relied on Article 2 § 1 of Protocol No. 7 to the Convention.

The Court, being the master of the characterisation to be given in law to the facts of a case, considers that this complaint falls to be examined under Article 13 of the Convention, which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

58. The Government submitted that the courts in the criminal proceedings against D.A. had not been determining the applicant's guilt, so there was no need for him to have the right to appeal against their judgments.

59. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

60. When examining the applicant's complaint under Article 6 § 2 of the Convention, the Court concluded that the domestic courts in the proceedings against D.A. had made it clear that they had not been determining the applicant's guilt, and that the legal effect of the judgments in the case against D.A. had been limited to that case (see paragraphs 54-55 above). Having regard to those findings, the Court considers that it is not necessary to examine whether the applicant's inability to appeal against those judgments constituted a violation of Article 13 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention.

Done in English, and notified in writing on 31 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President