

CASE OF DAKTARAS v. LITHUANIA - Application no. 42095/98

Facts: On 11 May 1998, Mr Henrikas Daktaras applied to the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant applied against the Republic of Lithuania alleging that his right to a fair trial guaranteed by Article 6 § 1 of the Convention had been breached. He also claimed that the prosecutor declared him guilty in his pre-trial decision of 1 October 1996, in breach of Article 6 § 2 of the Convention (principle of the presumption of innocence).

On 18 February 1996 a prosecutor at the Organized Crime Division of the Office of the Prosecutor General instituted criminal proceedings against Mr. Daktaras who was suspected of being involved in an offence of demanding and obtaining a ransom of 7000 USD for returning the stolen car of a certain J. M. On 1 April 1996, the applicant was charged on four counts, including blackmail and inciting the victim to make false statement.

The applicant requested the prosecution to discontinue the investigation as the charges were “ill-founded” and that the case file did not contain “evidence of guilt”. On 1 October 1996, a prosecutor of the Organized Crime Division dismissed the request of Mr. Daktaras by stating that there are evidences proving that the applicant was guilty. On 2 October 1996, the President of the Supreme Court transmitted the case to the Vilnius Regional Court which found that Mr. Daktaras was guilty of blackmail and inciting the victim to make false statement. As “principal offender” on the blackmail charge, the applicant was sentenced to seven years and six months of imprisonment. Furthermore, he was fined 15000 litai and his property was confiscated.

The applicant challenged the decision claiming that he has been deprived of a fair trial by an independent and impartial court. On 27 May 1997 the Court of Appeal modified the decision of the Vilnius Regional Court stating that the applicant was a “secondary party”, not the principal offender. The sentenced remained unchanged. The judge who had delivered the first sentence wrote a letter to President of the Criminal Division of the Supreme Court asking him to lodge a petition and quash the judgment of the Court of Appeal. The President of the CD appointed a rapporteur and a chamber of three judges to examine the case. On 2 December 1997, the Supreme Court quashed the judgment of the Court of Appeal and uphold the decision of the Vilnius Regional Court claiming that the applicant was the principal offender on the blackmail charge.

Issue: The case was brought to the Court to decide whether there is a violation of article 6 § 1 (right to fair trial) and article 6 § 2 of the Convention (the principle of the presumption of innocence).

The applicant also claimed that the prosecutor declared him guilty in his decision of 1 October 1996, in breach of Article 6 § 2 of the Convention (principle of the presumption of innocence) which provides that “everyone charged with a criminal

offence shall be presumed innocent until proved guilty according to law". The Court observed whether there was a violation of this article of the Convention.

I. Decision of the Court:

Decision of the Court on the alleged violation of Article 6 § 1 of the Convention

Holdings: Yes, there had been a violation of the article 6 § 1 (right to a fair trial) of the Convention.

Court's Rationale: The Court noted that the President of the Criminal Division of the Supreme Court had a significant role played before and during the hearing as he not only takes up the prosecution case, but in addition to his organizational and managerial functions, constitutes the court and appoints its members who are subordinate to him in rank. Therefore, it cannot be said that from an objective point of view, there were sufficient guarantees to exclude any legitimate doubt as to the absence of inappropriate pressure. In addition, the intervention of the President was prompted by the first-instance judge in the present case. Considering the circumstances, the Court finds that the applicant's doubts regarding the impartiality of the Supreme Court may be said to have been objectively justified and there has been a violation of Article 6 § 1 of the Convention.

Decision of the Court on the alleged violation of Article 6 § 2 of the Convention

Holdings: there has been no violation of Article 6 § 2 of the Convention.

Court's Rationale: The Court emphasized the importance of the words by public officials in their statements before a person is proved guilty. In the present case, however, the prosecutor used the same terms (suggesting that the evidence of guilt is "proved") as had been used by the applicant and he had not referred to the question whether the applicant's guilt had been established, but to the question of whether the case file disclosed sufficient evidence of the applicant's guilt to justify proceeding to trial.. Therefore, the statements used by the prosecutor in his decision of 1 October 1996 did not breach Article 6 § 2 of the Convention (principle of the presumption of innocence).

Just satisfaction: The Court decided that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction.

Costs and expenses: The Court held that Lithuania was to pay Mr Daktaras 10.354.22 Euros (EUR) for legal fees and expenses in connection with the hearing of his case.