

# Article 6 §2 Statements

## Presumption of Innocence

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Choosing our words wisely

# Written and Oral Statements in Court

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Should we say that?

# Presumption of Innocence

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- ❖ There is a violation of POI if:
  - ❖ A public official makes a statement;
  - ❖ concerning a person charged with a criminal offense;
  - ❖ reflects an opinion, he/she is guilty;
  - ❖ unless he has been proved so according to law



# Is there a Violation?

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Guiding principles but no  
bright line rule



Case-by-case analysis



Nature and context of  
proceeding



Does not necessarily hinge  
on the language itself




# Judicial Statements

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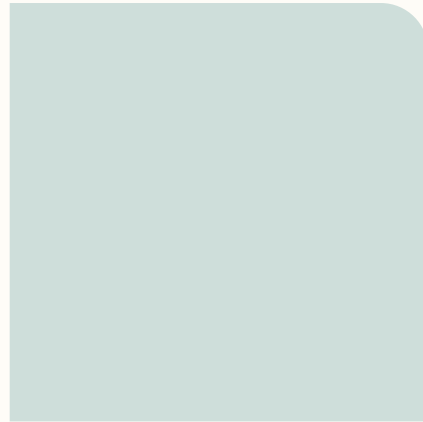
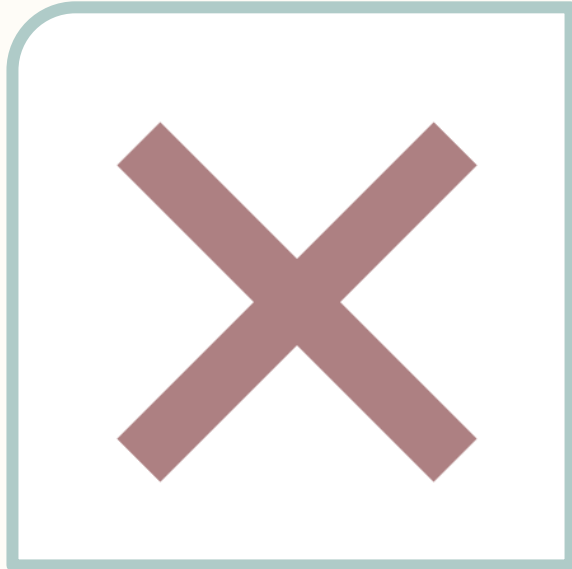
- ❖ *Nerattini v. Greece*
- ❖ Applicant arrested for receiving a package containing drugs
- ❖ When executing search warrant at applicant's home, police found and seized Egyptian and Greek antiquities
- ❖ Prosecutor only brought drug charges
- ❖ On appeal of detention order, the court mentioned the antiquities, and a propensity to commit offenses relating to antiquities

# ECHR Complaint



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<b>Applicant</b>	<b>Government</b>
POI infringed	POI not infringed
Presented as a perpetrator for a crime he was not charged of	Court had to articulate risk of flight
The charges for the antiquities were brought 6 months after the damage was done	Criminal charges were later brought relating to the antiquities



Violation



## ECHR Judgment

- ❖ Evident the court relied on the antiquities in its decision,
- ❖ Court - “demonstrates the propensity to commit further offenses relating to antiquities
- ❖ The defendant was not formally charged with the offense

# Judicial & Expert Statements

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## *Muller v. Germany*

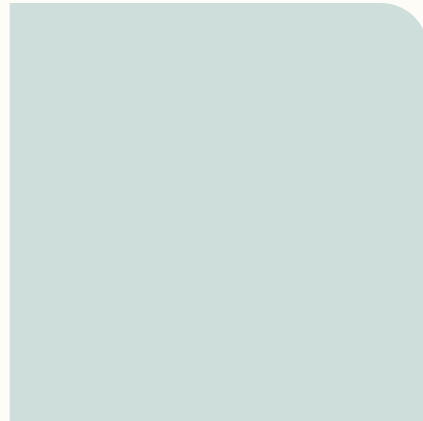
- ❖ 1984 applicant convicted of murdering his wife, life in prison
- ❖ 1997 applicant accused of assaulting a woman while on semi-custodial release
- ❖ 1999 Frankfurt district court acquitted the applicant of assault & he requested his sentence be converted to probation
- ❖ 2007 Kassel Regional Court denies probation
  - ❖ Cites expert report
  - ❖ Court found the applicant would reoffend if released



# ECHR Complaint

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Applicant	Government
POI infringed	POI not infringed
POI applies until final judgment is reached	POI did not apply to the proceeding, no criminal charges pending, not trying to ascertain guilt
POI mandates all domestic courts respect acquittal in their judgements	Decision on probation: Court had right to make its own prognosis on the danger posed



No  
Violation



## ECHR Judgment

- ❖ Court was tasked with evaluating risk to public
- ❖ No statements about guilt on assault case but behavior toward female
- ❖ Prognosis on dangerousness was appropriate



# Key Takeaways

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- ❖ In drafting judgements:
  - ❖ What is the nature of the proceeding?
  - ❖ What can the court properly consider?
  - ❖ Pay homage to the presumption
  - ❖ Propensity is always dangerous
  - ❖ Clearly indicate the basis of the decision

# Statements of Public Officials

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He said what?



# Statements of Public Officials

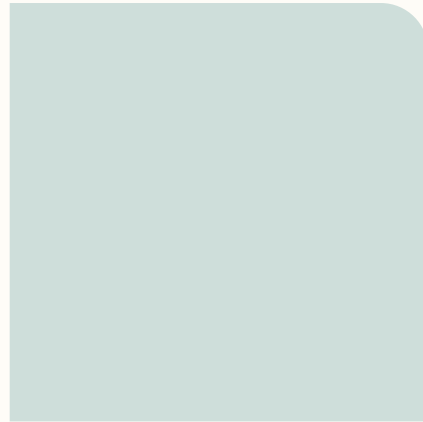
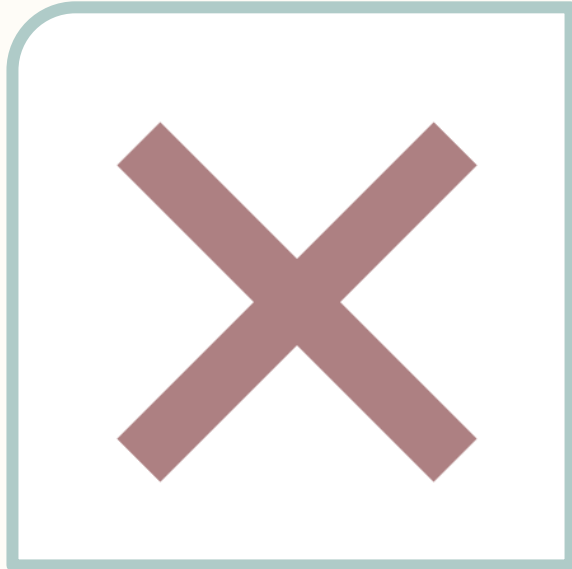
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- ❖ *Konstas v. Greece*
- ❖ Applicant was a university official charged with fraud
- ❖ Convicted and appealed his sentence
- ❖ While case pending appeal, in parliamentary session, statements were made by PM, Deputy MOF & MOJ
- ❖ Statements were politically charged and provided enough information to determine they were referencing the Applicant's case

# ECHR Complaint

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Applicant	Government
PO infringed	POI not infringed
Comments raised allegations that might influence re-examination of his case by the COA	Remarks made after conviction as part of political debate
Comments were made days after first instance verdict	Comments were general and nonspecific
The officials did not have all the facts and should have exercised more restraint	Long duration between remarks and appeal - appeal was still pending



Violation



# ECHR Judgment

- ❖ POI can be infringed at any stage in the proceeding
- ❖ Although they did not mention him by name, the comments, by their nature, identified the applicant
  - ❖ PM – referred to a general reference of a subject matter – no violation
  - ❖ Deputy MOF – “Crooks” “you even steal from each other” – reflected his own view of the case, prejudicing a future judgement of the court of appeals
  - ❖ MOJ – courts “boldly and resolutely” convicted those involved, suggests he wanted the COA to uphold the conviction


# Statements of Prosecutors

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- ❖ *Daktaras v. Lithuania*
- ❖ Applicant investigated in connection with a ransom/stolen car scheme
- ❖ Prosecutors investigated and applicant asked for case to be dismissed
- ❖ Prosecutor declined and stated the evidence proved the applicant's guilt
- ❖ Applicant convicted and appealed

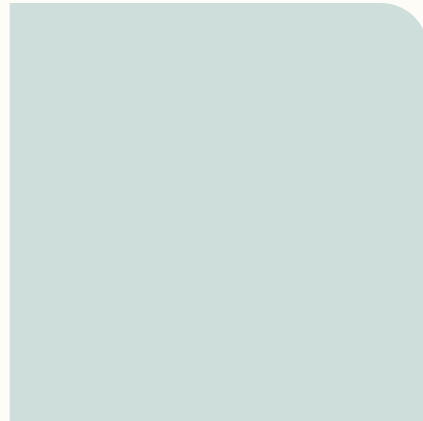


# ECHR Complaint



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Applicant	Government
POI infringed	POI not infringed
The prosecutor declared him guilty in his pre-trial decision to proceed with the indictment	The prosecutor's statements merely described the degree of suspicion against the applicant by referring to the strength of the evidence against him
	Prosecutor was required either to adopt a reasoned decision confirming the validity of the suspicion or to discontinue the case
	Statement was not a publicly made



No  
Violation

# ECHR Judgment



- ❖ POI must be determined in the context of the particular circumstances in which the impugned statement was
- ❖ The statements were intrinsic to the case, a reasoned decision at a preliminary stage of the proceedings
- ❖ While the use of the term “proved” was unfortunate, the prosecutor responded to the applicant’s language and referred to whether the evidence supported proceeding with charges



**POI extends from  
pre-trial through  
the completion of  
appeals**

**Duration  
between  
comments and  
resolution of case  
is not dispositive**

**Justice officials  
are held to a  
higher standard**

**Everything said  
during pendency  
of case can  
impact the  
outcome**

# **Key Takeaways**

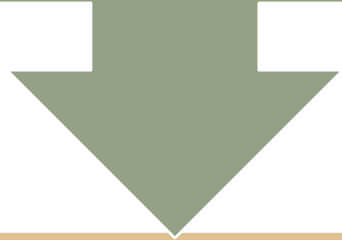
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# Press Coverage of Criminal Cases

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Is this on the record?

Virulent press campaign can adversely affect the fairness of a trial by influencing public opinion and, consequently, jurors called upon to decide the guilt of an accused



Press coverage of current events is an exercise of freedom of expression, guaranteed by Article 10 of the Convention.



## **The Balance**

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# Is there Prejudice?

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- ❖ Questions to ask when weighing media impact on fairness of trial
  - ❖ How much time has elapsed between the media campaign and (1) the start of the trial and (2) the determination of the trial panel?
  - ❖ Are the challenged publications attributable to the authorities?
  - ❖ Did the publications influence the judges?
  - ❖ Was the Defendant prejudiced?

\*Objective standard

# Press Statements

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- ❖ *Paulikas v. Lithuania*
- ❖ Applicant (police officer) charged in traffic accident causing death of 3 children
- ❖ Vast media attention on case
- ❖ Calls for senior police leadership to resign
- ❖ Officials resigned
- ❖ Statements by President – “intolerable that crimes committed by officers are justified”
- ❖ Applicant found guilty of charges

# ECHR Complaint

Applicant	Government
POI infringed	POI not infringed
Virulent media campaign, branded as “killer of children,” his witnesses were ridiculed	Media coverage related to a legitimate public interest
High-level officials urged the court to order strictest sentence possible	Not a targeted campaign against the applicant, but rather the broader issue within the police department
Resignation of police commissioner & MOI improperly influenced proceedings	Statements did not contain declarations about applicant’s guilt
	Discussed political liability, not criminal liability
	Decided by professional judges, capable of rejecting external influence, strong evidence of guilt







No  
Violation

# ECHR Judgment



- ❖ MOI – “this was not the first-time..police officers caused terrible accidents”
  - ❖ But the defendant had admitted causing the accident
  - ❖ Not a declaration as to the applicant’s guilt
- ❖ Other officials expressed political responsibility but did not discuss applicant’s criminal liability
- ❖ Resignation of officials cannot be seen as declaration of applicant’s guilt
- ❖ President's statement did directly reference case
  - ❖ Not in isolation, discussed greater issues within the police
  - ❖ Some concern with wording about past “mild punishments” however, this was part of the greater political context of officers escaping justice



# Key Takeaways

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- ❖ Article 6 § 2 cannot prevent public officials from informing public about criminal investigations in progress, calls for discretion
- ❖ In a democracy it is inevitable that information is imparted when a serious charge of misconduct in office or when applicant is a public figure
- ❖ Context is critical
- ❖ Coverage of current events is an exercise of freedom of expression, domestic authorities are not responsible for acts of the press
- ❖ Are there sufficient safeguards to ensure the proceedings as a whole are fair?
- ❖ A breach requires cogent evidence that concerns about impartiality of judges are objectively justified
- ❖ Professional judges are less likely than a jury to be influenced by a press campaign