

Justice Minister's statements violated presumption of innocence

In today's **Chamber judgment**¹ in the case of **Bavčar v. Slovenia** (application no. 17053/20) the European Court of Human Rights held that there had been:

by 6 votes to 1, a violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights, and

unanimously, no violation of Article 7 (no punishment without law).

Mr Bavčar, a former Government minister, was found guilty of money laundering in 2016. The case concerned appeal proceedings during which the then Minister of Justice Goran Klemenčič had given a television interview captioned "Mr Klemenčič: If the *Bavčar* case becomes time-barred, a lot of people will have to answer [for that]".

The Court found in particular that Mr Klemenčič's statements had implied guilt on the part of Mr Bavčar and had caused a reaction in the courts and the Government. This had violated the presumption of innocence in the case.

However, the Court was satisfied that the Slovenian courts' reasoning, which had included extensive reference to and explanations of Slovenian law, the Slovenian case-law, the Constitution, international and EU law, and the Court's case-law, in finding against Mr Bavčar, that such crimes could be committed with either direct intent (in this case, accepting money) or indirect intent (disposing of that money), had not violated the Convention.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Igor Bavčar, is a Slovenian national who was born in 1955 and lives in Stari trg pri Ložu (Slovenia). He was interior minister during Slovenia's independence struggle from Yugoslavia, and later Europe minister.

In 2013 in a trial with three other co-accused, Mr Bavčar was found guilty of charges of abuse of a position or rights when carrying out an economic activity and money laundering. Among other findings, the trial court established that he had received 21.6 million euros into his bank account which he had later made use of. He received a prison sentence and was ordered to return the illegally obtained assets.

The four co-defendants lodged applications for the protection of legality with the Slovenian Supreme Court.

In 2015 the Supreme Court ordered a retrial as it was not clear that all the elements of the offence for which Mr Bavčar had been convicted had been met in the case. In September 2016 the Ljubljana District Court acquitted Mr Bavčar of the criminal offence of inciting abuse of a position or rights, but found him guilty of money laundering. The court pointed to contracts signed between Mr Bavčar and Microtrust d.o.o. (a company belonging to one of the co-accused), among other contracts, which

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.

amounted to sham formal legal bases for transactions, the actual purpose being to conceal the illegality of the received money's origin. He was again given a prison sentence and ordered to pay a sum equivalent to the illegally acquired money.

Mr Bavčar's prison sentence had been stayed in February 2015 owing to his poor state of health. However, in September 2016 footage later emerged of him allegedly playing basketball.

As a result of the widespread media attention that the case had attracted, on 27 September 2016 (the day the basketball footage emerged) then Minister of Justice Goran Klemenčič gave an interview to POP TV (a commercial television station). The journalist made the following statement:

"If you are influential and have money, you can buy yourself a medical opinion in order not to go to jail. When the case is getting close to becoming time-barred, you happily play basketball. ..."

To which the Minister replied, among other things, the following:

"What is happening now, however, is absolutely a slap in the face for the Slovenian rule of law ... he has to be convicted with final effect to play [basketball] ... If this case [*Bavčar*] becomes time-barred, let me say here: I have made a commitment many times on your show, and I hope that I have delivered. Here I will do everything possible to make heads roll. ... [I will do this] not because someone should be convicted or acquitted ..., but because the time-barring of any court case, and we have too many of them, is the worst possible result. I believe this will not happen, but if it does ... I think a lot of people will have to answer [for that] and I will be the first to demand answers. ..."

Mr Bavčar appealed against the retrial judgment, arguing that money laundering could not be a result of indirect intent, and that the televised statements by the minister had exerted pressure on the Higher Court judges. That appeal was dismissed, and the judgment became final. Mr Bavčar began serving his prison sentence in September 2017.

Mr Bavčar lodged an application for the protection of legality, which the Supreme Court dismissed in February 2019. Two later constitutional complaints by Mr Bavčar were ultimately not entertained by the Constitutional Court.

Complaints, procedure and composition of the Court

Relying on Articles 6 §§ 1 and 2 (right to a fair trial) and Article 7 (no punishment without law), the applicant complained that the Justice Minister's statement during his trial had breached his presumption of innocence and had put pressure on the Slovenian courts. He also complained of his conviction for money laundering on the basis of indirect intent.

The application was lodged with the European Court of Human Rights on 3 April 2020.

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

Alena Poláčková (Slovakia), *President*,
Lətif Hüseynov (Azerbaijan),
Péter Paczolay (Hungary),
Ivana Jelić (Montenegro),
Erik Wennerström (Sweden),
Davor Derenčinović (Croatia) and,
Vasilka Sancin (Slovenia), *ad hoc Judge*,

and also Renata Degener, *Registrar*.

Decision of the Court

Article 6 §§ 1 and 2

The Court reiterated that the presumption of innocence was violated when public officials made statements that an individual was guilty before he or she had been tried.

It noted Mr Bavčar's status within Slovenia and his contribution to that country's transition to democracy. It had been natural that the media had been interested in his case. Minister Klemenčič's interview had come the day after a video had been released of Mr Bavčar's allegedly having played basketball, despite his having asked for his prison sentence to be put on hold for health reasons.

His statement – "if this case becomes time-barred ... I will do everything possible to make heads roll" – had caused a reaction in the courts and the Prime Minister's office. The Court considered that those high-ranking officials, in particular the Justice Minister, should have understood that they were duty-bound to respect the principle of presumption of innocence.

As regards the influence of those statements on the proceedings before the Slovenian courts, the Court noted that at the time of the relevant statements in this case Mr Bavčar had been found guilty, but there had been a stay of execution of his sentence. Concerning the statement that the Government would prevent someone who should "probably be serving a prison sentence" from "playing basketball", the Court considered that that had implied confirmation of Mr Bavčar's guilt. The cumulative effect of those statements had been capable of prejudicing the Higher Court in its judgment in the case.

As the presumption of innocence had been violated in Mr Bavčar's case, there had therefore been a violation of Article 6 § 2.

As a result of its findings under Article 6 § 2, the Court held that it was not necessary to examine whether the applicant's right to an "independent and impartial tribunal" under Article 6 § 1 had been breached.

Article 7

The Court noted that the retrial court had convicted Mr Bavčar on the basis of two acts of money laundering, one committed with direct intent – accepting EUR 21.6 million – , and one with indirect intent – disposing of that money. He had been convicted in accordance with the law as it had stood at that time, although the interpretation of "intent" had changed between the commission of the crime and the final judgment. The Government argued that the conviction had nevertheless been foreseeable under the law and provided domestic case-law in support of that position.

Mr Bavčar's arguments regarding Slovenian law and case-law, the Constitution, and the Court's case-law, had been dealt with by the national courts. The reasoning as regards the link between his actions and his mind had been exhaustively examined by the courts, which had explained that under the relevant law (Article 252 of the Criminal Code) a perpetrator's subjective attitude was open to interpretation, allowing for criminal offences that could be committed with either direct or indirect intent. The Court was satisfied that this interpretation had been in line with developments in national case-law, occurred in other cases, and was compatible with the Convention.

There had been no violation of Article 7.

Just satisfaction (Article 41)

The Court held that Slovenia was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 in respect of costs and expenses.

Separate opinions

Judge Paczolay expressed a concurring opinion. *Ad hoc* Judge Sancin expressed a partly dissenting opinion. These opinions are annexed to the judgment.

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.