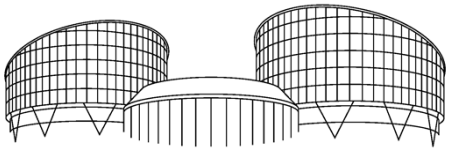

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MILACHIKJ v. NORTH MACEDONIA

(Application no. 44773/16)

JUDGMENT

Art 6 § 2 • Presumption of innocence • Language used by higher courts, dismissing applicant's civil compensation claim regarding a car impounded from him in earlier discontinued misdemeanour proceedings, not to be reasonably read as an affirmation imputing criminal liability, given the nature and context of the civil proceedings • Compensation claim examined in a different context from that of misdemeanour proceedings, before different courts with different compositions • Applicant not dispensed from obligation to prove civil claim in accordance with applicable domestic rules on the burden of proof

STRASBOURG

14 October 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Milachikj v. North Macedonia,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Jovan Ilievski,
Lado Chanturia,
Arnfinn Bårdsen, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 44773/16) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian/citizen of the Republic of North Macedonia, Mr Zoran Milachikj ("the applicant"), on 29 July 2016;

the decision to give notice of the application to the Government of North Macedonia ("the Government");

the parties' observations;

Having deliberated in private on 7 and 13 September 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns an alleged violation of the presumption of innocence (Article 6 § 2 of the Convention) during compensation proceedings regarding a car which had been impounded from him in the context of misdemeanour proceedings for an administrative customs-related offence, following the discontinuation of the misdemeanour proceedings as being time-barred.

THE FACTS

2. The applicant was born in 1955 and lives in Ohrid. He was represented before the Court by Mr E. Balaban, a lawyer practising in Ohrid.

3. The Government were represented by their acting Agent, Ms D. Djonova.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 13 January 2006 the police became suspicious that a car that the applicant was driving, which he had previously acquired from a foreign

national and which had been registered with foreign number plates, had a forged registration certificate and fake number plates. The police impounded the car and reported the matter to the Customs Authority on the suspicion that no taxes or customs duties had been paid for it, which was an offence punishable under section 206 of the Customs Act (see paragraph 11 below). In June 2006 the Customs Authority instituted misdemeanour proceedings under section 207 in conjunction with section 206 of the Customs Act (see paragraphs 11 and 12 below), submitting that he ought to have known that the car had not been declared to the customs authorities and that customs duties and other taxes had not been paid. It also sought the confiscation of the car, which was a mandatory measure specified in section 208 of the Customs Act (see paragraph 13 below).

6. After the courts rejected the application for lack of jurisdiction, proceedings were brought before the Misdemeanour Commission within the Customs Authority ("the Commission"). In a decision of 10 December 2009 the Commission found the applicant liable for the administrative offence in question and imposed a fine on him (see paragraph 11 below), holding that "it would attain the purported aim, namely to deter him from committing this and other offences in future". On 13 December 2010 the Administrative Court quashed that decision due to errors of law regarding the scope of the case and the fine. On 6 April 2011 the Commission discontinued the proceedings on account of the absolute time-bar resulting from the expiry of the five-year limitation period for the offence in question. It also ordered that the car be returned to the applicant under section 268 of the Customs Act (see paragraph 14 below). In October 2011 the Agency for Confiscated Property ("the Agency"), which had stored the car pending the outcome of the proceedings, returned it to the applicant.

7. In February 2012 the applicant instituted civil proceedings against the Customs Authority, claiming compensation for loss of value of the car, under the general rules of tort provided for in the Obligations Act. In this connection he argued that no responsibility on his part had been established in the misdemeanour proceedings and that the car had been impounded without any legal ground. Following a retrial, on 25 April 2014 the Ohrid Court of First Instance upheld the applicant's claim and awarded him the equivalent of 10,660 euros, which had been the value of the car at the time of its impounding, as established by an expert. The first-instance court referred to, *inter alia*, the relevant documentary material from the misdemeanour proceedings providing a chronological outline of all actions taken by the relevant authorities at the time (see paragraphs 5 and 6 above). It also reiterated the reasoning in the decisions given in those proceedings. It held that the actions that had been taken by the Customs Authority in the misdemeanour proceedings brought against the applicant on account of the alleged customs-related administrative offence had been in accordance with the law. However, the Customs Authority had not conducted itself diligently

in those proceedings and had allowed the statute of limitations to expire. Accordingly, it had been responsible for the inordinate length of the proceedings and the consequential loss of value of the car. The court dismissed the defendant's arguments that the applicant had been liable for the alleged administrative offence, holding that no guilt had been established in the misdemeanour proceedings, the latter having been discontinued because the statute of limitations had expired.

8. On 6 October 2014 the Bitola Court of Appeal overturned that judgment, finding that the lower court had wrongly applied the substantive law on the established facts. It dismissed the applicant's compensation claim and stated, *inter alia*:

> "The misdemeanour proceedings against the plaintiff were not discontinued because the offence had not been committed, but because of the absolute time-bar. It cannot be said that there was any unlawful conduct or that the plaintiff's car was impounded without a legal basis such that the plaintiff's claim should be upheld and the defendant ordered to compensate for the damage. The plaintiff was required to declare the car to the Customs Office and he knew that he had been driving it with fake number plates, which was the basis for the proceedings against him."

9. The applicant challenged that judgment by means of an appeal on points of law in which he complained, *inter alia*, that the Court of Appeal had violated his right to the presumption of innocence. In this connection he reiterated that the misdemeanour proceedings had been discontinued and that no liability on his part had been established. The applicant further submitted that the Court of Appeal was not competent to assess whether the plaintiff had been required to report the car, since that court decided in civil and not misdemeanour proceedings and only the competent body could establish whether or not an administrative offence had been committed.

10. On 3 February 2016 the Supreme Court dismissed the applicant's appeal on points of law. The relevant parts of its judgment read as follows:

> "... no responsibility can be attributed to the defendant for the damage to the car ... because the defendant was bound by law to report an administrative offence as specified in the Customs Act and to institute misdemeanour proceedings against the perpetrator, now the plaintiff (*против сторителот, сега тужител*). That the misdemeanour proceedings were conducted so that relevant facts ... could be established ... cannot amount to unlawful conduct ... Accordingly, no responsibility can be attributed to the defendant for the damage alleged by the plaintiff.
>
> [The applicant's complaint] that the defendant had kept the car without legal grounds because the [misdemeanour] proceedings against him had been discontinued and no liability had been established, and that the defendant is therefore responsible for the damage to it, is ill-founded. This is because the proceedings against the plaintiff were not discontinued because it had not been established that he had committed the offence, but because of the absolute time-bar, after which the car was returned to him.
>
> It is unsubstantiated that the defendant was not diligent and allowed the car to be damaged or caused the misdemeanour proceedings to be protracted ... In the present case, [the police] impounded the car and ... handed it over to the Agency.

> Accordingly, the car was not kept at the defendant's premises and it cannot be held responsible for having been inattentive or careless. Furthermore, on 10 December 2009 the Commission found the plaintiff liable for a customs-related administrative offence ... [The] judgment of 13 December 2010 [of] the Administrative Court ... was served on the Commission on 4 January 2011, that is, five days after the statute of limitations had expired ..., which means that the defendant did not cause any delays in the proceedings ..."

RELEVANT LEGAL FRAMEWORK

I. CUSTOMS ACT

11. Under section 206(1)(5) of the Customs Act, as in force at the relevant time, a fine was to be imposed on a physical person who had failed to declare goods to the customs authorities.

12. Section 207 of the Act provided for the liability of a *mala fide* possessor of goods (*одговорност на недобронамерен поседувач-имател на предмети со кои е сторен прекршок*) who would, *inter alia*, buy, sell, obtain as a gift, keep, use or acquire title to those goods even though he or she knew or ought to have known that an administrative offence had been committed, *inter alia* under section 206 of the Customs Act.

13. Section 208 of the Act provided for the mandatory confiscation of goods used for committing the offences specified in sections 206(1)(5) and 207 of the Act.

14. Under section 268 of the Customs Act of 2005, goods or means of transport used for committing an administrative offence were to be seized, even if no misdemeanour proceedings could be conducted against the perpetrator because his or her identity or whereabouts could not be established or for any other statutory reasons, unless the statute of limitations had expired.

II. MISDEMEANOR ACT OF 2006

15. Section 2 of the Misdemeanour Act provided that the general rules specified in the Criminal Code applied, *mutatis mutandis*, to misdemeanours and liability for them.

16. Under section 71, an accused (*обвинет*), within the meaning of the law, was defined as any physical or legal person subject to misdemeanour proceedings. Identical provisions are found in the Misdemeanour Act of 2019.

III. CRIMINAL PROCEEDINGS ACT

17. Under section 21 of the Criminal Proceedings Act, an accused (*обвинет*) is defined as a person against whom, *inter alia*, an indictment or private criminal complaint has been lodged.

THE LAW

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

18. The applicant complained that the reasoning provided by the higher civil courts had violated his right to the presumption of innocence. He relied on Article 6 § 2 of the Convention, which reads as follows:

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

A. Admissibility

Compatibility ratione materiae

(a) The parties' submissions

19. The Government submitted that Article 6 § 2 of the Convention did not apply to the compensation proceedings, which had been civil in nature. Furthermore, the prior misdemeanour proceedings could not be regarded as "criminal" within the meaning of that Article. They had been instituted under the Customs Act and conducted, under the procedural rules for administrative offences, by the Customs Authority and the Administrative Court. In those proceedings, unlike those in criminal cases, prison sentences could not be imposed; administrative offences, including customs-related offences, concerned minor violations of public order and were governed by administrative law; the perpetrator of an administrative offence was not considered to be "convicted of a criminal offence".

20. In any event there had been no causal link between the two proceedings. The compensation proceedings had been independent of, and had occurred after, the misdemeanour proceedings. They had required a specific legal assessment based on criteria and evidential standards that were different from those in the misdemeanour proceedings. That the civil courts had relied, *inter alia*, on the evidential material from the misdemeanour proceedings was not decisive. The outcome of the misdemeanour proceedings had had no bearing on their findings, which had been confined to the issue whether the impounding of the car, a mandatory security measure, had been ill-founded (*неосновано*).

21. The applicant submitted that the misdemeanour proceedings should be regarded as "criminal". This followed from the domestic legislation (see paragraphs 15-17 above) and the punitive nature of penalties imposed on the "accused" in both misdemeanour and criminal proceedings. Furthermore, the civil proceedings in the present case had been closely linked to the prior misdemeanour proceedings. After the latter had been discontinued, the applicant had become entitled to claim compensation for loss of the value of

the car impounded in those proceedings. The civil courts had accepted jurisdiction to give a decision on that claim, but they had dismissed it on the merits.

(b) The Court's assessment

22. The general principles concerning the applicability of Article 6 § 2 are set out in *Allen v. the United Kingdom* ([GC] no. 25424/09, §§ 92-94, 103 and 104, ECHR 2013).

23. The present case concerns allegations that the judicial decisions given in the compensation proceedings violated the right guaranteed by Article 6 § 2 of the Convention. It has not been argued that those proceedings gave rise to a "criminal charge", within the autonomous meaning of the Convention. Accordingly, what comes into play is the second aspect of Article 6 § 2 of the Convention, the role of which is to prevent the principle of the presumption of innocence from being undermined after prior criminal proceedings have ended with an outcome other than a conviction.

24. Having regard to the Government's objections (see paragraph 19 above), the Court firstly has to determine whether the offence with which the applicant was charged in the misdemeanour proceedings was "criminal" within the meaning of that Article. In so doing, the Court will have regard to the three alternative criteria laid down in *Engel and Others v. the Netherlands* (8 June 1976, § 82, Series A no. 22; see also *Jussila v. Finland* [GC], no. 73053/01, §§ 30-31, ECHR 2006-XIV; and *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 75, 22 December 2020): (a) the classification of the offence under the domestic law, (b) the nature of the offence, and (c) the nature and degree of severity of the penalty that the person concerned risks incurring.

25. As to the legal classification of the offence under the domestic law, the Court notes that the alleged offence was formally classified as an administrative rather than a criminal offence under the national law. This follows from the fact that it was provided for in sections 206 and 207 of the Customs Act (see paragraphs 11 and 12 above) and not in the Criminal Code. Furthermore, as argued by the Government and not disputed by the applicant, the potential penalty (a fine) would not have been entered in the applicant's criminal record. However, since the classification of the offence under the domestic law is of relative value only, the Court must further examine the offence in question in the light of the second and third *Engel* criteria (see the previous paragraph).

26. As to the nature of the offence in question, the Court reiterates that it was defined in the Customs Act, that is, in legislation that applied to the whole population (to anyone suspected of being engaged in the particular behaviour referred to therein) and not just to a particular group. What is more, the potential fine that could have been imposed was, as argued by the

applicant and confirmed in the misdemeanour proceedings, punitive in nature as it was not intended to serve as pecuniary compensation for unpaid customs duties, but as a penalty to deter reoffending (see paragraphs 6 and 21 above). The Government did not provide any counter-arguments. The Court finds these elements sufficient for a conclusion that the purported customs-related administrative offence was of a criminal character and thus attracted the guarantees of Article 6 of the Convention (see, *mutatis mutandis*, *Žaja v. Croatia*, no. 37462/09, §§ 87 and 88, 4 October 2016).

27. The Court furthermore has to examine whether there was a link between the misdemeanour proceedings and the civil proceedings which ended in the Supreme Court's judgment of 3 February 2016. In this connection it notes that, in the context of the misdemeanour proceedings against the applicant, on 13 January 2006 the authorities impounded the car and kept it until after the Commission had discontinued the proceedings and had ordered the car to be returned to the applicant (see paragraphs 5 and 6 above). The applicant's subsequent compensation claim concerned the loss of value of the car kept by the authorities pending the misdemeanour proceedings. In the adjudication of that claim, the civil courts referred to the procedural developments during the misdemeanour proceedings and analysed their eventual impact on the applicant's claim for loss of value of the car. Relying on the evidence and judgments in the misdemeanour proceedings, as well as on evidence submitted in the civil proceedings, the first-instance court upheld the applicant's claim and ordered the Customs Authority to pay him an amount equal to the value of the car at the time of its impounding (see paragraph 7 above). On the facts established by the first-instance court, the higher courts dismissed the applicant's claim, finding that no responsibility could be attributed to the defendant for the damage to the car. In doing so, they referred to the outcome of the prior misdemeanour proceedings and commented on the applicant's eventual participation in the events leading to the charge brought against him (see paragraphs 8 and 10 above). The Court is therefore satisfied that the civil proceedings were linked to the prior misdemeanour proceedings (see *Allen*, cited above, § 104). It will revert to these issues in the analysis of the merits of the applicant's complaint (see paragraphs 33-36 below).

28. For these reasons, Article 6 § 2 is applicable in the present case, which, unlike other cases in which the Court has been called upon to consider the application of Article 6 § 2 to judicial decisions taken following the conclusion of criminal proceedings (for example, see *Farzaliyev v. Azerbaijan*, no. 29620/07, 28 May 2020, and the references cited in *Pasquini v. San Marino (no. 2)*, no. 23349/17, § 36, 20 October 2020), regarding proceedings on the imposition of civil liability on applicants for the payment of compensation to the victim), concern civil proceedings brought by the applicant. The Court also notes that the application is neither manifestly ill-founded nor inadmissible on any other

grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The applicant reiterated his arguments that the reasoning provided by the higher courts in the compensation proceedings had contained statements imputing liability to him for the alleged customs-related administrative offence.

30. The Government submitted that the dismissal of the applicant's compensation claim could not be regarded as tantamount to a violation of the presumption of his innocence. Since that claim had concerned the impounding of the car, which was a mandatory security measure ordered in the misdemeanour proceedings, the civil courts had examined the legal ground for the institution of those proceedings, but not their outcome. The higher courts had not engaged in reassessing the applicant's liability for the administrative offence in question. They had not expressed suspicion, let alone determined the applicant's guilt in that regard. The Supreme Court had merely specified that the offence had been the subject of misdemeanour proceedings. The reference to the "perpetrator" in the Supreme Court's decision had coincided with the statutory terminology and followed the language used in the application for misdemeanour proceedings (see paragraph 5 above). Both the Court of Appeal and the Supreme Court had labelled the applicant as a "plaintiff" in the compensation proceedings and noted that the misdemeanour proceedings had been discontinued as time-barred. The Government concluded that the impugned language should be seen in the light of the reasoning provided by those courts taken as a whole.

2. The Court's assessment

31. The general principles concerning the protection provided by Article 6 § 2 are set out in *Pasquini v. San Marino (no. 2)* (cited above, §§ 48-54).

32. In the present case, the compensation proceedings in question concerned the applicant's claim in respect of the loss of value of the car, which was impounded in 2006 and was kept by the authorities until 2011, while the misdemeanour proceedings were pending against him. The compensation proceedings followed after the misdemeanour proceedings had been discontinued as time-barred and the car had been returned to him in accordance with section 268 of the Customs Act. That provision specified the discontinuation of misdemeanour proceedings as the sole ground under which the authorities were required to return to the accused the goods used

for committing an offence punishable under the Customs Act (see paragraphs 6 and 14 above).

33. The Court notes that, in their reasoning for dismissing the applicant's compensation claim, both the Court of Appeal and the Supreme Court referred to the misdemeanour proceedings. As noted above, they described the outcome of those proceedings and commented on the applicant's eventual participation in the events leading to the charge brought against him and on the subsisting indications of his possible guilt in relation to the impugned offence (see paragraph 27 above).

34. As to the former, both courts acknowledged that the misdemeanour proceedings against the applicant had been discontinued as time-barred and not "because the offence had not been committed" or "because it had not been established that [the applicant] had committed the offence" (see paragraphs 8 and 10 above). The Court accepts that these formulations are open to different interpretations and may be understood to suggest that the prospect of success of a compensation claim in the present case were not the same compared to cases where a final acquittal judgment had been handed down and those where criminal proceedings had been discontinued. Whereas the choice of words was an unfortunate slip, these formulations cannot of themselves amount to an explicit affirmation imputing liability for the misdemeanour to the applicant.

35. As to the applicant's possible guilt in respect of the impugned offence, the Court of Appeal noted that he "was required to declare the car to the Customs Office and [that] he knew that he had been driving it with fake number plates" (see paragraph 8 above). In the Court's opinion, such a statement may be understood as referring to both the objective (duty to report to the Customs Authority) and subjective (conscious behaviour) constituent elements of the administrative offence specified under sections 206 and 207 of the Customs Act (see paragraphs 11 and 12 above). The Court emphasises that the use of such expressions was unfortunate, given the confusion which they might have caused. Although the Supreme Court did not reproduce those expressions in its own decision, it did not either explicitly address the language used by the lower court. As the Court has previously held, where the use of unfortunate language may give rise to concern for respect for the presumption of innocence it is important for it, when examining the context of the proceedings as a whole and its specific features, whether the higher courts expressly engaged with this issue (see *Vardan Martirosyan v. Armenia*, no. 13610/12, § 84, 15 June 2021 and *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14, § 71, 22 April 2021). It would thus have been preferable for the Supreme Court to engage explicitly with the language of the Court of Appeal and not simply to remain silent.

36. The Supreme Court further stated that the defendant "institute[d] misdemeanour proceedings against the perpetrator, now the plaintiff".

Although it would have been preferable to avoid it, the use of the technical legal term "perpetrator" for the applicant is to be seen in the context of the terminology used by the Customs Act (see paragraph 14 above). Furthermore, the Supreme Court limited itself to that expression and did not expressly state that the applicant had committed the offence of which he had been accused and in relation to which the misdemeanour proceedings had been discontinued.

37. In any event, the use of the unfortunate language quoted above does not mean that the higher civil courts first set out that the applicant had in fact committed the administrative offence in order to then be able to rule on the compensation claim. It is necessary to look at the context of the proceedings as a whole and their special features. These features are also applicable where the language of a judgment might be misunderstood but where it cannot, on the basis of a correct assessment of the domestic law context, be characterised as a statement of criminal guilt (see *Fleischner v. Germany,* no. 61985/12, § 65, 3 October 2019).

38. In this connection, the Court observes that the applicant's compensation claim was examined in a different context from that of the misdemeanour proceedings, before different courts with different compositions of judges. The compensation proceedings were therefore neither an accessory to, nor merely a continuation of, the misdemeanour proceedings (ibid., § 66; see also *Ilias Papageorgiou v. Greece*, no. 44101/13, § 51, 10 December 2020).

39. The context was set in the remaining reasoning of the Supreme Court in which it explained that the decisions ordering the discontinuation of the misdemeanour proceedings and the return of the car to the applicant did not automatically entitle him to pecuniary compensation for the loss of value of the car. His compensation claim was dealt with on the basis of tort law and the general principles of civil proceedings and depended on issues such as whether there had been legal grounds for the temporary seizure and whether the sole defendant in the compensation proceedings, the Customs Authority, was responsible for the alleged damage. The Supreme Court was satisfied that the misdemeanour proceedings and the impounding of the car had sufficient legal basis. Furthermore and having regard to the principle that in civil proceedings it is normally the plaintiff in a defended action who bears the burden of proof (*affirmanti non neganti incumbit probation*), the Court cannot find it unreasonable that the applicant was required to prove that the defendant, in taking the actions in the misdemeanour proceedings, had lacked the requisite diligence. The discontinuation of the misdemeanour proceedings did not mean that he was dispensed from the obligation of having to prove his claim brought in civil proceedings in accordance with the applicable domestic rules regarding burden of proof (see, *mutatis mutandis*, *Bok v. the Netherlands*, no. 45482/06, §§ 43-45, 18 January 2011). The civil courts determined these issues on the basis of

all available evidence presented to them and all the facts they deemed relevant in the circumstances and found that the applicant had not properly discharged his burden of proof. Noteworthy in this connection are the Supreme Court's considerations exempting the Customs Authority from civil liability on account of the storage of the car by the Agency and the service of the Administrative Court's judgment on the Commission after the statute of limitations for the offence in question had already expired (see paragraph 10 above).

40. In the light of the foregoing, the Court considers that the language used by the higher courts, seen from the point of view of the nature and context of the civil proceedings in the present case, could not reasonably have been read as an affirmation imputing "criminal" liability to the applicant. There has accordingly been no violation of Article 6 § 2 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds,* by four votes to three*,* that there has been no violation of Article 6 § 2 of the Convention.

Done in English, and notified in writing on 14 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Mits, Yudkivska and Hüseynov is annexed to this judgment.

S.O.L.
V.S.

JOINT DISSENTING OPINION OF JUDGES MITS, YUDKIVSKA AND HÜSEYNOV

I. INTRODUCTION

1. We fully share the view that the application is admissible and, in particular, that the purported customs-related offence was of a criminal character and that the civil proceedings were linked to the misdemeanour proceedings, such as to attract the applicability of Article 6 § 2 of the Convention. However, we part from the majority in the assessment on the merits and we consider that the language used by the higher courts was not merely "unfortunate", but must be seen as imputing "criminal" liability to the applicant in violation of Article 6 § 2 of the Convention.

II. RELEVANT GENERAL PRINCIPLES

2. The judgment refers to the general principles set out in *Pasquini v. San Marino (no. 2)* (no. 23349/17, §§ 49-54, 20 October 2020) and which can be summarised as follows:

> "49. The second aspect of the protection of the presumption of innocence comes into play when the criminal proceedings end with a result other than a conviction ... Without protection to ensure respect for the acquittal or the discontinuation decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory ... What is also at stake once the criminal proceedings have ended is the person's reputation and the way in which that person is perceived by the public. To a certain extent, the protection afforded under Article 6 § 2 in this respect may overlap with the protection afforded by Article 8 ...
>
> 50. ... the Court has previously considered that the presumption of innocence will be violated in cases concerning statements after the discontinuation of criminal proceedings if, without the accused's having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence, a judicial decision concerning him reflects an opinion that he is guilty ...
>
> 51. In cases concerning compliance with the presumption of innocence, the language used by the decision-maker will be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2. However, when regard is had to the nature and context of the particular proceedings, even the use of some unfortunate language may not be decisive ...
>
> 52. In cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal, the Court has emphasised that while exoneration from criminal liability ought to be respected in the civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, if the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue falling within the ambit of Article 6 § 2 of the Convention ...

> 53. Extra care ought to be exercised when formulating the reasoning in a civil judgment after the discontinuation of criminal proceedings ...
>
> 54. When assessing the impugned statements, the Court must determine their true sense, having regard to the particular circumstances in which they were made (...). Even the use of expressions from the sphere of criminal law has not led the Court to find a violation of the presumption of innocence where, read in the context of the judgment as a whole, the use of the said expressions could not reasonably have been understood as an affirmation imputing criminal liability ..."

III. APPLICATION OF THE GENERAL PRINCIPLES TO THE CIRCUMSTANCES OF THE CASE

3. In the present case there were two dubious statements made by two different courts. The first was made by the Bitola Court of Appeal. When discussing the misdemeanour proceedings against the applicant that court, *inter alia*, stated: "The plaintiff was required to declare the car to the Customs Office and he knew that he had been driving it with fake number plates, which was the basis for the proceedings against him" (see paragraph 8 of the judgment). In our opinion, this statement clearly attributed guilt for the relevant misdemeanour to the applicant, containing both the objective and subjective elements of the relevant misdemeanour (compare paragraph 35 of the judgment). Such a statement was not necessary for the purposes of, and exceeded the scope of, the civil proceedings.

4. There was a possibility, though, to rectify this statement. The applicant specifically argued in his appeal before the Supreme Court that the Bitola Court of Appeal was not competent to establish whether he had been obliged to report the car and had thus committed an administrative offence, and that the court had therefore acted in violation of the presumption of innocence; he pointed out that the misdemeanour proceedings had been discontinued and that no guilt on his part had been established in those proceedings. The Supreme Court, however, did not address this claim but made another dubious statement in the context of assessing the responsibility of the public authority (the defendant), stating that "... the defendant was bound by law to report an administrative offence as specified in the Customs Act and to institute misdemeanour proceedings against the perpetrator, now the plaintiff ...".

5. We could agree that the latter statement on its own, assessed in the light of the nature and context of the proceedings before the Supreme Court and for the reasons explained in the judgment, might be seen as "unfortunate language" not falling within the ambit of Article 6 § 2. It is also true that we are dealing with civil proceedings in which neither the Bitola Court of Appeal nor the Supreme Court would have had to find that the applicant had committed the misdemeanour in order to be able to rule on his compensation claim. However, these conclusions do not suffice to discard Article 6 § 2.

6. It is the settled case-law of the Court that it will assess whether the higher courts rectified problematic language used by the lower courts such as to eliminate a possible issue under Article 6 § 2. In cases concerning criminal proceedings in which the lower courts, in decisions concerning detention on remand, had used statements indicating that the person had committed the relevant crime, the Court found a violation of Article 6 § 2, concluding that the higher courts either had failed to rectify the "error" made by the lower court (see, for example, *Matijašević v. Serbia*, no. 23037/04, § 47, ECHR 2006-X, and *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14, § 71, 22 April 2021) or had failed both to acknowledge such an error and to rectify it (see, for example, *Grubnyk v. Ukraine*, no. 58444/15, § 146, 17 September 2020, and *Vardan Martirosyan v. Armenia*, no. 13610/12, § 88, 15 June 2021).

7. A similar approach was taken in the context of civil proceedings that followed criminal proceedings in which a person had been acquitted. Thus, in two cases concerning Norway in which the lower courts had either found it probable that the applicant had committed the crime, or applied a less stringent standard of proof in the civil proceedings while covering all the constituent elements of a crime in their reasoning, the Court noted that the civil courts had overstepped the bounds of a civil forum and that the Supreme Court had not rectified these shortcomings, despite the Supreme Court having used more careful language (see, respectively, *Y. v. Norway*, no. 56568/00, §§ 45-46, ECHR 2003-II, and *Orr v. Norway*, no. 31283/04, §§ 51-54, 15 May 2008). The Court found a violation of Article 6 § 2 in both cases. By contrast, the Court declared an application inadmissible in a situation where the Supreme Court's Appeals Leave Committee had set aside the problematic wording in the High Court's judgment. The Court was satisfied that the presumption of innocence was not called into question after the domestic proceedings had come to an end, that is, after the rectification made by the Supreme Court (see *A. v. Norway* (dec.), no. 65170/14, §§ 40-41, 29 May 2018).

8. The present case concerns civil proceedings that followed criminal proceedings which had been discontinued as being time-barred. Admittedly, different principles apply in relation to the threshold of applicability of the presumption of innocence in cases where a person has been acquitted and those where criminal proceedings have been discontinued. In the former case it is the voicing of "suspicions regarding the accused's innocence", whereas in the latter it is the fact that the judicial decision "reflects an opinion that the accused is guilty". The Grand Chamber noted in *Allen v. the United Kingdom* ([GC], no. 25424/09, § 122, ECHR 2013) that this distinction had been introduced in *Sekanina v. Austria* (25 August 1993, Series A no. 266-A), which sought to limit the "opinion that the accused is guilty" principle to cases where criminal proceedings had been

discontinued, and that this distinction in principle was followed in subsequent case-law.

9. The principle which, according to *Allen* (cited above), applies to the discontinuation of criminal proceedings was formulated in *Minelli v. Switzerland* (25 March 1983, § 37, Series A no. 62), as follows:

> "In the Court's judgment, the presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law and, notably, without his having had the opportunity of exercising his rights of defence, a judicial decision concerning him reflects an opinion that he is guilty. This may be so even in the absence of any formal finding; it suffices that there is some reasoning suggesting that the court regards the accused as guilty. ..."

10. In the present case, as discussed above, the statement made by the Bitola Court of Appeal clearly "reflected an opinion that the applicant was guilty" of the relevant misdemeanour (in the terms of the *Minelli* principles, cited above), or "imputed 'criminal' liability" to the applicant (in the terms of the *Pasquini (no. 2)* principles, cited above), hence raising an issue under Article 6 § 2.

11. This being so, there is no reason to consider that in the present case the Court should adopt a different approach from the cases referred to above concerning civil proceedings following acquittal or criminal proceedings involving decisions on detention on remand, and stop short of assessing whether the Supreme Court rectified the issue regarding the presumption of innocence. This is especially so since the Court has specifically emphasised that extra care ought to be exercised when formulating the reasoning in a civil judgment after the discontinuation of criminal proceedings (see *Pasquini (no. 2)*, cited above, § 53).

12. As regards the nature and context of the proceedings, it is not sufficient to assess the two sets of proceedings and the impugned statements made therein separately from each other. A particular feature of this case is the fact that the first statement made by the Bitola Court of Appeal attributing guilt for the misdemeanour was brought to the attention of the Supreme Court. Without addressing the issue of the presumption of innocence, the Supreme Court itself used a statement which could be understood as implicating the applicant in the misdemeanour at issue. In a situation like this, the statement made by the Bitola Court of Appeal must be read in the light of the decision taken by the Supreme Court.

13. The majority took issue with the findings of the domestic courts to the effect that the proceedings against the applicant had been discontinued not "because the offence had not been committed" or "because it had not been established that [the applicant] had committed the offence", but because the proceedings were time-barred (see paragraph 34 of the judgment). We do not think that the choice of words here should be regarded as an "unfortunate slip". However, the majority concluded that the wording in question did not amount to "an explicit affirmation imputing

liability for the misdemeanour to the applicant". We would like to point out that the Court's case-law, including *Pasquini (no. 2)* (cited above), does not require an affirmation imputing liability to be "explicit".

14. Finally, in the present case we are dealing with the highest courts in the country. As a matter of principle, statements made by judges are subject to stricter scrutiny than those made by investigating authorities such as the police and the prosecutor's office (see *Pandy v. Belgium*, no. 13583/02, § 43, 21 September 2006). It is for the highest court in the country to dissipate any doubts about the innocence of a person whose guilt has not been established in a court of law. Otherwise, the fair-trial guarantees become theoretical and the reputation of the person tainted.

IV. CONCLUSION

15. In view of the above considerations, and in particular the fact that the statement made by the Bitola Court of Appeal raised an issue regarding the presumption of innocence and that the Supreme Court, instead of rectifying it, made another dubious statement, we conclude that the impugned language used by the higher courts, even seen from the point of view of the nature and context of the civil proceedings in the present case, could have been reasonably understood as an affirmation imputing "criminal" liability to the applicant. Consequently, there has been a violation of Article 6 § 2 of the Convention.