



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

THIRD SECTION

CASE OF DIACENCO v. ROMANIA

(Application no. 124/04)

JUDGMENT

STRASBOURG

7 February 2012

FINAL

07/05/2012

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

In the case of Diacenco v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 17 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 124/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Victor Diacenco (“the applicant”), on 4 November 2003.

2. The applicant was represented by Ms Angela-Simona Bosovici, a lawyer practising in Botoşani. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horaţiu Radu, from the Ministry of Foreign Affairs.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicant alleged, in particular, that the Suceava Court of Appeal’s judgment of 9 July 2003, holding him in the reasoning part of the judgment criminally liable for the alleged offence, and ordering him to pay civil damages to S.I., constituted a violation of his right to be presumed innocent until proved guilty, contrary to Article 6 § 2 of the Convention.

5. On 31 May 2010 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1944 and lives in Botoşani.

7. On the evening of 5 November 1998 the applicant, an engineer, accompanied by P.H., was driving a car owned by the limited company C. on the national road connecting Iaşi to Botoşani and was involved in a car accident. A car travelling in the opposite direction blinded the applicant with its headlights and he was forced to slow down and to steer the car towards the right side of the road. Suddenly, a cart pulled by a horse (“the cart”) travelling on the side of the road appeared in front of the applicant and forced him to break abruptly. However, he was unable to avoid collision. The driver of the cart, N.Z., escaped unharmed, but his passenger, S.I., suffered some injuries that required medical treatment.

A. The criminal investigation stage of the proceedings

8. On 9 November 1998 the Botoşani Forensic Laboratory carried out a forensic examination of the injuries suffered by S.I. and found that they could have been caused by a car accident on 5 November 1998, and required fifty-eight to fifty-nine days of medical care.

9. A second forensic examination of the injuries suffered by S.I. was carried out by the Botoşani Forensic Laboratory on 3 February 1999. It concluded that S.I.’s injuries could have been caused by a car accident on 5 November 1998, and required 102 to 103 days of medical care.

10. On 24 February 1999 the Botoşani Prosecutor’s Office ordered the opening of a criminal investigation against the applicant for involuntary battery and other violent offences.

11. By a decision of the Botoşani Prosecutor’s Office of 15 June 1999 the criminal investigation against the applicant was discontinued on the ground that he had not committed any unlawful act. The decision concluded that the cart which the applicant had collided with had not been equipped with the legally required hazard warning lights, which prevented the applicant from seeing the cart at the material time owing to the poor weather conditions. Consequently, the applicant could not have anticipated the danger and taken action in order to avoid it. S.I. appealed against the decision.

12. By a final decision of 10 June 2000 the Suceava Prosecutor’s Office allowed S.I.’s appeal, quashed the decision of 15 June 1999 and ordered the reopening of the criminal investigation against the applicant.

13. On an unspecified date S.I. joined the criminal proceedings instituted against the applicant as a civil party and claimed 50,000,000 Romanian lei

(ROL) (approximately 2,100 euros (EUR)) in respect of pecuniary and non-pecuniary damage.

14. By a final decision of 19 March 2001 the Botoşani Prosecutor's Office acknowledged that S.I. had joined as a civil party the criminal proceedings instituted against the applicant, indicted the applicant and referred the case to the Botoşani District Court.

B. The trial stage of the proceedings

15. On an unspecified date the applicant at his own request added to the file a technical expert report dated 4 June 2001 regarding the accident of 5 November 1998. The report concluded, *inter alia*, that the applicant had been driving lawfully, had been travelling at a speed of forty-three kilometres per hour (km/h), that he had hit the cart at a speed of thirty-three km/h and that the person responsible for the accident was N.Z.

16. On 29 October 2001 and 16 April 2002 the Botoşani District Court ordered a technical expert report and a supplement to the technical report, respectively, to be prepared regarding the accident of 5 November 1998.

17. On 29 January and 16 September 2002 the Iaşi Forensic Department attached to the Minister of the Interior carried out the technical expert analysis and concluded that the applicant had been travelling at a speed of between twenty-eight and thirty-six km/h and could have avoided the accident if his speed had been between eleven and twelve km/h. However, there had been no reason for him to travel at such a low speed. The travelling speed had been high enough to cause part of the cart to break. Moreover, the accident could have been avoided by N.Z. if he had equipped his cart with the legally required hazard warning lights. Consequently, the absence of the legally required hazard warning lights on N.Z.'s cart had been the cause of the accident.

18. On 15 March 2002, in his written submissions before the first-instance court, the applicant contested, *inter alia*, the results of the medical expert reports of 9 November 1998 and 3 February 1999. He contended that S.I. had already been suffering from some of the ailments which had been taken into account in the reports in order to determine the number of days of medical care she required as a result of the accident. Moreover, the said reports had not established with certainty that her condition had been caused by the car accident at issue.

19. By a judgment of 16 December 2002 the Botoşani District Court acquitted the applicant on the basis of the provisions of Article 47 of the Romanian Criminal Code, and dismissed S.I.'s civil claims for damages against him. Relying on the statements of the witnesses, of the victim and of the accused, as well as on the forensic and technical expert reports contained in the file, the court held that in the absence of hazard warning

lights, the applicant could not have foreseen the presence of the cart on the road and that therefore the accident could not have been avoided.

20. The applicant appealed against that judgment and argued that the legal basis for his acquittal should have been the fact that he had not committed the alleged offence and that N.Z. had been the sole party responsible for the accident. S.I. also appealed against the judgment, requesting to be awarded civil damages.

21. By a judgment of 8 May 2003 the Botoşani County Court, in the presence of the applicant and his chosen legal representative, dismissed both appeals and upheld the judgment of 16 December 2002. In dismissing S.I.'s request for civil damages, the court held that in the light of the applicant's acquittal, the just satisfaction claim submitted by the applicant did not have any basis in law.

22. The applicant and S.I. appealed (*recurs*) against that judgment. S.I. modified her civil claims against the applicant to ROL 100,000,000 in respect of pecuniary and non-pecuniary damage.

23. On 3 June 2003 the parties were summoned to appear before the Suceava Court of Appeal on 9 July 2003. The summons addressed to the applicant was displayed on the main entrance door of his home because he was not at home when the bailiff had attempted to deliver the summons.

24. On 9 July 2003, in the absence of the applicant and his legal representative and prior to the delivery of its judgment, the Suceava Court of Appeal heard the oral submissions of the parties present with regard to the appeal.

25. By a final judgment of 9 July 2003 the Suceava Court of Appeal dismissed in the operative part of its judgment the applicant's appeal, and upheld the judgments of 16 December 2002 and 8 May 2003. In the reasoning part of the judgment it held that the applicant had failed to provide the court with written or oral reasons for his appeal (*recurs*), as required by the applicable rules of criminal procedure and that the court could not identify any reasons that would require the Court of Appeal to quash the judgments of the lower courts. At the same time the court allowed the appeal (*recurs*) lodged by S.I., and ordered the applicant to pay ROL 100,000,000 (approximately EUR 2,600) to S.I. for pecuniary and non-pecuniary damage, out of which ROL 30,000,000 (approximately EUR 800) would be paid jointly with the insurance company A., for the mental and physical suffering which S.I. had endured and the medical expenses she had incurred. It held that the lower courts had misapplied the law with regard to the civil limb of the proceedings, and considered that they had erred in acquitting the applicant on the ground that he could not have anticipated the presence of the cart on the road. According to the evidence in the file, the applicant had committed the unlawful act in respect of which he had been indicted and could have foreseen the danger in question. The applicant was guilty of the offence of involuntary battery and

other violent offences because he had failed to control the speed of his car and to adjust it to the road conditions so that he would have been able to stop in the event of a foreseeable obstacle. Moreover, the court dismissed the conclusion reached in the technical expert reports concerning the speed of the applicant's car, on the ground that the impact had caused part of the car to break. Furthermore, prudent driving should have prompted the applicant to stop when he was blinded by the headlights of the car travelling in the opposite direction. Consequently, the court concluded that:

“For the above-mentioned reasons, [the court] considers that the applicant is guilty of the offence for which he was correctly indicted and his case sent for trial, the fact that the [lower] courts have acquitted him on the basis of the provisions of Article 47 of the [Romanian] Criminal Code (which is not applicable), is irrelevant in respect of the civil limb.”

C. Extraordinary appeal proceedings lodged by the applicant

26. On 2 October 2003 the applicant initiated extraordinary annulment (*contestație în anulare*) appeal proceedings against the final judgment of 9 July 2003. He argued that he had not been lawfully summoned for the hearing of 9 July 2003 before the Suceava Court of Appeal. Thus, he had been unaware about the date of the hearing. Consequently, he had been unable to submit written or oral reasons for his appeal, to defend himself or to inform the court as regards his absence.

27. By a final judgment of 28 September 2004 the Cluj Court of Appeal dismissed the applicant's annulment appeal on the ground that during the applicant's absence from his home the summons had been displayed on the main entrance door, in accordance with the applicable rules of criminal procedure. The applicant appealed against that judgment.

28. On 2 December 2004 the applicant brought extraordinary review (*revizuire*) appeal proceedings against the final judgment of 9 July 2003, submitting, *inter alia*, that he had not been lawfully summoned for the hearing held on the aforementioned date.

29. By a final judgment of 14 December 2004 the Court of Cassation dismissed the applicant's appeal against the final judgment of 28 September 2004 as inadmissible, on the ground that the said judgment was final and not subject to appeal.

30. By a judgment of 5 October 2006 the Botoșani District Court dismissed the applicant's appeal to review the final judgment of 9 July 2003, on the ground that he had been lawfully summoned and that, in any event, his presence at the hearing would not have changed the outcome of the proceedings, given that the Suceava Court of Appeal had relied on the evidence available in the file and not the parties' arguments. The applicant appealed against that judgment.

31. By a judgment of 16 January 2007 the Botoşani County Court dismissed the applicant's appeal against the judgment of 5 October 2006 as ill-founded. The applicant appealed against that judgment.

32. By a final judgment of 22 October 2007 the Suceava Court of Appeal dismissed the applicant's appeal against the judgment of 16 January 2007 as ill-founded.

II. RELEVANT DOMESTIC LAW

33. The relevant provisions of the Romanian Constitution as in force at the relevant time provided as follows:

Article 23

“ ...

(8) A person is considered innocent pending a final court conviction.”

34. The relevant provisions of the Romanian Code of Criminal Procedure in force at the relevant time provided as follows:

Article 14

“(1) The aim of a civil action is to engage the civil liability of the person accused of a criminal offence...

(2) A civil action can be joined to the criminal proceedings, if the victim joins the criminal proceedings as a civil party.

...”

Article 15

“...

(2) A victim can join criminal proceedings as a civil party at the criminal investigation stage or before the court...

...”

Article 19

“(1) If a victim has not joined criminal proceedings as a civil party, he or she can initiate separate proceedings for damages caused as a result of the offence before the civil courts.

(2) Civil proceedings are to be suspended pending a final judgment of the criminal courts...

...”

Article 22

“(1) The final judgment of a criminal court is *res judicata* in respect of the existence of an offence, the identity of the offender and his guilt for the court examining the civil action.

(2) The final judgment of the court examining the civil action is not *res judicata* in respect of the existence of an offence, the identity of the offender and his guilt for the authority carrying out the criminal investigation or for the criminal courts.”

Article 66

“(1) A person accused of or charged with a criminal offence does not have to prove his innocence.

(2) Where evidence is adduced proving a person’s guilt, the accused or the person charged with a criminal offence has the right to rebut the evidence.”

35. Articles 998 and 999 of the Romanian Civil Code provide that any person who has suffered damage can seek redress by bringing a civil action against the person who has intentionally or negligently caused such damage.

36. Article 47 of the Romanian Criminal Code provides that an act covered by the criminal law, which leads to results owing to unforeseeable circumstances, shall not be an offence.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 AND 7 OF THE CONVENTION

37. Relying on Articles 6 and 7 of the Convention the applicant complained that the Suceava Court of Appeal’s judgment of 9 July 2003, holding him in the reasoning part of the judgment criminally liable for the alleged offence, and ordering him to pay civil compensation to S.I., constituted a violation of his right to be presumed innocent until proved guilty. He also complained of the outcome of the proceedings, the alleged unlawfulness of the order to pay S.I. civil damages and the unfairness of the proceedings, in so far as he had been unlawfully summoned before the Suceava Court of Appeal for the hearing of 9 July 2003, and that as a result of his absence from the hearing he had been unable to prepare and present his defence before the domestic court or to argue the reasons for his appeal (*recurs*).

38. The relevant Convention provisions read as follows:

Article 6

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

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

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

Article 7

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

A. Admissibility

1. No significant disadvantage

39. The Government first submitted that the operative part of the Court of Appeal’s judgment, the only enforceable part of the judgment, had expressly upheld the decision of the lower courts to acquit the applicant. Consequently, the applicant could not be said to have suffered a substantial disadvantage within the meaning of the Convention concerning his acquittal

in respect of the criminal limb of the proceedings, taking into account also the small amount of civil compensation he had been ordered to pay.

40. The applicant disagreed.

41. The Court notes that the main element of the criterion set by Article 35 § 3 (b) of the Convention is whether the applicant has suffered any significant disadvantage (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010).

42. Inspired by the general principle of *de minimis non curat praetor*, this admissibility criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative, and depends on all the circumstances of the case. The severity of a violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev*, cited above). In other words, the absence of any significant disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Adrian Mihai Ionescu*, cited above).

43. The Court reiterates in this respect that it has previously considered insignificant the pecuniary loss of EUR 90, allegedly sustained by the applicant in the case of *Adrian Mihai Ionescu* (cited above), and it found negligible the pecuniary loss of EUR 0.5, allegedly sustained by the applicant in the case of *Korolev* (cited above).

44. In the present case, the Court notes that the applicant had been involved in criminal proceedings, with civil claims brought against him following a car accident. In the criminal proceedings, by a final decision, the Suceava Court of Appeal upheld in the operative part of its judgment the acquittal of the applicant by the lower courts, but at the same time casted doubt in respect of the correctness of his acquittal in the reasoning part of the same judgment. At the same time it ordered the applicant to pay S.I. EUR 1,800 alone, and EUR 800 jointly with the insurance company A. for pecuniary and non-pecuniary damage.

45. The Court notes that none of the parties submitted clear information concerning the financial status of the applicant. Nevertheless, it observes that the applicant was employed as an engineer at the time, and that according to the Romanian National Institute for Statistics, the average gross salary level in Romania in 2003, when the applicant was ordered to pay S.I. pecuniary and non-pecuniary damages, was ROL 8,183,317 (approximately EUR 220).

46. The Court also takes note of the fact that the domestic proceedings which are the subject of the complaint before it were aimed at clearing the applicant's name in respect of the offence he had allegedly committed.

Therefore, in addition to the pecuniary nature of the damages he was forced to pay, it is also necessary to take into account the fact that the proceedings concerned a question of principle for the applicant, namely his right to be presumed innocent until proved guilty.

47. Under these circumstances, in the Court's view, the applicant cannot be deemed not to have suffered a significant disadvantage, and it accordingly dismisses the Government's objection.

2. Incompatibility ratione materiae

48. Relying on the case of *Ringvold v. Norway* (no. 34964/97, ECHR 2003-II), the Government also argued that Article 6 § 2 was not applicable in the present case, as nothing in the Court's case-law suggested that the right to be presumed innocent applied to the field of civil liability, even if the domestic courts had relied in their judgments concerning civil compensation on the same facts which constituted the basis of the criminal charge brought against the applicant. The applicant had been ordered to pay civil compensation to a civil party after he had been acquitted in respect of the criminal limb of the proceedings, and the civil part of the proceedings was not incompatible with and had not set aside that acquittal.

49. The applicant argued that Article 6 § 2 was applicable in the present case on account of the criminal proceedings brought against him.

50. The Court considers that the question about the applicability of Article 6 § 2 of the Convention is inextricably linked to the merits of the applicant's complaint about the breach of his right to the presumption of innocence, and therefore, joins this objection to the merits of the above complaint.

51. The Court further notes that this and the remaining complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

a) The applicant

52. The applicant argued that the judgment of the Suceava Court of Appeal had breached his right to the presumption of innocence, placing him in a substantially disadvantaged position both pecuniarily and morally.

b) The Government

53. The Government submitted that the Court of Appeal's judgment had been delivered as part of the criminal investigation instituted against the applicant by professionally trained judges, and that therefore the Court of Appeal's reasoning, followed by the applicant's acquittal in the operative part of the judgment, could not have influenced public opinion or have had an impact on his right to be presumed innocent. The domestic courts had examined all the evidence submitted by the parties over the course of the adversarial proceedings and had repeatedly adjourned the proceedings in order to take the evidence requested by the parties and to assess the culpability of the applicant. The applicant's failure to attend the hearing of 9 July 2003 was exclusively imputable to him as he had been lawfully summoned.

54. Lastly, they argued that the fact that the domestic courts had ordered the applicant to pay civil damages, even after he had been acquitted under the criminal limb of the proceedings, had not breached his right to the presumption of innocence, given the applicable procedural rules concerning civil liability.

2. The Court's assessment

55. The Court reiterates that the concept of a "criminal charge" in Article 6 is an autonomous one. According to its established case-law there are three criteria to be taken into account when deciding whether a person was "charged with a criminal offence" for the purposes of Article 6, namely the classification of the proceedings under national law, their essential nature and the type and severity of the penalty that the applicant risked incurring (see *Phillips v. the United Kingdom*, no. 41087/98, § 31, ECHR 2001-VII and *A.P., M.P. and T.P. v. Switzerland*, 29 August 1997, *Reports of Judgments and Decisions* 1997-V, § 39). Moreover, the scope of Article 6 § 2 is not limited to criminal proceedings that are pending (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 35). In certain instances, the Court has also found the provision applicable to judicial decisions taken after the discontinuation of such proceedings (see, in particular, *Minelli v. Switzerland*, 25 March 1983, Series A no. 62, and *Lutz, Englert and Nölkenbockhoff v. Germany*, 25 August 1987, Series A no. 123), or following an acquittal (see *Sekanina v. Austria*, 25 August 1993, Series A no. 266-A; *Rushiti v. Austria*, no. 28389/95, 21 March 2000; and *Lamanna v. Austria*, no. 28923/95, 10 July 2001). Those judgments concerned proceedings related to such matters as an accused's obligation to bear court costs and prosecution expenses, a claim for reimbursement of his (or his heirs') necessary costs, or compensation for pre-trial detention, and which were found to constitute a consequence of, and to be concomitant to criminal

proceedings. Accordingly, the Court will examine whether the compensation proceedings in the present case gave rise to a “criminal charge” against the applicant and, in the event that this was not the case, whether the compensation proceedings were, nevertheless, linked to the criminal trial in such a way as to fall within the scope of Article 6 § 2.

56. Turning to the first of the above-mentioned criteria, the classification of the proceedings under national law, the Court notes that the applicant remained “charged”, formally speaking, until his acquittal gained legal force. However, this concerned only the initial criminal charge of which he was acquitted; it was of no relevance to the compensation claim. The Court notes that the latter had its legal basis in the general principles of the national law on torts applicable to personal injuries. According to the aforementioned principles, criminal liability is not a prerequisite for liability to pay compensation. Even where, as in the present case, the victim had opted to join a compensation claim to the criminal trial, the claim would still be considered a “civil” one. This is also apparent from the domestic courts’ judgments in the applicant’s case, which described the claim as “civil”. Thus, the Court finds that the compensation claim at issue was not considered to be a “criminal charge” under the relevant national law.

57. As regards the second and third criteria, the nature of the proceedings and the type and severity of the “penalty” (namely, in the instant case, the allegedly punitive award of compensation), the Court observes that, while the conditions for civil liability could in certain respects overlap, depending on the circumstances, with those for criminal liability, the civil claim was nevertheless to be determined on the basis of the principles that were applicable to the civil law of tort. The outcome of the criminal proceedings was not decisive for the compensation case. The victim had a right to claim compensation regardless of whether the defendant had been convicted or, as in the present case, acquitted, and the compensation issue was to be the subject of a separate legal assessment, based on criteria and evidentiary standards which differed in several important respects from those applicable to criminal liability.

58. In the Court’s view, the fact that an act which may give rise to a civil compensation claim under the law of tort is also covered by the objective constitutive elements of a criminal offence cannot, notwithstanding its gravity, provide sufficient grounds for regarding the person allegedly responsible for the act in the context of a tort case as being “charged with a criminal offence”. Nor can the fact that evidence from the criminal trial has been used to determine the civil law consequences of that act warrant such a characterisation. Otherwise, Article 6 § 2 would give a criminal acquittal the undesirable effect of pre-empting the victim’s possibilities for claiming compensation under the civil law of tort, thereby constituting an arbitrary and disproportionate limitation on his or her right of access to court under Article 6 § 1 of the Convention. This again could give an acquitted

defendant, who is deemed responsible according to the civil burden of proof, the undue advantage of avoiding any responsibility for his or her actions. Such an extensive interpretation would not be supported either by the wording of Article 6 § 2, or by any common ground in the national legal systems within the Convention community. On the contrary, in a significant number of Contracting States, an acquittal does not preclude the establishment of civil liability in relation to the same facts (see *Y. v. Norway*, no. 56568/00, § 41, 11 February 2003).

59. Thus, the Court considers that, while the acquittal from criminal liability ought to be maintained in the 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 (see, *mutatis mutandis*, *X v. Austria*, no. 9295/81, Commission decision of 6 October 1992, Decisions and Reports (D.R.) 30, and *M.C. v. the United Kingdom*, no. 11882/85, decision of 7 October 1987, D.R. 54).

60. However, if the national decision on compensation contains a statement imputing criminal liability to the respondent party, this could raise an issue falling within the ambit of Article 6 § 2 of the Convention (see *Y. v. Norway*, § 42, cited above).

61. The Court will therefore examine the question whether the domestic courts acted in such a way or used such language in their reasoning as to create a clear link between the criminal case and the ensuing compensation proceedings and to justify extending the scope of the application of Article 6 § 2 to the latter.

62. The Court notes that the Suceava Court of Appeal concluded its judgment with the following finding:

“For the above-mentioned reasons, [the court] considers that the applicant is guilty of the offence for which he was correctly indicted and his case sent for trial, the fact that the [lower] courts have acquitted him on the basis of the provisions of Article 47 of the [Romanian] Criminal Code (which is not applicable), is irrelevant in respect of the civil limb.”

63. That judgment was final, was delivered in the applicant’s absence and was not subject to appeal. Although the operative part of the judgment upheld the decisions of the lower courts in acquitting the applicant in respect of the criminal limb of the proceedings, the Court reiterates that, the reasoning in a judgment has the same binding effect as the operative part, if like in the present case, it forms its essential underpinning (see *Perez v. France* [GC], no. 47287/99, § 25, *in fine*, ECHR 2004-I). Consequently, the operative part of the judgment did not rectify the issue, which in the Court’s opinion, thereby remained.

64. The Court observes that the Court of Appeal took note of the fact that the applicant had been acquitted of the criminal charges by the lower courts, and that it upheld their judgments. However, in seeking to protect the legitimate interests of the purported victim, the Court of Appeal

expressly declared the applicant “guilty of the offence for which he was correctly indicted”. Consequently, the Court considers that the language employed by the Suceava Court of Appeal, overstepped the bounds of the civil forum, thereby casting doubt on the correctness of that acquittal. Accordingly, there was a sufficient link to the criminal proceedings which was incompatible with the presumption of innocence.

65. In the light of all the above considerations, the Court finds that Article 6 § 2 of the Convention was applicable to the proceedings relating to the compensation claim. Therefore, it dismisses the Government’s objection and concludes that there has been a violation of Article 6 § 2 of the Convention.

66. Having regard to its finding in respect of the applicant’s complaint under Article 6 § 2 of the Convention (above), the Court considers that it has examined the outstanding legal issue raised by the present application. Therefore, it does not consider it necessary to give a separate ruling on the remaining allegations of violations of Articles 6 and 7 of the Convention (see, *mutatis mutandis*, *Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Amanalachioai v. Romania*, no. 4023/04, § 63, 26 May 2009; *Fikret Çetin v. Turkey*, no. 24829/03, § 44, 13 October 2009; and *Efendioğlu v. Turkey*, no. 3869/04, § 35, 27 October 2009).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

68. The applicant claimed 2,618 euros (EUR) in respect of pecuniary damage and EUR 75,000 in respect of non-pecuniary damage.

69. The Government contested the existence of a causal link between the alleged violation and the pecuniary damage claimed by the applicant. Moreover, they submitted that the damage claimed by the applicant in respect of non-pecuniary damage was excessive and argued that the conclusion of a violation of the Convention would suffice as compensation for the non-pecuniary damage he had incurred.

70. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant suffered some non-pecuniary damage as a result of the infringement of his right to the presumption of

innocence in the present case. Making an assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicant also claimed EUR 5,075 in respect of lawyer and court fees and submitted receipts totalling ROL 72,150,000 (EUR 1,700).

72. The Government contested the amount and argued that the applicant's claims were excessive.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are also reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

74. Regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to award the applicant EUR 1,700, plus any tax that may be chargeable to him.

C. Default interest

75. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection that the applicant did not suffer a significant disadvantage;
2. *Joins to the merits* the Government's objection as to the applicability of Article 6 § 2 of the Convention and *dismisses* it;
3. *Declares* the application admissible;
4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
5. *Holds* that there is no need to examine separately the remaining complaints under Articles 6 and 7 of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President