



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

FIFTH SECTION

CASE OF KANGERS v. LATVIA

(Application no. 35726/10)

JUDGMENT

STRASBOURG

14 March 2019

FINAL

09/09/2019

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

In the case of Kangers v. Latvia,

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

Angelika Nußberger, *President*,

Ganna Yudkivska,

André Potocki,

Síofra O'Leary,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 February 2019,

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

PROCEDURE

1. The case originated in an application (no. 35726/10) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Jānis Kangers ("the applicant"), on 2 June 2010.

2. The applicant was represented by Mr A. Zvejsalnieks, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The applicant alleged, in particular, that a judgment finding him guilty of a repeat offence while his appeal with respect to the initial offence was still pending had been contrary to Article 6 § 2 of the Convention.

4. On 17 November 2015 notice of the complaint under Article 6 § 2 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Jūrmala.

A. First set of administrative offence proceedings

6. On 20 November 2008 the police drew up an administrative offence report (*administratīvā pārkāpuma protokols*) stating that the applicant had violated Article 149¹⁵(4) of the Code of Administrative Offences (*Latvijas Administratīvo pārkāpumu kodekss*) by driving a vehicle under the influence of alcohol with a blood alcohol concentration exceeding 1.5 permilles (0.15%). The applicant lodged an appeal.

7. On 1 December 2008 the Jūrmala City Court (*Jūrmalas pilsētas tiesa*) terminated the administrative offence proceedings, as it had failed to establish *corpus delicti*. This decision took effect on 5 January 2009, and the applicant's driving licence card was returned to him.

8. On 10 February 2009 a prosecutor lodged an appeal (*apelācijas protests*) against the decision of 1 December 2008. The Riga Regional Court (*Rīgas apgabaltiesa*) instituted appeal proceedings. On 23 February 2009 the applicant received notice of the hearing, which was set to take place in four days. He asked for the hearing to be postponed so that he could prepare his defence. The Riga Regional Court dismissed that request and heard the case in the applicant's absence.

9. By a judgment of 27 February 2009 the Riga Regional Court quashed the decision of 1 December 2008. It found that the applicant had committed an offence under Article 149¹⁵(4) of the Code of Administrative Offences and imposed the following penalties: fifteen days' administrative detention; a fine of 500 lats (LVL – approximately 685 euros (EUR)); a two-year driving ban; and a ban on obtaining a licence to operate recreational crafts for two years. The decision was not amenable to appeal and took effect on 6 March 2009 when its text was finalised.

10. The applicant complained to the Ministry of Justice that a final court decision had been quashed. On 26 March 2009 the Ministry responded that under the Code of Administrative Offences the prosecutor had the right to appeal against decisions taken in administrative offence proceedings and that there were no time-limits for doing so.

11. On 25 March 2009 the applicant requested that the execution of the judgment of 27 February 2009 be suspended. By a final decision of 28 April 2009 the Riga Regional Court dismissed that request.

B. Second set of administrative offence proceedings

12. On 31 July 2009 the police drew up an administrative offence report stating, *inter alia*, that the applicant had driven a car while disqualified, in violation of Article 149⁴(6) of the Code of Administrative Offences (hereinafter "the initial offence"). On 1 September 2009 a fine of LVL 250 (approximately EUR 343) was imposed on him. On 7 October 2009 that decision was upheld by the State Police.

13. On 19 October 2009 the applicant lodged an appeal with the administrative courts. He argued that on 1 December 2008 the first set of administrative offence proceedings had been terminated and that the relevant decision had taken effect. His driving licence card had been returned to him. Under domestic law, decisions that had become final could not be quashed on appeal.

14. On 20 December 2010 the Administrative District Court (*Administratīvā rajona tiesa*) dismissed the appeal, noting that the decision of 1 December 2008 had been set aside by the Riga Regional Court, whereas the judgment of 27 February 2009 revoking his right to drive vehicles had taken effect and was binding. Thus, on 31 July 2009 the applicant had driven a car even though his licence had been revoked.

15. The applicant appealed before the Administrative Regional Court (*Administratīvā apgabaltiesa*), which by a final judgment of 24 April 2012 upheld the judgment of the first-instance court. It added that the twenty-day time-limit for lodging an appeal only applied to persons against whom administrative offence proceedings had been instituted. It did not apply to prosecutors in the exercise of their right to lodge an appeal. Hence, in the applicant's case the prosecutor had been entitled to appeal against the decision of 1 December 2008 even after it had taken effect. Furthermore, the judgment of 27 February 2009 had become final and was legally binding. Its legality could not be reassessed in the present set of proceedings. Lastly, there was no indication that the applicant had been unaware of the fact that his driving licence had been revoked.

C. Third set of administrative offence proceedings

16. On 23 September 2009 the police drew up an administrative offence report stating that the applicant had driven a car while disqualified and that the offence had been committed repeatedly within a year, in violation of Article 149⁴(7) of the Code of Administrative Offences (hereinafter "the repeat offence"). The applicant lodged an appeal.

17. On 6 November 2009 the Riga City Zemgale District Court (*Rīgas pilsētas Zemgales priekšpilsētas tiesa*) found the applicant administratively liable under Article 149⁴(7) of the Code of Administrative Offences for driving while disqualified repeatedly within a year. In establishing the facts the court referred to the judgment of 27 February 2009 (see paragraph 9 above) and the administrative offence report of 31 July 2009 (see paragraph 12 above). The court imposed a penalty of five days' administrative detention and a fine of LVL 400 (approximately EUR 549).

18. The applicant appealed against this judgment arguing (i) that the judgment of 27 February 2009 was unlawful and (ii) that the repeated nature of the offence could not be established, as his appeal concerning the administrative offence report of 31 July 2009 (relating to the initial offence)

was still pending. The applicant requested that the court either terminate the proceedings or suspend them until the conclusion of the administrative offence proceedings concerning the initial offence.

19. On 26 February 2010 the Riga Regional Court by a final judgment upheld the finding that the applicant had committed a repeat offence. It noted that there was no reason to conclude that a person could not be found guilty of a repeat offence while the decision concerning the initial offence was being appealed against. The fact that the appeal proceedings were still pending could not be used as a criterion to determine whether the person had already been administratively punished. The only criterion for determining the repeated nature of the offence was whether or not the decision on the initial offence had been set aside or its legal effect suspended at the time the decision on the repeat offence was being taken. In the absence of such circumstances, the findings of the decision on the initial offence were legally binding and had to be taken into account when classifying the second offence as a repeat offence. Referring to Article 283 of the Code of Administrative Offences, the court noted that an appeal against a decision revoking a person's driving licence did not suspend enforcement of that decision. Accordingly, the appeal lodged against the decision concerning the offence of 31 July 2009 (the initial offence) did not preclude the offence under consideration being classified as a repeat offence and the proceedings being concluded while that appeal was still pending.

20. On 2 June 2010, when the applicant lodged his application with the Court, he submitted that he had already served the sentence of five day's administrative detention and had already paid the fine imposed in the third set of administrative offence proceedings. The Government did not contest this allegation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Administrative Offences

21. Article 149¹⁵(4) of the Code of Administrative Offences establishes administrative liability for driving a vehicle under the influence of alcohol, if the blood alcohol concentration exceeds 1.5 permilles (0.15%). The penalty for this offence (if the vehicle driven was a car) at the pertinent time was administrative detention for a period of ten to fifteen days, a fine of LVL 500 (approximately EUR 685) and a ban on driving vehicles for a period of two years. In addition, in accordance with Article 29 and Article 29³ of the Code, the driving ban also resulted in a ban on obtaining a licence to operate recreational crafts.

22. Article 149⁴(6) of the Code provides that a person is to be held administratively liable for driving without a licence or while disqualified. At

the relevant time the fine for this offence ranged from LVL 200 to 300 (approximately EUR 274 to 411).

23. Under Article 149⁴(7) the person is to be held liable for the same offence, if it has been committed repeatedly within a year. At the relevant time the penalty for a repeat offence was administrative detention of five to fifteen days and a fine of LVL 400 (approximately EUR 549).

24. Article 242 of the Code at the relevant time provided that a prosecutor exercised supervisory functions in administrative offence proceedings and could, *inter alia*, appeal against decisions taken in those proceedings. Article 282 set out the prosecutor's right to lodge an appeal against decisions taken in administrative offence proceedings. These provisions contained no indication of any time-limits. By contrast, under Article 281¹(2), persons against whom the judgment in the administrative offence proceedings had been taken had twenty days to lodge an appeal.

25. Article 283 of the Code at the relevant time provided that the lodging of an appeal, including a prosecutor's appeal, suspended the execution of the decision until the adjudication of the case. The provision contained some exceptions, including with regard to decisions concerning driving disqualifications.

B. Administrative Procedure Law

26. Section 185(1) of the Administrative Procedure Law provides that an application lodged with the court for an administrative decision to be set aside, declared invalid or declared as having lost its legal force, suspends the legal effect of that administrative decision from the date the application is received by the court. In accordance with section 185(4)(2), this provision is not applicable where different regulations in other laws apply.

C. Case-law of the Supreme Court

27. In relation to the domestic case-law concerning repeat administrative offences the Government submitted a judgment of 28 February 2008 delivered by the Administrative Department of the Senate of the Supreme Court (*Augstākās tiesas Senāta Administratīvo lietu departaments*) in a dispute between a limited liability company and the State Revenue Service. The case concerned a fine of LVL 100 (approximately EUR 137) for the repeat administrative offence of declaring goods under a false name. In its relevant part the judgment reads:

“[8] ... an administrative penalty is considered to be imposed from the moment the decision on administrative penalty takes effect.

[9] An institution's ... decision in an administrative offence case ... is an administrative decision. Accordingly, ... it takes effect at the moment it is served on the addressee.

[10] Even though an institution's decision on administrative penalty takes effect at the moment it is served on the addressee, ... it is amenable to administrative or judicial appeal.

Section 185(1) of the Administrative Procedure Law provides that an application for an administrative decision to be set aside suspends the legal effect of that administrative decision from the date the application is received by the court.

... in accordance with the aforementioned provision, the suspension of the legal effect of the administrative decision suspends any legal consequences of this administrative decision. Accordingly, if the aforementioned provision would be applicable to a decision on an administrative penalty, then in the event of an appeal during the court proceedings there would be no grounds to consider that the person has been administratively punished.

[11] However, section 185(4)(2) of the Administrative Procedure Law provides that the first paragraph of this section is not applicable to situations which are regulated by other laws. In other words, section 185(1) of the Administrative Procedure Law is not applicable if the situation is governed by *lex specialis* included in another law. Accordingly, it has to be established whether there is such *lex specialis*.

[12] Article 283 of the Code of Administrative Offences provides that the lodging of an appeal suspends the execution of the decision ...

Accordingly, with respect to the decisions imposing an administrative sanction, the Code of Administrative Offences provides that it is the *execution* of the decision that is suspended and not the *legal effect* of that decision, as is stipulated in section 185 of the Administrative Procedure Law.

[13] ... the suspension of the legal effect of a decision is a broader concept, which means that from the beginning of the appeal proceedings until their conclusion the legal situation is the same as [it was] prior to the taking of the administrative decision ... That is to say, all legal consequences of the administrative decision are suspended. By contrast, the suspension of the execution of an administrative decision is a narrower concept, which only concerns enforcement and not the other legal consequences of the administrative decision ... These other consequences remain effective ...

[14] It follows that Article 283 of the Code of Administrative Offences is *lex specialis* in relation to section 185(1) of the Administrative Procedure Law. That is to say, it contains a different regulation with respect to administrative offence proceedings as compared to the general norm included in the Administrative Procedure Law ...

Accordingly, the act of appealing a decision on administrative penalty in itself does not affect the legal status of the person as being administratively sanctioned.

...

[16] The Administrative Regional Court has rightly pointed out that a decision to hold a person administratively liable under a provision of the Code of Administrative Offences, under which one of the elements of the offence is repeated commission of that offence within a year of the administrative punishment ... would be unjustified if the first decision concerning the administrative punishment ... which formed the basis of establishing the repetitiveness, [was] quashed on appeal.

However, the Administrative Regional Court has drawn an unfounded conclusion that a person cannot be sanctioned under a provision that provides for repetitiveness

as one of the elements of that offence merely because the first decision concerning the administrative punishment is being appealed against ...

Thus, the fact whether the first decision is or is not being appealed against in itself cannot be used as a criterion to determine whether the person has been administratively sanctioned. The criterion is whether the first decision is in effect at the time the second decision is being taken. If it is in effect at the time the punishment for a repeat offence is being imposed (it has not been quashed, its legal effect has not been suspended), it is legally binding and, hence, has to be taken into account when classifying the second offence.

However, if a court when assessing the legality of the second decision (whereby the person has been held legally liable for a repeat offence) considers that adjudication of the case is not possible prior to the conclusion of the proceedings concerning the legality of the first offence (which formed the basis of the finding of the repeated nature of the offence), the court may suspend the proceedings ... After the first case has been adjudicated the court may take into account its outcome, thereby also attaining a fair resolution of the second case.

In addition, if the first decision is quashed after the proceedings concerning the repeat offence have been concluded, a fair resolution of the case may be attained by applying [the section of the Administrative Procedure Law concerning the initiation of administrative proceedings in the institution *de novo*, if the factual circumstances have changed in the addressee's favour, or the section on the adjudication of a case *de novo* on the basis of newly discovered circumstances, if the judgment or the institution's decision that had formed the basis of the decision in the administrative proceedings has been set aside].

On the other hand, if during the appeal proceedings the first decision is found to be legal, then in the second set of proceedings a fair resolution of the case may only be attained if the repeated nature of the offence was taken into account at the time of its adoption.

[17] The Administrative Regional Court has made an unfounded reference to a decision of the Supreme Court, taken in a plenary session, ... stating that a person being held criminally responsible in another set of criminal proceedings where the judgment *has not yet taken effect* cannot be invoked to establish repetitiveness. The Administrative Regional Court has not taken into account that an institution's decision in administrative offence proceedings takes effect when it is served on the addressee ... That is to say, at the time of lodging the appeal it *has already taken effect*."

THE LAW

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

28. The applicant complained that he had been found guilty of a repeat offence while his appeal concerning the initial offence was still pending, in violation of the presumption of innocence guaranteed under 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."

29. The Government contested that argument.

A. Admissibility

1. *Exhaustion of domestic remedies*

30. The Government pointed out that at the time the applicant had lodged his application with the Court the second set of administrative offence proceedings concerning the initial offence had not yet been concluded. Had the final judgment in those proceedings called the presumption of fact made in the third set of proceedings concerning the repeat offence into question, the applicant would have had access to an effective remedy – he could have requested new adjudication of the case on the basis of a change in factual circumstances.

31. The applicant disagreed that he should have had to await the final decision in the second set of proceedings. The essence of his complaint concerned the decision taken in the third set of proceedings concerning the repeated nature of the offence, and he had availed himself of every opportunity to appeal in relation to that decision.

32. The Court reiterates that the only remedies that Article 35 § 1 of the Convention requires to be used are those that relate to the breaches alleged and that, at the same time, are available and sufficient (see, among many authorities, *Fatullayev v. Azerbaijan*, no. 40984/07, § 151, 22 April 2010). According to the applicant, the violation of Article 6 § 2 emanated from the fact that the repeated nature of the offence had been established before the proceedings concerning the initial offence had been finalised. Consequently, prior to lodging his application with the Court the applicant was required to use only those domestic remedies which were capable of addressing that particular complaint.

33. The Court is of the view that a subsequent opportunity to challenge the ruling concerning the repeated nature of the offence would not have addressed the applicant's complaint that that finding had been made prematurely and in violation of the presumption of innocence. The Government did not refer to any remedy that would have enabled the applicant to invite the domestic courts to find a violation of the presumption of innocence from a procedural standpoint (compare *Konstas v. Greece*, no. 53466/07, § 29, 24 May 2011). Accordingly, the applicant was not required to await the outcome in the second set of administrative offence proceedings to potentially avail himself of the remedy proposed by the Government.

2. *Victim status*

34. The Government argued that the applicant could no longer claim to be a victim of a violation of Article 6 § 2 of the Convention, as the second

set of administrative offence proceedings had been duly concluded and he had been found guilty of driving while disqualified.

35. The applicant emphasised that the punishment in the third set of proceedings had been imposed before the conclusion of the second set of proceedings, even though the initial offence had been an integral element of the composition of the repeat offence. Thus, regardless of the outcome in the second set of proceedings, the third set of proceedings had been unfair, as he had not been given an adequate opportunity to defend himself.

36. The Court has held that an ultimate finding of guilt cannot negate the applicant's initial right to be presumed innocent until proved guilty according to law (see *Matijašević v. Serbia*, no. 23037/04, § 49, ECHR 2006-X, compare also *Mokhov v. Russia*, no. 28245/04, § 32, 4 March 2010 and *Kolomenskiy v. Russia*, no. 27297/07, § 107, 13 December 2016). Accordingly, the subsequent finding that the applicant had committed the chronologically earlier offence has no bearing on his victim status in relation to his complaint that he had been presumed guilty before his guilt had been determined by a final decision.

3. Significant disadvantage

37. The Government argued that the applicant had not suffered a significant disadvantage, as the alleged violation of his rights had not attained the minimum level of severity warranting consideration by an international court. The case concerned a *prima facie* justified presumption of fact and law, which in principle was not prohibited by the Convention, and there were appropriate safeguards to remedy a presumption that had later lost its basis. Furthermore, the fact that the second set of administrative offence proceedings concerning the initial offence was still pending was explicitly addressed by the courts in the third set of proceedings where the finding concerning the repeated nature of the offence was made. Thus the issue currently put before the Court had been properly considered by a domestic tribunal.

38. The applicant provided no submissions in relation to this objection.

39. 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 *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010). The presumption of innocence is one of the elements of a fair criminal trial and, as a procedural right, serves mainly to guarantee the rights of the defence and at the same time helps to preserve the honour and dignity of the accused (see *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 192, 10 April 2018). Assuming that it finds a violation, the breach of that right entails an unjustified designation of the applicant as being guilty of an offence and thus has a serious impact on the applicant's personal reputation, as well as on the fairness of the proceedings pending against him (see

El Kaada v. Germany, no. 2130/10, § 42, 12 November 2015, and *Diacenco v. Romania*, no. 124/04, § 46, 7 February 2012).

40. The Court adds that the practical effects of the applicant being found guilty of a repeat offence rather than of simply driving while disqualified cannot be regarded as insignificant. With this more serious classification of the offence the applicant was not only given a higher fine but also a custodial sentence of five days.

41. In view of the foregoing, the Court concludes that the applicant cannot be deemed not to have suffered a significant disadvantage for the purposes of Article 35 § 3 (b) of the Convention.

4. Conclusion

42. Accordingly, the Court dismisses the Government's aforementioned objections. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant argued that the quashing of the final decision of 1 December 2008 in the first set of administrative offence proceedings had contravened the principle of legal certainty. Hence, on 31 July 2009, when the record of the administrative offence of driving while disqualified in the second set of proceedings had been drawn up, he had had his driving licence. The appeal in relation to that decision had still been pending when he had been found guilty of repeated commission of the same offence within a year.

44. The repetitiveness had been one of the constitutive elements of the offence of which he had been found guilty in the third set of administrative offence proceedings. As he had not been found guilty of the initial violation, there had been no grounds to consider that the same violation had been committed repeatedly. A person could not be punished on the basis of assumptions. Imposing a penalty for the repeat offence before the final ruling concerning the initial offence had taken effect had been contrary to the presumption of innocence.

45. The Government argued that the applicant's complaint was in large part based on his objections against the first set of administrative offence proceedings. They emphasised that the decision of 1 December 2008 discontinuing the administrative offence proceedings had been quashed and that the judgment of 27 February 2009 revoking the applicant's driving

licence had taken effect. The domestic courts in the second and third set of administrative offence proceedings had been bound by this latter judgment.

46. Furthermore, relying on *Falk v. the Netherlands* ((dec.), no. 66273/01, 19 October 2004) the Government submitted that a person's right to be presumed innocent was not absolute. Presumptions of fact and law operated in every criminal-law system and were not prohibited in principle by the Convention, as long as the States remained within reasonable limits, taking into account the importance of what was at stake and maintaining the rights of the defence.

47. The Government further argued that the third set of administrative offence proceedings concerning the repeated nature of the offence had been based on the first set of proceedings revoking the applicant's driving licence and the second set of proceedings, in which the competent authorities had already established that the applicant had driven while disqualified. The domestic courts in the third set of proceedings had also directly addressed the issue of whether they could proceed while the second set of proceedings was still pending. Relying on established case-law of the Supreme Court, they ruled that the presumption of fact was reasonable. The Government argued that the domestic authorities had not overstepped the reasonable limits, considering that in the course of the second set of proceedings the outcome of the first set of proceedings could not be altered. On the contrary, the domestic authorities had emphasised that the judgment of 27 February 2009 had taken effect and had the force of law.

2. The Court's assessment

(a) The scope of the case

48. The Court notes at the outset that in the present case it cannot address the applicant's objections against the first set of administrative offence proceedings. His complaints to that effect have already been declared inadmissible by the Court at the communication stage for non-compliance with the six-month time-limit.

49. The assessment of the Court is therefore limited to the compliance with the presumption of innocence in the third set of administrative offence proceedings.

(b) General principles

50. Article 6 § 2 safeguards the right to be presumed innocent until proved guilty according to law. Viewed as a procedural guarantee in the context of a criminal trial itself, the presumption of innocence imposes requirements in respect of, *inter alia*, the burden of proof; legal presumptions of fact and law; the privilege against self-incrimination; pre-trial publicity; and premature expressions, by the trial court or by other

public officials, of a defendant's guilt (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 93, ECHR 2013, and the references cited therein).

51. Article 6 § 2 has been held to apply to situations where a court decision, rendered in one set of proceedings which has a link with another set of criminal proceedings simultaneously pending against the person, may have implied a premature assessment of the person's guilt (see *El Kaada*, cited above, §§ 37 and 63, and *Böhmer v. Germany*, no. 37568/97, § 67, 3 October 2002, where suspension of the prison sentence was revoked on the grounds that a new offence had been committed, even though that new offence was still pending investigation or trial; see also *Hajnal v. Serbia*, no. 36937/06, §§ 130-31, 19 June 2012, where pending criminal cases were taken into account in sentencing as an aggravating circumstance; and *Perica Oreb v. Croatia*, no. 20824/09, §§ 144-47, 31 October 2013, where pre-trial detention was extended on the basis of a conviction that was still pending on appeal).

52. The presumption of innocence under Article 6 § 2 will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before his guilt has been proved according to law. It suffices, even in the absence of a formal finding, that there is some reasoning suggesting that the court or the official in question regards the accused as guilty, while a premature expression by the tribunal itself of such an opinion will inevitably run foul of the said presumption (see, among other authorities, *Matijašević*, cited above, § 45, and *Mugoša v. Montenegro*, no. 76522/12, § 67, 21 June 2016).

53. It is the essence of the principle of presumption of innocence that it can only be invalidated by a final conviction in accordance with the law. The presumption of innocence cannot cease to apply in appeal proceedings simply because the accused was convicted at first instance (see *Konstas*, cited above, §§ 35-36).

(c) Application to the present case

54. Firstly, the Court observes that the Government did not contest that the administrative offence proceedings in question concerned a "criminal offence" for the purposes of Article 6 of the Convention (see also *Marčan v. Croatia*, no. 40820/12, § 33, 10 July 2014). Furthermore, the Government put forward no arguments with respect to the question of whether the finding of the repeated nature of the offence in the third set of administrative offence proceedings had amounted to the finding of the applicant's guilt in relation to the initial offence. Instead, they contended that the domestic courts had relied on a justified presumption of fact that had remained within reasonable limits.

55. The Court observes that in the third set of administrative offence proceedings the domestic courts established that the applicant had committed the offence of driving while disqualified repeatedly within a

year. In doing so the courts expressly referred to the administrative offence report of 31 July 2009 in relation to which the appeal was still pending before the first-instance court (see paragraphs 17 and 19 above). The conclusion that this initial offence constituted the basis for repetitiveness unavoidably implied that the applicant had also committed that initial offence (compare *Hajnal*, cited above, § 131, and *Perica Oreb*, cited above, § 147).

56. With respect to presumptions of fact or of law, the Court has indeed recognised that they operate in every legal system and that the Convention does not prohibit them in principle. It has, however, also noted that Article 6 § 2 does not regard presumptions of fact or of law provided for in the criminal law with indifference. It requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence (see *Salabiaku v. France*, 7 October 1988, § 28, Series A no. 141-A).

57. In assessing what was at stake, the Court acknowledges the importance of securing effective road safety by ensuring that traffic offences would not go unpunished (compare *Falk*, cited above). However, in respect to the applicant, the Court notes that because the applicant was found guilty of a repeat offence rather than of simply driving while disqualified he was not only given a higher fine but also a custodial sentence of five days (compare and contrast *Ioan Pop v. Romania* (dec.) [Committee], no. 40301/04, 28 June 2011). Moreover, the applicant was required to serve this sentence before the proceedings concerning the initial offence were completed.

58. In the cases where the Court has analysed presumptions of fact or of law in the context of criminal proceedings it has had particular regard to the procedural guarantees and the means of defence available to the accused for rebutting such presumptions (see *Falk*, cited above; *Salabiaku*, cited above, §§ 29-30; *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 36985/97, §§ 114-116, 23 July 2002; *Janosevic v. Sweden*, no. 34619/97, §§ 102-04, ECHR 2002-VII; *Radio France and Others v. France*, no. 53984/00, § 24, ECHR 2004-II; and *Ian Pop*, cited above). Invariably, in all of those cases the legal presumptions had been (or had constituted part of) the subject matter put before the domestic courts, allowing the defendants to exercise their defence rights. Where the procedural guarantees available for rebutting the presumptions were considered to be lacking, the presumption of innocence was found to be violated (see *Anghel v. Romania*, no. 28183/03, §§ 62-69, 4 October 2007).

59. In the present case, as the Government's submissions show, the presumption concerned the fact that the applicant had committed an offence that was the subject matter of a different set of proceedings. As shown by the wording of the Riga Regional Court (see paragraph 19 above) and the Government (see paragraph 47 above), the domestic courts considered

themselves to be legally bound by the administrative offence report concerning the initial offence, regardless of the fact that it was being appealed against. Accordingly, the applicant was left without any means of defence with respect to that presumption.

60. The Court reiterates that the presumption of innocence precludes a finding of guilt outside the criminal proceedings before the competent trial court, irrespective of the procedural safeguards in such parallel proceedings and notwithstanding general considerations of expediency (see *Böhmer*, cited above, § 67).

61. Therefore, the Court considers that the finding of the Riga Regional Court made in the third set of administrative offence proceedings, that the applicant had committed a repeat offence, even though his appeal in relation to the initial offence was still pending before the first-instance court in the second set of proceedings, was contrary to the applicant's right to be presumed innocent with respect to that initial offence.

62. There has accordingly been a violation of Article 6 § 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 1,696.12 euros (EUR) in respect of pecuniary damage, representing the fines imposed in the administrative offence proceedings, and EUR 15,000 in respect of non-pecuniary damage.

65. The Government disagreed that the fines could be regarded as losses caused by the alleged violation and considered that no award should be made under the head of pecuniary damage. They also argued that the applicant had failed to prove that he had suffered non-pecuniary damage and the causal link between the alleged violation and the damage. It considered that a finding of a violation in itself would constitute adequate and sufficient compensation.

66. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

67. The Court also considers that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

68. The applicant also claimed EUR 762.30 for the legal expenses incurred before the Court.

69. The Government submitted that should the Court consider it necessary to make an award under this head, it should be limited to the actual legal expenses incurred by the applicant in the amount of EUR 762.30.

70. 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 reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 762.30 for the proceedings before the Court.

C. Default interest

71. 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

1. *Declares*, by a majority, the complaint concerning the alleged violation of the presumption of innocence admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 6 § 2 of the Convention;
3. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Holds*, by six votes to one,
 - (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, EUR 762.30 (seven hundred and sixty-two euros and thirty cents), 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 amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge O'Leary is annexed to this judgment.

A.N.
C.W.

DISSENTING OPINION OF JUDGE O’LEARY

1. I am, regretfully, unable to subscribe to the majority’s finding of a violation under Article 6 § 2 of the Convention.

2. To understand the case and the concerns which may arise in relation to the finding of a violation of the presumption of innocence in the very particular circumstances of the present case, it is important to understand the timeline in relation to the three different but interconnected sets of proceedings before the Latvian courts. It may be unusual to commence a separate opinion with such a chronological presentation but in the instant case it appears necessary.

A. Timeline in relation to the three sets of domestic proceedings

3. The three sets of proceedings, with the second and third sets overlapping, progressed as follows:¹

- 20 November 2008 (I): The Police issued an administrative offence report in relation to the applicant finding that he had been driving under the influence of alcohol.

- 1 December 2008 (I): Jūrmala City Court terminates the administrative offence proceedings and returns the applicant’s driving licence card to him.

- 10 December 2009 (I): The prosecutor appeals this decision to the Riga Regional Court which he could do, with no time limit being specified in domestic law for such an appeal, in contrast to the twenty days with which a discontent applicant would have had to comply (see §§ 8 and 23 of the judgment).

- 27 February 2009 (I): The Riga Regional Court quashes the City Court decision, finds the applicant guilty of driving under the influence of alcohol and imposes the relevant penalties, including a two year disqualification from driving. This judgment was not amenable to appeal and became final on 6 March 2009. The final and binding nature of this judgment is indisputable under Latvian law.²

¹ A number is attributed to each procedural step (I, II, III), to designate the set of proceedings to which it belongs.

² Attempts by the applicant to suspend the execution of the judgment of 27 February 2009 also failed before the Jūrmala City Court and the Riga Regional Court on 7 April 2009 and 28 April 2009, respectively.

4. With this final judgment, the first set of proceedings ended. However, as we shall see, the applicant's complaints before this Court all stem from and relate to that first set of proceedings and to the judgment of the Regional Court of 27 February 2009, whose legal effects he continued to contest.

5. The second and third sets of proceedings commenced in July and September 2009 and, crucially, progressed on an overlapping basis, with the third set concluding before the proceedings in the second set had been determined by the court of first instance or on appeal.

- 31 July 2009 (II): The Police issue an administrative offence report in relation to the applicant finding that he had driven a car when disqualified and imposing a fine. The judgment refers to this as the “initial offence”.

- Unknown date (II): The fine for this “initial offence” is executed.

- 23 September 2009 (III): The Police issue an administrative report in relation to the finding that the applicant had driven a car when disqualified, characterizing the offence as a repeat one. Due to this characterization, the applicant became immediately liable under Latvian law for an increased fine and five to fifteen days in administrative detention.

- 7 October 2009 (II): Following an appeal by the applicant to the State Police authority – he claimed that the judgment of 27 February 2009 was unlawful – the administrative offence of 31 July 2009 (the “initial offence”) is upheld.

- 9 October 2009 (III): The applicant introduces his administrative appeal in relation to the repeat offence, relying again on the termination decision of 1 December 2008 and the alleged unlawfulness of the final judgment of 27 February 2009 in the first set of proceedings.

- 19 October 2009 (II): The applicant introduces his administrative appeal in relation to the “initial offence”.

- 6 November 2009 (III): The Riga City Zemgale District Court finds the applicant guilty of the repeat offence and imposes the increased fine and five day administrative detention sentence. It refers to the final judgment of 27 February 2009 which banned him from driving and to the administrative offence for ignoring this ban which was the subject of the 2nd proceedings.

– Unknown date (III): The applicant pays his fine and serves his administrative sentence for the repeat offence.

– 17 November 2009 (III): The applicant introduces his appeal in the third set of proceedings against the District Court decision of 6 November 2009 in relation to the repeat offence, arguing that the final judgment in the first set of proceedings of 27 February 2009 was unlawful and that the repeated nature of the offence could not be established given the pending appeal in the second set of proceedings in relation to the “initial offence”. He requests that the third set of proceedings be terminated or suspended until the conclusion of the second set of proceedings.

– 26 February 2010 (III): The Riga Regional Court, sitting on appeal in the third set of proceedings, upholds the finding that the applicant had committed a repeat offence. It relies on the final judgment in the first set of proceedings and on the fact that, for driving offences, the lodging of an appeal does not suspend the execution of a ruling withdrawing the driving license.

– 2 June 2010 (I - III): The applicant introduces his application before the European Court of Human Rights. It contains broad complaints in relation to all three sets of proceedings.

– 20 December 2010 (II): The Administrative District Court sitting at first instance in relation to the initial offence dismisses the applicant’s case. It notes the final and binding nature of the judgment of 27 February 2009 in the first set of proceedings and indicates that on 31 July 2009 the applicant could not have had the right to drive.

– Unknown date (II): The applicant appeals that District Court decision in the second set of proceedings.

– 24 April 2012 (II): The Administrative Regional Court, sitting on the appeal in the second set of proceedings, upholds the judgment of the first instance court in a judgment dated 24 April 2012. It confirmed that the judgment of 27 February 2009 in the very first set of proceedings had become final, was legally binding and that its legality could not be reassessed in the second set of proceedings brought by the applicant.

6. It is uncontested that the applicant knew that, when stopped by the police on 31 July and 23 September 2009, he had been disqualified from driving. However, despite the final and legally binding nature of the

judgment which imposed that disqualification, he considered it unlawful and continued to drive.

B. The applicant's complaints

7. Before the Court, the applicant introduced several complaints under Articles 1, 6, 2 and 4 of Protocol no. 7.

8. He complained, on the one hand, that the very first set of proceedings, which had ended in his conviction for driving under the influence of alcohol and the imposition of the two year driving ban, was unfair. This complaint, lodged in June 2010, was rejected as being out of time, the final judgment in those proceedings having been handed down on 27 February 2009, and having become final on 6 March of the same year. On the other hand, he complained that he had been convicted, in the third set of proceedings, with a repeat administrative offence, even though his guilt as regards the “initial administrative offence”, dealt with in the second set of proceedings, had not yet been established.³

9. When communicating this last complaint, the Court asked the respondent Government whether:

“the domestic courts’ findings in the proceedings against the applicant for repeated driving without a licence [were] compatible with the presumption of innocence, guaranteed by Article 6 § 2, in view of the ongoing proceedings reviewing the lawfulness of the first decision concerning driving without a licence”?

C. Was the presumption of innocence violated in the circumstances of the present case?

10. It follows from the case as communicated by the Court and argued by the applicant that the alleged violation of the presumption of innocence related to the third set of proceedings and not to the second set (which, at any rate, had not terminated when the application was lodged).

11. This understanding of the applicant's complaint runs through most of the relevant paragraphs of the judgment (see §§ 28, 31 – 33, 36, 40, 44). In § 36, for example, the majority finds:

“... the subsequent finding that the applicant had committed the chronologically earlier offence has no bearing on his victim status in relation to his complaint that he had been presumed guilty before his guilt had been determined by a final decision”.

³ A third complaint concerned the fact that the proceedings regarding the repeat administrative offence had been decided by the courts of general jurisdiction rather than the administrative courts. This complaint was rejected for non-exhaustion of domestic remedies.

12. In § 49 the Court limits its assessment to “the compliance with the presumption of innocence in the third set of administrative offence proceedings”.

13. It is only in § 61 that the Court adjusts the thrust of its reasoning and finds that the finding of the Riga Regional Court made in the third set of administrative offence proceedings – that the applicant had committed a repeat offence – was contrary to his right to be presumed innocent with respect to that “initial offence”, the subject of the second set of proceedings. In other words, the focus shifts from the third to the second set of proceedings.

D. What violations might the Court have found in the circumstances of this case?

14. Had the applicant’s complaint in relation to the first set of proceedings been lodged on time and been properly litigated the applicant might arguably have challenged the absence of any time-limit under domestic law for the lodging of an appeal against a decision terminating proceedings at first instance, the refusal to postpone the hearing organized precipitously before the appeal court and the absence of any appeal against the decision of the Regional Court, which decision was taken a mere two months after a first instance court had decided to terminate proceedings for absence of *corpus delicti* and following a hearing at which the applicant was not present. The Riga Regional Court was arguably, in those circumstances, the court of first and last instance. The applicant omitted to bring, on time or at all, these complaints in relation to the first, final and legally binding domestic court decision which imposed the driving ban and determined the outcome of all those which followed.

15. In relation to the second and third set of proceedings, the applicant might have challenged the refusal of his request to suspend or terminate the third set of proceedings before the Riga Regional Court until the conclusion of the second set of proceedings which were pending in relation to the initial administrative offence for violation of the driving ban. He might also have challenged the immediate execution of the penalty or, given the circumstances of the case, the fact that the second set of proceedings took longer than the third one.

16. The applicant did, to some extent, go for this broader, procedural unfairness path in relation to the third proceedings. As indicated in § 34, in answer to the respondent State’s arguments on loss of victim status, he argued that “the third set of proceedings had been unfair, as he had not been given an adequate opportunity to defend himself”.

17. In my view, the majority should have concentrated on this aspect of the applicant’s broadly framed Article 6 complaint. It might perhaps have found, in the circumstances, procedural unfairness in violation of

Convention standards.⁴ Instead, having communicated the complaint under Article 6 § 2, the Court has stuck to that more difficult terrain.

18. What are the consequences of doing so? It would appear that, from 6 March 2009, the applicant was subject to a legally imposed disqualification from driving given the final and legally binding terms of the Regional Court judgment of 27 February 2009 in the first set of proceedings. When stopped by the police in July and September 2009, the only question to be resolved in any appeal brought by the applicant was whether, factually, it was he who had been driving. The legal question of the disqualification itself was clear, final and legally binding. Appeals by the applicant seeking to reassert the District Court termination of proceedings of 1 December 2008 and overrule the Regional Court judgment of 27 February 2009 in the first set of proceedings were therefore manifestly ill-founded and doomed to fail. As the respondent State explains “the second administrative proceedings were in no way aimed at reviewing the legality or legitimacy of the sentence imposed in the first proceedings”.

19. For the reasons explained above, had the applicant challenged that first judgment in a timely fashion before this Court, he might have been able to present solid Article 6 grounds for this Court to find a violation of Article 6. He did not do so. However, the majority have, via application of the presumption of innocence, applied in relation to two different sets of subsequent legal proceedings, allowed the applicant to succeed in what he has all along been challenging, namely the legal effects of the judgment of 27 February 2009. The presumption of innocence trumps the applicant’s failure to comply with a binding court order disqualifying him from driving for two years.

20. Less than two months separate the commission by the applicant of what the majority designate as the “initial offence” (31 July 2009) and the “repeat” driving offence (23 September 2009). By introducing a manifestly ill-founded appeal against the “initial offence”, first before the police authority (two weeks *after* the commission of the second offence, already characterized as repeat) and then before the first instance administrative court (almost four weeks *after* the commission of the repeat offence), the applicant ensures that the second characterization – a repeat offence – is either vitiated or must be held in abeyance no matter how long the administrative proceedings relating to the manifestly ill-founded appeal in the second set of proceedings take. The applicant submits that, until the final

⁴ My vote against admissibility was on somewhat technical grounds as operative part 1 of the judgment is framed exclusively in terms of the alleged violation of the presumption of innocence. The applicant complained under Article 6; the Court communicated the case under Article 6 § 2. I might not have voted against the admissibility of a broader Article 6 § 1 complaint communicated differently, and would certainly not have voted against a complaint in relation to the first set of proceedings if such a complaint had been lodged in time.

conclusion of the Administrative Regional Court of 24 April 2012 in the second set of proceedings, he could not have been charged (or indeed been convicted) with a “repeat” offence, but perhaps only an offence under Article 149⁴ (6) of the Code of Administrative Offences.

21. By following his logic, and ignoring as irrelevant the first set of proceedings from which all else stems,⁵ the majority allows the dissuasive effect of domestic legislation to be lost in relation to a driver who simply refused to accept, and consciously decided to flout, the legal fact and legal consequences of a final, binding domestic judgment which he failed to challenge on time before this Court.

E. Conclusions

22. In my view, the presumption of innocence, whose object and purpose is described in the general principles reproduced in the majority judgment (§§ 50-53), has been misapplied. It is noteworthy that, having found a violation, the majority awards no just satisfaction.

23. The majority confuses the enforceability of the judgment in the first set of proceedings and the applicant’s conviction in the third set of proceedings, whose consequences are only assessed in relation to the second set of proceedings, as if the first set never occurred.⁶ As a matter of fact and law, whether the applicant accepted it was legal or not, he had been banned from driving by a court judgment in the first set of proceedings in 2008. That ban was enforceable when the two subsequent administrative offences for driving despite the ban were committed in July and September 2009. The applicant may have felt himself “innocent” or that the first set of proceedings were unfair,⁷ but he nevertheless went on to infringe a legally valid ban on driving a car. In this context, it is irrelevant whether the “initial administrative offence” (the subject of the second set of proceedings) was

⁵ The omission of any reference to this first judgment, which imposed the disqualification, is particularly noteworthy in § 55 of the judgment. See also, § 59 of the judgment which fails to recognise that the domestic courts considered themselves legally bound by that judgment and the driving ban it imposed.

⁶ In the admittedly different context of how the presumption of innocence operates in circumstances where criminal proceedings have been concluded, the Court recently reiterated in *O’Neill v. the United Kingdom*, no. 14541/15, § 40, 8 January 2019 (emphasis added), that: “*There is no single approach to ascertaining the circumstances in which Article 6 § 2 will be violated in the context of proceedings which follow the conclusion of criminal proceedings. However, much will depend on the nature and context of the proceedings in which the impugned decision was adopted, and 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 (see Allen v. the United Kingdom [GC], no. 25424/09, §§ 125-126, ECHR 2013)*”. In the present case nature and context have been forgotten and a single, if not singular, approach has been chosen.

⁷ A question which the Chamber could not examine as this complaint was out of time.

res iudicata or not when the third set of proceedings were concluded. What is important is that the judgment in the first set of proceedings imposing the driving ban was enforceable and, for the duration of its two year validity, the applicant was not allowed to drive a car. When he nevertheless did so, he was a (re)offender. This is very far from the scenario of a domestic court ignoring the presumption of innocence in appeal proceedings simply because the accused was convicted at first instance or from the other cases on the presumption of innocence relied on by the majority in §§ 50 - 51.⁸

24. Were the consequences of this judgment a careful reconsideration in Latvia of when and how administrative offence proceedings are scheduled, of the need to respect the rights of the defence under Article 6 of the Convention in administrative offence proceedings or of the automatic execution of a penalty for an administrative offence which is punitive in nature and includes administrative detention, this could be welcomed.

25. However, it could be argued that the judgment provides an incentive for those charged with certain administrative offences to introduce manifestly ill-founded appeals in order to suspend or quash the legal effects of a final, binding, prior court judgment. That is not a purpose which the presumption of innocence is intended to serve.

26. In a recent judgment of the United Kingdom Supreme Court, in which a majority of judges explained why they had difficulty, in admittedly different circumstances, following the case-law of this Court on Article 6 § 2 of the Convention, Lord Bridge stated:

“I am ... persuaded that, in its rulings upon the extent of the operation of article 6(2) of the Convention, the ECtHR has, step by step, allowed its analysis to be swept into hopeless and probably irretrievable confusion. An analogy is to a boat which, once severed from its moorings, floats out to sea and is tossed helplessly this way and that”.⁹

27. In the instant case the applicant should have brought his real Article 6 complaint in relation to the first set of proceedings on time. When he failed to do so, and to the extent that his remaining complaints were admissible, the majority should have chosen to navigate a simpler Article 6 route than the one on which they embarked.

⁸ See *Konstas v. Greece*, no. 53466/07, 24 May 2011, to which the majority refers in § 53 of the judgment.

⁹ See *R (on the application of Hallam) (Appellant) v. Secretary of State for Justice (Respondent)* [2019] UKSC 2, § 85.