



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

FIRST SECTION

CASE OF ILIAS PAPAGEORGIOU v. GREECE

(Application no. 44101/13)

JUDGMENT

Art 6 § 2 • Presumption of innocence • Civil court finding that applicant was driving under the influence of alcohol after acquittal by criminal courts • Civil proceedings instituted after criminal proceedings, before a different court and court composition, and with a separate assessment of facts • Outcome of criminal proceedings not decisive for civil case in domestic law • Language used not to be reasonably read as an affirmation imputing criminal liability, when read in the context of the judgment as a whole

STRASBOURG

10 December 2020

FINAL

10/03/2021

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

In the case of Ilias Papageorgiou v. Greece,

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

Ksenija Turković, *President*,
Krzysztof Wojtyczek,
Linos-Alexandre Sicilianos,
Alena Poláčeková,
Péter Paczolay,
Raffaele Sabato,
Lorraine Schembri Orland, *judges*,

and Abel Campos, *Section Registrar*,

Having regard to:

the application (no. 44101/13) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mr Ilias Papageorgiou (“the applicant”), on 5 July 2013;

the decision to give notice to the Greek Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 17 November 2020,

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

INTRODUCTION

1. The case concerns the alleged violation of the presumption of the applicant’s innocence on account of a final civil court finding that the applicant was driving under the influence, following his acquittal by the criminal courts for the same offence.

THE FACTS

2. The applicant was born in 1974 and lives in Athens. He was represented by Mr V. Sarakis, a lawyer practising in Athens.

3. The Government were represented by their Agent’s delegate, Mrs A. Dimitrakopoulou, Senior Legal Advisor at the State Legal Council.

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

5. On 2 July 2005, the applicant, while driving his car, was involved in a car accident. Mr D.S., the passenger in the applicant’s car, was injured. The police were called in the scene and the applicant was ordered to undergo a breathalyser test. The first test showed an alcohol level of 0.67 mg/l in the applicant’s breath and the second test showed an alcohol level of 0.57 mg/l.

6. On 24 October 2007 the applicant was acquitted of driving under the influence of alcohol, an offence provided for in Article 42 of Law

no. 2696/1999 (judgment no. 93819/24.10.2007 of the C Section of the Athens One-Member Misdemeanour Court). As, according to the information provided by the Government, in this type of acquittal decisions no minutes are kept by the court's registrar and only an extract (*απόσπασμα*), attesting the applicant's acquittal, is available, the reasons for this decision are not known. No remedies were exercised against that judgment which, thus, became final.

7. On 18 June 2007, D.S. lodged an action with the Athens One-Member Court of First Instance against the applicant and the insurance company in which the applicant's car was insured "X. S.A." (henceforth "the insurance company"). By this action, D.S. claimed that he had been injured in the car accident that took place on 5 July 2005 which had been caused by the applicant. He requested the amounts of 18,317.65 euros (EUR) as pecuniary damage and of EUR 150,000 as non-pecuniary damage.

8. On 30 October 2007 the insurance company lodged an incidental action (*παρεμπίπτουσα αγωγή*) against the applicant. By this action, it claimed that the insurance contract it had concluded with the applicant excluded damages and bodily injuries caused by the car driver if the latter was under the influence of alcohol or drug substances as provided for by Article 42 of the Traffic Code; that the applicant had been in a state of inebriation at the time of the car accident and, therefore, the damages caused to D.S. were excluded from insurance. It requested the court to recognise that the applicant, as owner of the insured car and driver of it at the moment of the accident, ought to reimburse to it any amount that it would be ordered to pay to D.S.

9. The Athens One-Member Court of First Instance issued judgment no. 2331/2008 by which it merged the two actions. It partly granted D.S.'s action, ordering the applicant and the insurance company to pay to him EUR 26,081.65 and EUR 850 for costs and expenses and dismissed the rest of D.S.'s claims. It also rejected the insurance company's incidental action against the applicant, holding that there was no causal link between the consumption of alcohol by the applicant and the accident caused.

10. On 25 August 2008 the insurance company lodged an appeal against the first-instance decision with the Athens Court of Appeal. By his observations before the appellate court, D.S. lodged a counter-appeal. The Athens Court of Appeal issued judgment no. 4800/2010 by which it concluded that the insurance company should pay to D.S. the amount of EUR 23,191.62, as well as EUR 1,000 for costs and expenses. The domestic court further held that the applicant was driving under the influence of alcohol and that that fact was causally linked with the accident caused, given that it had limited his ability to drive safely. More specifically, it held the following:

"... In the present case, it was proved that the...driver of the...car, at the time of the accident, was under the influence of alcohol, as alcohol amounting to 0.67 mg/l of

exhaled air at the first measurement and 0.57 mg/l of exhaled air at the second measurement was detected in him with the method of a breathalyser. That fact, in conjunction with his admission that he had consumed alcohol (two drinks and a glass of wine) in a bar where he was having fun with his friends until the early morning of that same day, and with the above-mentioned reckless driving behaviour he showed by his speed, exceeding by far the permitted limit of 50 km/hour, the ignorance of danger and the overestimation of his skills, lead to the conclusion that indeed, the above-mentioned driver was under the influence of alcohol. [That fact], contrary to what he argues, is causally linked to causing the accident, given that it limited his skill to drive safely and contributed to him driving recklessly and speedily, as mentioned above, [to a degree] that did not allow him to have full control of his vehicle and to be able to make the necessary manoeuvres in order to avoid an accident ...”

11. The appellate court held that the above-mentioned conclusion was not contradicted by decision no. 93819/2007 of the Athens One-Member Misdemeanour Court which had acquitted the applicant, as the civil courts were not bound by the decisions of the criminal courts, which they assessed freely along with the rest of evidence. Based on that reasoning, the appellate court held that the applicant’s conduct fell within the exemption clauses provided for by the insurance contract. As to the basis for civil liability, the judgment referred to the joint ministerial decision no. K4/585/1978 which, for its part, referred to the relevant article of the Traffic Code and formed part of the general insurance conditions that were annexed to the insurance contract (see paragraph 19 below). Therefore, the applicant should reimburse to the insurance company the amount the latter would pay D.S.

12. On 21 January 2011 the applicant lodged an appeal on points of law with the Court of Cassation. He argued, *inter alia*, that the decision of the appellate court violated his right to be presumed innocent following his acquittal by the criminal courts for the same facts.

13. By its decision no. 215/2013, the Court of Cassation rejected the appeal on points of law. As regards the acquittal decision of the criminal courts invoked by the applicant, the Supreme Administrative Court held that Article 6 § 2 of the Convention did not result in the civil courts being bound by *res judicata* of criminal courts. In the circumstances of the present case, the Athens Court of Appeal had taken into account the acquittal decision of the criminal court. It had formed its conclusions without making any interpretation as regards the reasons for the applicant’s acquittal and without expressing its views, directly or indirectly on the applicant’s criminal responsibility. Therefore, it had not put into question the presumption of the applicant’s innocence, as protected by Article 6 § 2 of the Convention.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. NATIONAL LAW

A. The constitution

14. The relevant provisions of the Constitution read as follows:

Article 93

“1. Courts are distinguished into administrative and civil and criminal courts, and they are organized by special statutes.”

Article 94

“2. Civil courts shall have jurisdiction on private disputes, as well as on cases of non-contentious jurisdiction, as specified by law.”

Article 96

“1. The punishment of crimes and the adoption of all measures provided by criminal laws belong to the jurisdiction of ordinary criminal courts.”

B. Civil Code

15. The relevant provision of the Civil Code reads as follows:

Article 330

“Unless otherwise specified, the debtor is liable for any wilful or negligent failure of the fulfilment of the contractual obligation, either attributed to him or to his legal representatives. Negligence exists when the diligence required in transactions is not paid.”

C. Code of Civil Procedure

16. The relevant provisions of the Code of Civil Procedure read as follows:

Article 321

“The definitive judgments of civil courts that one cannot lodge an application to set a judgment by default aside (*ανακοπή ερημοδικίας*) and an appeal shall be final and shall constitute *res judicata*.”

Article 339

“Pieces of evidence shall include the confession, the on-site inspection, the expert’s report, the documents, the parties’ testimonies, the witnesses, the judicial presumptions and affidavits.”

Article 340

“...

2. Except for cases explicitly defined in law, the court shall freely assess the evidence and shall decide according to its conscience whether the submissions are true. The decision shall state the reasons that led the judge to form his view.”

D. Code of criminal procedure

17. Article 28 of the Criminal Code reads as follows:

“By negligence shall act anyone who, due to the lack of attention he owed in the circumstances and could pay, either did not foresee the criminal result caused by his act, or foresaw it as possible, but believed that it would not happen.”

E. Traffic Code

18. Article 42 of the Traffic Code in its relevant parts provides as follows:

“1. No driver may drive a road vehicle under the influence of alcohol, toxic substances or medication that, according to their directions, may affect the driver’s ability. The driver submitted to a check shall be considered as being under the influence of alcohol when the alcohol’s percentage in his body is over 0.50 grams per blood litre, if measured by a blood test, or 0.25 mg per litre of exhaled air, if measured by a breathalyser ...”

F. Joint ministerial decision

19. Article 25 of the joint ministerial decision no. K4/585/1978 reads in its relevant parts as follows:

“...

8. Damages caused by a car driver who was under the influence of alcohol or drug substances, within the meaning and under the conditions of Article 42 of the Traffic Code, shall be excluded from insurance.”

G. Domestic case-law

20. Following different decisions by various sections of the Court of Cassation, the issue of whether civil courts are bound by the acquittal decisions of the criminal courts was referred to the full Plenary of the Court of Cassation. By decision no. 4/2020 issued on 15 July 2020, the Plenary of the Court of Cassation held that the decisions of the criminal courts, either acquitting or convicting the defendant, are not binding for the civil courts and *vice versa*.

21. In particular, it repeated that Articles 93 to 96 of the Constitution provide for the separation of domestic courts into civil, criminal and administrative. The decisions issued in the context of one jurisdiction are

assessed freely by the courts of another jurisdiction unless the law provides otherwise. The opposite conclusion would lead to the criminal courts being bound by the decisions of the civil courts, in case the latter had issued a decision first. Apart from that being against the Code of Criminal procedure regarding the assessment of evidence, it would lead to violation of the presumption of the defendant's innocence, given that his conviction would be certain beforehand when the civil courts had already concluded on his responsibility.

22. That conclusion was reinforced by two more elements; firstly by the different nature of the procedure and of the responsibility. The interpretation of negligence in criminal law is different from the one in civil law. In criminal law, the admission of negligence takes into account not only what one "had to do" but also what he personally could do. On the contrary, in civil law, negligence is more objective and is defined in Article 330 of the Civil Code as the "diligence that is required in transactions". It follows, thus, that the same person may be acquitted by the criminal courts because the element of what he personally could do is missing, but be considered by the civil courts as bearing responsibility because the measures he took were insufficient or inexistent based on the objective diligence.

23. Secondly, the above-mentioned conclusion was reinforced by the different rules on the distribution of the burden of proof. In criminal courts, the inquisitorial system is applicable and judges and prosecutors have to examine *ex officio* all evidence pointing towards the innocence or the criminal responsibility of the defendant. On the contrary, in civil courts the parties to the proceedings have the responsibility to adduce all evidence and the presumption of innocence is activated only if the parties adduce the acquittal decision of the criminal court to the civil court. In addition, each jurisdiction requires a different degree of judicial conviction. In criminal trial the principle *in dubio pro reo* prevails, whereas in civil trial, the judge needs to form full and certain opinion in order to admit that one bears civil responsibility.

24. It follows that the acquittal decision of criminal courts results from other (less severe) conditions, whereas the relevant decision of a civil court is the result of full judicial conviction. However, the civil court must take into account the acquittal decision as a strong piece of evidence but can depart from it with a fully reasoned decision.

25. The Court of Cassation reiterated the Court's case-law on the presumption of innocence holding that, under the Convention, following acquittal by a criminal court, the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof is not precluded. However, the reasoning of the civil courts must not question the acquittal by the criminal courts by, *inter alia*, referring that the defendant was acquitted due to doubts, or that he was acquitted by majority, or that the public prosecutor disagreed. The civil

court must remain within the borders of the civil trial avoiding any considerations related to the criminal offence that are not relevant for the civil trial so as not to give the impression that it examines also the criminal offence. The use of expressions must be made carefully so as not to question the acquittal by the criminal court. Finally, the assessment as to whether the presumption of innocence has been violated is made *in concreto* according to the facts of the case and of the reasoning used by the civil court.

II. EUROPEAN UNION LAW

26. Recital 17 of the Preamble of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings”, reads as follows:

“(17). The term ‘public statements made by public authorities’ should be understood to be any statement which refers to a criminal offence and which emanates from an authority involved in the criminal proceedings concerning that criminal offence, such as judicial authorities, police and other law enforcement authorities, or from another public authority, such as ministers and other public officials, it being understood that this is without prejudice to national law regarding immunity.”

27. Article 4 of the Directive, in its relevant parts, reads as follows:

Article 4 **Public references to guilt**

“1. Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.

...”

THE LAW

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

28. The applicant complained that the judgment of the civil courts holding that he was driving under the influence of alcohol violated his right to be presumed innocent following his acquittal by the criminal courts for that same offence. Article 6 § 2 of the Convention reads as follows:

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

A. Admissibility

1. *The Government's arguments*

29. The Government submitted that the applicant had not proved that there was a close link between the criminal and civil proceedings. Articles 93 to 96 of the Constitution provided for the separation of domestic courts into civil, criminal and administrative. In the circumstances of the present case, the civil and criminal courts had examined the case from different aspects, namely the criminal court had examined the applicant's criminal liability and the civil courts had examined his civil liability. The Athens One-Member Misdemeanour Court had concluded that the level of alcohol in the applicant's blood was not considered sufficient to establish his criminal liability; however, it was one of the elements taken into consideration by the civil courts in order to conclude on his civil liability, without though questioning his acquittal by the criminal court.

30. In addition, there were significant differences between the two sets of proceedings. The facts and the behaviour attributed to the applicant in the subsequent proceedings were not identical as to the ones examined by the criminal courts. The parties to the proceedings were different. Lastly, the procedural provisions and the applicable rules on the assessment of evidence were different. Therefore, the applicant had failed to prove that there was a sufficient link between the two sets of proceedings in order to engage Article 6 § 2 of the Convention.

31. The Government argued that the applicant had not claimed before the domestic courts that the civil courts were bound by the acquittal decision of the criminal court. On the contrary, he had argued that the inebriation alleged by the insurance company had not been proved as the latter had failed to provide sufficient and appropriate evidence. He had, thus, admitted that his acquittal by the criminal court alone was not sufficient to disprove his civil liability. Moreover, the applicant had not appealed against judgment no. 2331/2008 of the Athens One-Member Court of First Instance, which, even though it had rejected the incidental action lodged by the insurance company, it had not considered itself bound by the acquittal decision of the criminal court but had merely taken it into account, among other pieces of evidence.

32. The Government therefore invited the Court to conclude that the presumption of innocence was not engaged at all in the context of the civil proceedings and, in consequence, to declare the application inadmissible.

2. *The applicant's arguments*

33. The applicant replied that the distinction made by the Government about the two sets of proceedings was artificial. The presumption of innocence applied in principle when a case was brought before courts of

different jurisdiction. In the applicant's case, the two sets of proceedings had related to the same facts and to the same behaviour of the applicant but the criminal court had acquitted him for driving under the influence of alcohol, whereas the civil courts had ruled that he had been inebriated.

34. The applicant contended that criminal courts examine the criminal responsibility arising from a wrongful act and that civil courts examine the same wrongful act in order to conclude whether there is civil responsibility of the same person. In his case, the offence was prescribed in Article 42 of the Traffic Code and it was examined by both criminal and civil courts. Therefore, the distinctions made by the Government about the different type of liability or the different evidentiary procedure were artificial.

35. The applicant further argued that, pursuant to Article 5 § 2 of the Code of Administrative Procedure, administrative courts are bound by the *res judicata* of the civil and criminal courts. The same principle should apply to civil courts as well.

3. The Court's assessment

36. The general principles concerning the applicability of Article 6 § 2 in proceedings that follow the conclusion of criminal proceedings are set out in the Court's judgment *Allen v. the United Kingdom* [GC] (no. 25424/09, § 92 - 105, ECHR 2013).

37. In particular, the Court reiterates that the scope of Article 6 § 2 is not limited to pending criminal proceedings against an applicant, and can apply to judicial decisions taken after such proceedings were concluded either by way of discontinuation or acquittal (see *Allen*, cited above, §§ 98-102, for the summary of the earlier case-law in that connection). Such subsequent judicial decisions fall within the scope of Article 6 § 2 when, by virtue of the domestic legislation and practice, they are linked to the criminal proceedings and constitute "consequences and necessary concomitants of", or "a direct sequel to", the conclusion of the criminal proceedings (*ibid.*, §§ 99-100). Following discontinuation of criminal proceedings the presumption of innocence requires that the lack of a person's criminal conviction be preserved in any other proceedings of whatever nature (*ibid.*, § 102, with further references).

38. In *Allen*, the Court has clarified that, whenever the question of the applicability of Article 6 § 2 arises in the context of subsequent proceedings, the applicant must demonstrate the existence of a link between the concluded criminal proceedings and the subsequent proceedings. Such a link is likely to be present, for example, where the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant's participation in some or all of the events leading to the

criminal charge, or to comment on the subsisting indications of the applicant's possible guilt (see *Allen*, cited above, § 104).

39. In the present case, the Court notes that what comes into play is the second aspect of Article 6 § 2 of the Convention, the role of which is to prevent the principle of the presumption of innocence from being undermined after the relevant criminal proceedings have ended with an outcome other than a conviction. It has, therefore, to examine whether there was a link between any prior criminal proceedings and the civil proceedings which ended by decision no. 215/2013 of the Court of Cassation.

40. In this regard, it considers that the subsequent civil proceedings were linked to the criminal proceedings that were concluded by judgment no. 93819/24.10.2007 of the C Section of the Athens One-Member Misdemeanour Court. In particular, in the criminal proceedings the applicant was accused of driving under the influence of alcohol as the offence is provided for by Article 42 of the Traffic Code (see paragraph 18 above). The civil compensation claim was brought against the applicant by the insurance company because his contract excluded damages caused when the driver had been under the influence of alcohol as provided for by Article 42 of the Traffic Code (see paragraph 8 above). The civil courts, when deciding on the insurance company's claim, relied on the evidence collected by the police in the context of the criminal investigation, namely the measurements performed to the applicant with a breathalyzer at the time of the car accident (see paragraph 10 above), and ordered the applicant to reimburse to the insurance company the amount the latter would pay to D.S. Accordingly, under the relevant legislation and practice as applied by the domestic authorities and courts in the present case, the civil proceedings were linked to the criminal investigation.

41. For these reasons, Article 6 § 2 is applicable in the present case. The Court also notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

42. The applicant pointed out that the decision of the Court of Appeal, as confirmed by the Court of Cassation, had violated his right to be presumed innocent following his acquittal by the criminal courts. The admission of the civil courts that he was driving under the influence and that, for that reason, his ability to drive safely had been impeded, was directly opposite to the conclusion of the Misdemeanour Court which had acquitted him on 24 October 2007 for that same offence. In the applicant's view, the final decision of the civil courts had clearly ignored the acquittal decision and had cast a doubt on the presumption of his innocence, whereas civil courts

should have respected the presumption of innocence by rejecting the incidental action lodged by the insurance company.

43. The Government argued that it follows from the Court's case-law that an acquittal by a criminal court does not preclude the civil responsibility of someone based on a less strict burden of proof. In the circumstances of the present case, both the Court of Appeal and the Court of Cassation had fully respected the presumption of innocence. The Court of Appeal took into account as a piece of evidence the acquittal decision by the criminal court and did not engage in interpretation of it but assessed it along with other pieces of evidence. Furthermore, it did not rule directly or indirectly on the applicant's criminal guilt which would have been tantamount to questioning his earlier acquittal of the criminal charge. Similarly, the Court of Cassation did not put into question the applicant's acquittal. Therefore, in the Government's view, there was no violation of the presumption of the applicant's innocence in the present case.

2. *The Court's assessment*

(a) **General principles**

44. 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* [GC], cited above, § 93 and the case-law cited therein for examples of the above situations).

45. However, in keeping with the need to ensure that the right guaranteed by Article 6 § 2 is practical and effective, the presumption of innocence also has another aspect. Its general aim, in this second aspect, is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged (*ibid.*, § 94).

46. In cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal, the Court has emphasised that while exoneration from criminal liability ought to be respected in civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, if the national decision on compensation were to contain a statement attributing criminal liability to the respondent party, this would raise an issue falling within the ambit of Article 6 § 2 of the Convention (see *Allen*, cited above, § 123; *Ringvold v. Norway*, no. 34964/97, § 38, ECHR 2003-II;

Y v. Norway, no. 56568/00, §§ 41-42, ECHR 2003-II (extracts); and *Diacenco v. Romania*, no. 124/04, §§ 59-60, 7 February 2012).

47. Without protection to ensure respect for the acquittal or the discontinuance decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 314, 28 June 2018, with further references).

48. The language used by the decision-maker is of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2. Particular care ought to be exercised when formulating the reasoning in a civil judgment after the discontinuation of criminal proceedings (see *Fleischner v. Germany*, no. 61985/12, §§ 64 and 69, 3 October 2019). While use of some unfortunate language may not necessarily be incompatible with Article 6 § 2 depending on the nature and context of the particular proceedings, the Court has found that the presumption of innocence was violated in situations where the civil courts held that it was "clearly probable" that the applicant had committed a criminal offence or expressly indicated that the available evidence was sufficient to establish that a criminal offence had been committed (see *Allen*, cited above, §§ 125-26, with further references to the relevant precedents, including *Y v. Norway*, cited above, § 46, and *Diacenco*, cited above, § 64). When assessing the impugned statements, the Court must determine their true sense, having regard to the particular circumstances in which they were made (see *Bikas v. Germany*, no. 76607/13, § 46, 25 January 2018).

(b) Application in the present case

49. Turning to the present case, the Court observes that on 24 October 2007 the applicant was acquitted of driving under the influence of alcohol, an offence provided for in Article 42 of Law no. 2696/1999. No remedies were exercised against that judgment which, thus, became final. Following the applicant's acquittal, the civil courts were called to rule on the applicant's civil responsibility arising from the possible breach of his insurance contract. At the appeal stage, the Athens Court of Appeal issued judgment no. 4800/2010 by which it concluded that the applicant was driving under the influence of alcohol and thus, his conduct was excluded from the insurance contract he had signed with the insurance company. That judgment was upheld by the Court of Cassation in its decision no. 215/2013.

50. The Court firstly notes that it does not share the applicant's view that the acquittal decision itself should automatically exonerate him of any civil responsibility. On the contrary, it has repeatedly held that, while exoneration from criminal liability ought to be respected in civil compensation proceedings, it should not preclude the establishment of civil

liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof (see paragraph 46 above).

51. The Court notes that in the present case not only were the civil proceedings instituted later, but they also took place before a different court with a different composition of judges. They were therefore neither an accessory to the criminal proceedings (*a contrario*, *Lagardère v. France*, no. 18851/07, §§ 7 and 81, 12 April 2012) nor merely a continuation of the criminal proceedings (see *Ringvold*, cited above, § 41).

52. In this regard, the Court observes that, while the conditions for applying the impugned insurance policy clause could in certain respects overlap, depending on the circumstances, with those for establishing criminal liability, the insurance company's submission that the applicant, on account of his conduct, was liable for the damages they would be required to pay to D.S., was nevertheless to be determined on the basis of the principles that were proper to the civil law of tort (see *Lundkvist v. Sweden* (dec.), no. 48518/99, ECHR 2003-XI). By reference to the relevant articles of the joint ministerial decision, which for its part referred to the relevant article of the Traffic Code (see paragraph 11 above), the Court of Appeal made it clear that it had to examine an exemption clause of the insurance contract and no acknowledgment of criminal liability was intended (see *Fleischner*, cited above, § 67). The Court also notes that, according to the rules of domestic law, the outcome of the criminal proceedings was not decisive for the civil case. The insurance company had a right to rely on the exemption clause, regardless of whether the defendant was convicted or, as here, 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 (see paragraphs 20 - 25 above).

53. In addition, the civil jurisdictions determined the issue on the basis of the evidence presented before them. Unlike criminal procedural law, the civil courts had to rely on the evidence presented by the parties and rules on the burden of proof applied (see *Fleischner*, cited above, § 67). While some of that evidence had also been the evidence presented before the criminal jurisdictions, such as the measurements of the alcohol in the applicant's blood, the civil jurisdictions were required to examine and re-evaluate the elements therein (*ibid.*, § 68). Furthermore, these elements were accompanied by other evidence, the totality of which was brought to the courts' attention in adversarial conditions, and it was on the basis of that totality of evidence that the Court of Appeal ruled and its decision was later upheld by the Court of Cassation (see, *mutatis mutandis*, *Vella v. Malta*, no. 69122/10, § 59, 11 February 2014). In particular, it follows from the Athens Court of Appeal's conclusions that it took into account the measurements of the applicant's alcohol levels, but also his testimony before it and the speed of his car at the time of the accident in order to

conclude that the insurance exemption clause should apply. The Court of Appeal made a separate assessment of the facts in order to determine whether the constitutive elements of an offence had been fulfilled, but also assessed the additional elements for establishing civil liability (see *Fleischner*, cited above, § 68). It did not set out first to demonstrate that the applicant had in fact committed a criminal offence in order then to be able to rule on the compensation claim (see, *a contrario*, *Lagardère*, cited above, § 81).

54. The Court reiterates that the language used by the decision-maker is of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2. In the circumstances of the present case, it notes that the Athens Court of Appeal used the expression “was driving under the influence of alcohol”, as provided for by Article 42 of the Traffic Code. In the Court’s view this does not in itself present a problem, as the expression is not reserved for the criminal-law sphere but is equally used in the civil law of tort (compare *N.A. v. Norway*, no. 27473/11, § 48, 18 December 2014) as certain elements of a penal provision could be the basis for both criminal and civil liability (see *Fleischner*, cited above, § 63). Read in context of the judgment as a whole, the use of the said expression by the Court of Appeal in the instant case cannot reasonably be read as an affirmation imputing criminal liability on the part of the applicant. The Court also notes that the applicant himself has not put forward any allegations as regards the wording of the reasoning in the Court of Appeal’s judgment or in that of the Court of Cassation which upheld the judgment of the Court of Appeal.

55. In view of the above, the Court does not discern in the Court of Appeal’s reasoning any element in its description of the facts in respect of which it found the applicant civilly liable to pay compensation or in its assessment of those facts that could be viewed as amounting to the establishment of criminal guilt on the applicant’s part. Nor did the Court of Appeal’s reasoning contain any statement suggesting, either expressly or in substance, that all the conditions were fulfilled for holding the applicant criminally liable with respect to the charges of which he had been acquitted (see *Ringvold*, cited above, § 38).

56. In the light of the foregoing, the Court reiterates that particular care ought to be exercised when formulating the reasoning in a civil judgment after the discontinuation of criminal proceedings. However, taking into account the nature and context of the civil proceedings in the present case, it considers that the finding of civil liability was not contrary to the presumption of innocence. Those terms could not reasonably have been read as an affirmation imputing criminal liability. There has accordingly been no violation of Article 6 § 2 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 2 of the Convention;

Abel Campos
Registrar

Ksenija Turković
President