



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

FIFTH SECTION

CASE OF MACHALICKÝ v. THE CZECH REPUBLIC

(Application no. 42760/16)

JUDGMENT

Art 6 § 2 • Presumption of innocence • Reasoning and wording used by the civil courts when dismissing the applicant's compensation claim brought against the State, after the discontinuation of criminal proceedings against him as being time-barred, amounted to an explicit imputation of criminal liability

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 October 2024

FINAL

10/01/2025

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

In the case of Machalický v. the Czech Republic,

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

Mattias Guyomar, *President*,
Lado Chanturia,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Stéphane Pisani,
Úna Ní Raifeartaigh, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 42760/16) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Oldřich Machalický (“the applicant”), on 18 July 2016;

the decision to give notice to the Czech Government (“the Government”) of the complaint concerning the applicant’s right to presumption of innocence and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 3 September 2024,

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

INTRODUCTION

1. The case concerns an alleged violation of the presumption of innocence during compensation proceedings brought against the State by the applicant following the discontinuation of criminal proceedings against him as being time-barred (Article 6 § 2 of the Convention).

THE FACTS

2. The applicant was born in 1954 and lives in Roztoky. He was represented by Mr R. Jelínek, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. In January 2003 criminal proceedings were opened against the applicant, who was charged with fraud, in connection with actions he had committed in his capacity as a bank manager in 1993 and 1994 (known in the Czech Republic as the “H-system” case). In December 2004 he was formally

indicted for that offence by the prosecutor and tried by the Prague Municipal Court (hereinafter “the criminal court” or “the court”). Since the subjective element of fraud – that is, the fact that the applicant’s actions had been wilful and premeditated – could not be established, the criminal court changed the legal classification of the offence to mismanagement of another’s property.

6. In its decision of 9 January 2009 the criminal court observed that the facts established “allowed for the conclusion that the applicant (together with other persons) had committed the offence of mismanagement of another’s property”. However, since the five-year limitation period for that offence had expired before the applicant had been charged, and since the evidence available was not sufficient for his actions to be characterised as fraud, for which the Criminal Code set a ten-year limitation period, the court discontinued the criminal proceedings as being time-barred.

7. The prosecutor appealed against that decision and it was quashed on 4 November 2009. The case was remitted to the criminal court, which on 23 July 2010 again decided that the criminal proceedings against the applicant had to be discontinued as being time-barred. After referring to the above statements made in its decision of 9 January 2009, which it repeated on pages 100-01 of its decision of 23 July 2010, the criminal court went on to re-examine whether the applicant could be prosecuted for fraud, and concluded that he could not. That was because the prosecutor’s assertions that the applicant had since the beginning acted with fraudulent intent and agreed with other perpetrators on the means of carrying out the fraud could not be proved. The court noted, on pages 137 and 141 of its decision, that the applicant’s actions could only be characterised as mismanagement of another’s property, in respect of which the five-year limitation period had expired before the charges had been brought against him.

8. The applicant was instructed that if he declared, within three days from the notification of the decision of 23 July 2010, that he insisted on the case being examined, the criminal proceedings against him would be pursued. This procedure involves a person requesting that an examination of the criminal charges be continued notwithstanding that they have been found to be time-barred. If such a request is made, the proceedings continue and a conclusion on guilt or innocence is reached (Article 11 § 3 of the Code of Criminal Procedure; see paragraph 20 below). The applicant did not make use of that possibility. An appeal by the prosecutor against the court’s decision was dismissed by a higher court on 9 March 2011.

II. COMPENSATION PROCEEDINGS UNDER THE STATE LIABILITY ACT

9. In October 2011 the applicant lodged a claim under section 14 of the State Liability Act (Law no. 82/1998) with the Ministry of Justice, seeking

compensation for the legal expenses he had incurred in the above-mentioned criminal proceedings and for related loss of income.

10. In April 2012 the Ministry found the claim to be unfounded, given that the statutory requirement of a decision which had been quashed or changed on the grounds of its unlawfulness had not been satisfied in the present case. Nor had the applicant been in a situation which, according to judicial practice, amounted to an unlawful decision on bringing charges, meaning a situation where the criminal prosecution had been discontinued on grounds other than those mentioned in section 12 of the State Liability Act, namely because the accused had not perpetrated the alleged actions, or where he or she had been acquitted, and was thus to be regarded as not having committed the offence. In the present case, however, the applicant's prosecution had been discontinued as time-barred rather than because he had not committed the actions in respect of which the prosecution had been brought. It was also to be noted that the applicant had not asked to have the criminal proceedings against him pursued, thus depriving himself of the possibility of being acquitted, which would have rendered his prosecution unlawful.

11. On 21 May 2012 the applicant lodged a claim for compensation with the Prague 2 District Court, emphasising that he had been prosecuted for the offence of fraud, which had not been proved, and that his guilt had not been established by any court decision.

12. On 27 November 2013 the District Court dismissed the applicant's action. Accepting that his criminal prosecution had not led to a final conviction, which was why the decision to bring that prosecution could be formally regarded as having been quashed on account of its unlawfulness, the court considered, referring to the "clear" statements made by the criminal court on pages 100-01 and 141 of its decision of 23 July 2010 (see paragraph 7 above), that although the applicant's criminal prosecution had been discontinued as being time-barred, there was no doubt that he had committed an act fulfilling the constituent elements of the offence of mismanagement of another's property. In that context, the civil court referred to a judgment of 17 September 2012 in which the Supreme Court had held that, while the expiry of the limitation period meant the extinction of a perpetrator's criminal liability given that the need for a criminal-law response to an offence progressively attenuated over time, that circumstance could not have any bearing on the fact that a specified person had committed a legally reprehensible act. In such a situation the Supreme Court had considered it appropriate to apply section 12(1)(b) of the State Liability Act, pursuant to which compensation could not be granted to a person whose criminal prosecution had been discontinued on the ground that he or she was not criminally liable for the offence committed. Indeed, the passage of time could not imply that a person who had, according to the findings of the criminal proceedings, committed an offence should be considered a person whose

conduct was free from any unlawfulness and who should be compensated for having been prosecuted.

13. The applicant appealed, challenging the civil court's extensive interpretation of section 12 of the State Liability Act, which had *de facto* created a new ground for denying compensation. He was of the view that to be able to state that he had committed the offence of mismanagement of another's property, the civil court would have been obliged, at the very least, to rehear all the evidence taken by the criminal court.

14. On 28 April 2014 the Prague Municipal Court upheld the judgment of 27 November 2013, endorsing the conclusion that section 12 of the State Liability Act should be applied *per analogiam*, as the mere fact that the limitation period had expired did not imply that the decision to bring the prosecution had been unlawful. The court also observed that the applicant had not sought to have the criminal proceedings against him continued and the question of guilt determined, which would have allowed him, in the event of an acquittal, to seek compensation. Since he had not availed himself of that possibility, it could only be inferred *per analogiam* from section 12(1)(b) of the State Liability Act that he had no right to compensation on account of his criminal prosecution having been discontinued as time-barred. Indeed, if the applicant had insisted on the continuation of the criminal proceedings, he would have had an opportunity to prove (for example, by means of a decision to acquit him) that the decision to bring the prosecution had been unlawful. Such a conclusion could be reached even without reference to the reasoning of the criminal court's decision of 23 July 2010, in which that court had held that the applicant had committed the offence of mismanagement of another's property. In that respect, the Municipal Court agreed with the applicant's objection that, while the civil court would have been bound by a decision by the competent authorities that an offence had been committed, in the present case there had been no such decision as to his guilt and punishment.

15. The applicant lodged an appeal on points of law challenging the Municipal Court's interpretation according to which there could have been an "unlawful decision" only if he had asked for the criminal proceedings against him to be continued and obtained a decision in his favour (such as an acquittal). In his view, the unlawfulness of the decision to bring the prosecution stemmed from the very fact that that decision had been taken after the expiry of the limitation period. Even if he had insisted on the continuation of the criminal proceedings and obtained an acquittal, the initial decision to open the prosecution would not have been quashed.

16. On 11 February 2015 the Supreme Court rejected the applicant's appeal on points of law as being inadmissible. It observed that under the State Liability Act, compensation could be granted to a person whose criminal prosecution had been discontinued on the grounds that he or she had not committed the offence (typically, as provided by Article 172 § 1 of the Code of Criminal Procedure, (a) when there was no doubt that the act had not

occurred, (b) when the act did not constitute an offence, or (c) when it was not established that the act had been committed by the prosecuted person). On the other hand, in cases where a criminal prosecution was discontinued with the opposite conclusion, namely that the prosecuted person had committed a reprehensible act amounting to a criminal offence, the award of compensation was excluded by section 12(2)(b) and (c) of the State Liability Act on the basis that to do so would be contrary to good morals. In the Supreme Court's view, it was not relevant in that respect whether there had been any change in legal classification because the impugned act remained the same in any case and any compensation claim could only be linked to the act for which the person had been prosecuted. The fundamental issue underlying those conclusions was again the fact that the act committed by the person had constituted an offence. In the present case, the criminal court had stated in its discontinuation decision that the applicant had committed an offence; only a judgment acquitting him (and not the mere fact that the accused had insisted on the continuation of the criminal proceedings) would have been capable of demonstrating the contrary. Lastly, the Supreme Court found that the appeal on points of law could not be allowed on account of the applicant's complaint relating to the presumption of innocence: while, admittedly, he had not been convicted by a final decision, the criminal court had stated that he had committed an act fulfilling the constituent elements of the offence.

17. The applicant subsequently lodged a constitutional appeal against the decision of the Supreme Court, in which he complained, *inter alia*, of a violation of the principle of presumption of innocence and the *per analogiam* interpretation of the State Liability Act in his case. In his view, it followed from the criminal court's decision on the discontinuation of the proceedings that it had established that he had not committed the offence of fraud for which he had been prosecuted. In such a situation, having been unlawfully prosecuted for eight years, he could not have been expected to seek the continuation of the proceedings. The applicant also complained that the civil courts dealing with his compensation claim had rejected his proposal to rehear all the evidence previously taken by the criminal court and that, apart from the decision of 23 July 2010, they had not examined any evidence as to their assertion that he had committed the offence of mismanagement of another's property.

18. In its decision of 19 January 2016, the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded (III. ÚS 1391/15). Observing that civil courts were bound only by the operative part of a criminal court's judgment convicting a defendant but not by its reasoning or by a decision on the discontinuation of a criminal prosecution, it noted nonetheless that the courts dealing with the applicant's compensation claim had been fully competent to examine the matters covered by the reasoning of the criminal courts' decisions, the applicant's actions and

their impact on the compensation proceedings. In so doing they had taken into account the reasoning of the criminal court's decision on discontinuation, which was based on ample evidence and free from arbitrariness, but had not assessed the facts underlying the conclusion on the applicant's guilt. That, admittedly, could not be considered to have constituted a thorough review but was not sufficient to justify the quashing of their decisions.

Furthermore, the Constitutional Court accepted the application *per analogiam* of section 12 of the State Liability Act, which relied on the previous practice of the Supreme Court, and endorsed the conclusion according to which compensation for damage caused by a criminal prosecution could not be granted to a person who had been prosecuted for an act amounting to an offence which had lost its criminal character owing to statutory limitation. It observed that the fact that the initial legal characterisation of an act had not been confirmed did not render the criminal prosecution unlawful since the perpetrator could still be convicted for the same act but under a different provision of the Criminal Code; nor did the criminal prosecution become unlawful because the perpetrator could no longer be convicted, since he or she had still committed the act giving rise to that prosecution.

Lastly, the Constitutional Court found that, considered together, the criminal courts' decisions of 23 July 2010 and 9 March 2011 and their extensive reasoning offered a sufficient basis to conclude that the applicant had committed the offence of mismanagement of another's property, releasing the civil courts from the obligation to take more evidence. That was all the more so since the burden of proof in the compensation proceedings had lain with the applicant; however, it did not appear from the file that he had challenged the findings of fact made by the criminal courts.

Thus, the civil courts' conclusion, based on the criminal courts' decisions, that the applicant had committed an act contrary to the Criminal Code had constituted, in the specific circumstances of the case at issue, a legitimate reason for not granting the compensation sought.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CODE OF CIVIL PROCEDURE

19. Under Article 135 of the Code of Civil Procedure, a civil court is bound by a decision by the competent authorities that an offence has been committed and by their conclusions as to who committed it; as to other questions which should be dealt with by another authority, the court is allowed to assess them but should base its assessment on a decision by the competent authority if such a decision exists.

II. CODE OF CRIMINAL PROCEDURE

20. Under Article 11 § 3 of the Code of Criminal Procedure, as in force at the material time, criminal prosecution which has been discontinued as being time-barred shall be pursued if the person charged stated, within three days following the notification of the discontinuation decision, that he or she insisted on the case being examined.

III. STATE LIABILITY ACT (LAW NO. 82/1998)

21. Section 12(1) of the State Liability Act provides that there is no entitlement to compensation for damage caused by a criminal decision in the case of (a) a person who has caused his or her own detention or conviction, or the imposition of a protective measure, or (b) a person who has been acquitted or whose prosecution has been discontinued solely because he or she is not criminally liable for the offence committed.

Under Section 12(2) there is no entitlement to compensation for damage in the case when (a) it was not possible to pursue the proceedings for the reasons provided by a special law, (b) criminal prosecution had been conditionally discontinued and the discontinuation became effective, (c) the decision on discontinuation of criminal prosecution was part of a settlement agreement, and (d) criminal prosecution was discontinued for the reasons provided by a special law.

IV. DOMESTIC COURTS' PRACTICE

22. The Government submitted examples of domestic case-law (for example, judgment of the Prague Municipal Court no. 30 Co 566/2010 of 25 January 2011), according to which a prosecuted person is not entitled to compensation for an unlawful decision where the prosecution has been discontinued but where it has been simultaneously established that the prosecuted person engaged in conduct constituting a criminal offence. That can occur when the prosecution is discontinued as being time-barred while at the same time it has been reliably established that, but for the expiry of the limitation period, the person concerned could have been convicted and punished. In such cases, section 12 of the State Liability Act should apply *mutatis mutandis*.

23. In its judgments no. 28 Cdo 605/2012 of 17 September 2012 and no. 30 Cdo 408/2013 of 28 January 2014, the Supreme Court found that it would be inappropriate to grant a right to compensation in cases where a criminal offence had been committed and the fact that the perpetrator had not been convicted of that offence was based on conditions objectively laid down by law. If there was no doubt that the person concerned had indeed committed an act amounting to a criminal offence but the offence had ceased

to be punishable, then clearly this was a situation contemplated by the provisions of section 12 of the State Liability Act, which was intended to exclude the right to compensation for damage caused by a prosecution whose outcome had not established that the person prosecuted had not committed an act classified by law as a criminal offence. If the right to compensation were to be granted in such a case although, according to the conclusions reached in the criminal proceedings, the person prosecuted had indeed committed an unlawful act constituting a criminal offence, that would be at odds with the principle of *ex injuria jus non oritur* (no law arises from an illegal act).

THE LAW

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

24. The applicant complained that, when dismissing his action for damages in relation to his criminal prosecution, the civil courts had considered that he had perpetrated an act amounting to a criminal offence, even though the criminal proceedings against him had been discontinued as being time-barred.

He complained of a violation of the presumption of innocence, as provided for in Article 6 § 2 of the Convention, which reads as follows:

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

A. Admissibility

1. Arguments of the parties

25. The Government contended that the application was incompatible *ratione materiae* with the Convention. They pointed out that, prior to any decision to discontinue criminal proceedings, the criminal court was always called upon to determine the legal classification of the alleged act, in order to assess whether the conditions had been met for a more favourable decision in respect of the defendant. In the present case, it clearly followed from the reasoning of the decision of 23 July 2010 that the criminal court had reliably established, following lawfully conducted proceedings in which the applicant had made full use of his defence rights but which had had to be discontinued as time-barred, that the acts for which he had been prosecuted had taken place and amounted to the offence of mismanagement of another’s property. For that reason, and because the applicant had not sought any redress in that respect (see paragraph 27 below), they submitted that Article 6 § 2 could no longer be applied to the subsequent compensation proceedings in which the civil courts had only relied on those findings.

26. Referring to *Konstas v. Greece* (no. 53466/07, §§ 35-36, 24 May 2011), the Government argued that the presumption of innocence ended once guilt had been established by lawful means, which made Article 6 § 2 of the Convention inapplicable to subsequent proceedings. That had been so in the instant case, as confirmed by the Constitutional Court (see paragraph 18 above), which had found that the criminal courts' decisions of 23 July 2010 and 9 March 2011 offered a sufficient basis to conclude that the applicant had committed the criminal offence at issue. In the Government's view, the case-law cited by the applicant was not pertinent because in the cases relied on by him (see paragraph 29 below) the criminal proceedings had been discontinued as being time-barred by an investigator or prosecutor before they reached the courts, while in the case at hand the discontinuation had occurred following adversarial proceedings in the criminal court.

27. Furthermore, the Government raised an objection of non-exhaustion of domestic remedies in respect of the criminal court's decision. Considering that it was, in the first place, the Prague Municipal Court which had made some questionable statements in its discontinuation decision of 23 July 2010, they were of the view that the applicant should have asked for the criminal proceedings to be pursued (see paragraph 8 above). Had he availed himself of that possibility, he could have sought redress, for example, by means of a finding that the criminal court had violated the presumption of innocence by inferring that he had committed the offence in question or by means of an acquittal, which would have allowed him to seek compensation.

28. The Government also objected that the applicant should have sought compensation under the State Liability Act for any non-pecuniary damage suffered on account of the alleged violation of the presumption of innocence in the reasoning adopted by the civil courts in the compensation proceedings. They relied on the case-law of the Czech Supreme Court, according to which any content or reasoning of a court decision which was contrary to the law or amounted to a breach of the rights of the person concerned could be classified as official misconduct within the meaning of the State Liability Act.

29. The applicant contested the Government's objection of incompatibility *ratione materiae* and their submission that his guilt had been lawfully established in the criminal proceedings; he asserted that the criminal courts had not examined whether all the constituent elements of the offence of mismanagement of another's property had been fulfilled and that they had not given a judgment convicting him (he referred in that connection to *Teodor v. Romania*, no. 46878/06, §§ 36-46, 4 June 2013; *Agapov v. Russia*, no. 52464/15, §§ 38-45, 6 October 2020; and *Felix Guțu v. the Republic of Moldova*, no. 13112/07, §§ 47-54, 20 October 2020). Given that the criminal proceedings against him had been discontinued, he should not have been treated as though he were in fact guilty. In his view, the reasoning contained on pages 137 and 141 of the discontinuation decision of 23 July 2010

indicated instead that the criminal court would in all likelihood have acquitted him had the limitation period not expired.

30. In the applicant's view, it also followed from the above that in the discontinuation decision of 23 July 2010 the criminal court had not reached any clear finding as to his guilt (which it could only have done in a judgment convicting him) but had merely indulged in an incomplete and inaccurate summary of its previous decision. Thus, the reasoning of that decision had not violated the presumption of his innocence, so he had had no reason to defend himself by asking for the criminal proceedings to be continued, as proposed by the Government (see paragraph 27 above). Moreover, such a remedy could not have been directed against the reasoning of the discontinuation decision and could not have led to an examination of the correctness of its operative part; instead, it could only have resulted in an examination of whether or not he had committed the offence (and in the affirmative, no sentence could have been imposed on him, owing to the expiry of the statutory limitation period).

31. As to the Government's objection that he should have instituted another set of compensation proceedings (see paragraph 28 above), the applicant submitted that it would have been inefficient, uneconomical and procedurally inadmissible to bring such an action in order to challenge the problematic passages of the civil courts' decisions. Indeed, he had duly challenged those decisions by means of remedies available for that purpose within the initial compensation proceedings, including a constitutional appeal, which, however, had not persuaded the Constitutional Court to find that there had been any breach of the presumption of innocence.

2. *The Court's assessment*

(a) *Compatibility ratione materiae*

32. The Court reiterates that there are two aspects to the protection afforded by Article 6 § 2 of the Convention. Firstly, Article 6 § 2 protects the right of any person to be "presumed innocent until proved guilty according to law". Regarded as a procedural safeguard in the context of the criminal trial itself, 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. In such cases, the procedural guarantees inherent in the presumption of innocence have already operated at trial to prevent an unfair criminal conviction being imposed. However, without protection to ensure respect for the acquittal or the discontinuation decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation, and the way

in which he or she is perceived by the public (see *Allen v. the United Kingdom* [GC], no. 25424/09, §§ 93-94, ECHR 2013, and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 314-15, 28 June 2018, with further references). To a certain extent, the protection afforded under Article 6 § 2 in that respect may overlap with the protection afforded by Article 8 (see, for example, *Pasquini v. San Marino (no. 2)*, no. 23349/17, §§ 48-49, 20 October 2020).

33. When 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, as referred to above, 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 prior 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, and *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, § 122, 11 June 2024).

34. The Court notes that in the present case the criminal proceedings against the applicant ended with a discontinuation decision by the first-instance court because they had become time-barred. Accordingly, it cannot be argued, as the Government did (see paragraphs 25-26 above), that those proceedings resulted, or were intended to result, in the applicant being "proved guilty according to law" (see, *mutatis mutandis*, *Caraian v. Romania*, no. 34456/07, § 76, 23 June 2015).

35. The Court accepts that there was a direct link between the concluded criminal proceedings and the civil proceedings for compensation brought by the applicant against the State, since the decision as to compensation was based on the findings made by the courts in the prior criminal proceedings against him. Indeed, concluding that it followed from the criminal courts' decisions that the applicant had committed a criminal offence, the civil courts considered such a finding to be a legitimate reason for not granting him the compensation sought (see paragraphs 12, 16 and 18 *in fine* above).

36. Regard being had to the above, the Court considers that the complaint cannot therefore be rejected under Article 35 § 3 (a) of the Convention as incompatible *ratione materiae* with the provisions of the Convention.

(b) Exhaustion of domestic remedies

37. As to the Government's objection (see paragraph 27 above) that the applicant should have asked, following the discontinuation decision of 23 July 2010, that the criminal proceedings against him be continued, the Court notes that the applicant complained of a violation of the presumption of innocence in the subsequent civil proceedings for damages, not in the

criminal proceedings themselves. It can indeed be accepted, as maintained by the applicant (see paragraph 30 above), that the decision to discontinue the criminal proceedings was satisfactory for him and that he had no reason to challenge it, all the more so given that such a challenge could not have addressed the reasoning underlying the criminal court's decision on discontinuation and that he could not have anticipated the subsequent decisions of the civil courts which are at issue here.

38. Nor is the Court convinced by the Government's argument that the applicant should have brought another set of compensation proceedings under the State Liability Act claiming that there had been official misconduct (see paragraph 28 above). It is true that the Court has previously accepted that a remedy under civil law can, in principle, be considered effective against alleged violations of the presumption of innocence (see *Gutsanovi v. Bulgaria*, no. 34529/10, § 178, ECHR 2013 (extracts), and *Januškevičienė v. Lithuania*, no. 69717/14, § 59, 3 September 2019). The Court considers, however, that the compensation remedy indicated by the Government does not appear, on the face of it, to be effective with regard to the applicant's complaint about his right to be presumed innocent. First, the Government did not provide any specific examples of domestic case-law in which the courts had concluded that statements made by criminal courts in the context of discontinuing criminal proceedings amounted to official misconduct on the ground that they violated the presumption of innocence of the person concerned, and that that person should receive monetary compensation on that account. Second, the Court notes that the applicant did bring compensation proceedings under the State Liability Act, albeit on another ground (see paragraphs 9-18 above), in which the courts, and in particular the Constitutional Court, were called upon to examine the matter from the perspective of the applicant's presumption of innocence, and did not find anything problematic in the criminal courts' decisions. The Government's objection as to inadmissibility raised in this regard must therefore also be dismissed.

39. The Court further 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 applicant

40. The applicant maintained that the presumption of innocence had been violated in his case, firstly by the wording of the decisions adopted in the compensation proceedings and secondly, because the civil courts had proceeded on the substantive basis that he had committed the relevant offence even though his criminal prosecution had been discontinued and no evidence had been taken in the civil proceedings.

41. Citing the Court's judgments in *Teodor* (cited above, §§ 36-46), *Agapov* (cited above, §§ 38-45) and *Felix Guțu* (cited above, §§ 67-72), the applicant observed that the Court had previously found a violation of the presumption of innocence in cases where the civil courts had merely referred to the reasoning of decisions discontinuing criminal prosecutions, without having engaged in their own establishment of the facts or conducted any independent assessment of the evidence. In those cases, the civil courts had employed language which had overstepped the bounds of what was appropriate in a civil forum and which could easily have led readers to conclude that, had there been no statutory limitation and no decision to discontinue the proceedings, the person concerned would have been found guilty.

42. The applicant reiterated that the criminal courts had not reached the conclusion that he had been guilty of an offence (see paragraphs 29 and 30 above), given that they had taken as refuted the prosecutor's accusation that he had committed fraud and that they had not engaged, on account of the statutory limitation, in an examination of whether his actions had constituted the offence of mismanagement of another's property. Therefore, the civil courts deciding on his compensation claim had violated the presumption of innocence when they – namely the first-instance court and the Supreme Court – had essentially found him guilty in the criminal sense, making no distinction between the different prerequisites for criminal and civil liability (in that connection he referred to *Agapov*, cited above, § 41, and *Pasquini*, cited above, § 62). Moreover, the applicant asserted that the civil courts had based that finding of guilt solely on a single sentence taken from the criminal court's decision of 9 January 2009, which had been quoted out of context in the decision of 23 July 2010 without any reference to the analysis set out on pages 137 and 141, which in turn had indicated the likelihood of his acquittal. In so doing, the civil courts had failed to discharge their obligation to engage in their own evidence-taking as to whether his conduct had constituted a particular criminal offence, despite the fact that he had made just such a request. Furthermore, their conclusion that he had indeed committed an offence was a crucial and decisive argument underpinning their decision to dismiss his compensation claim.

2. *The Government*

43. The Government referred to the Court's case-law, according to which the presumption of innocence should be applied differently following the discontinuation of criminal proceedings as opposed to an acquittal (they cited *Pasquini*, cited above, § 50). They considered it essential to analyse whether the discontinued proceedings had made it possible to establish, by lawful means and with respect for the rights of the defence, that the defendant had committed an act amounting to a criminal offence, even if, because of various objective obstacles, he or she could not be held criminally liable for that act.

If that was so – and in the present case it followed from the reasoning of the criminal court’s decision that the applicant had indeed committed a criminal offence – the Court should be more lenient as regards the domestic courts’ statements in subsequent proceedings than if the prosecution had been discontinued because the defendant had been proved innocent or his guilt had not been reliably established. Otherwise, the courts would not be able to refer, in subsequent compensation proceedings, to the findings made by the criminal courts in order to explain why they did not, *secundum bonos mores*, award compensation to individuals who, from a substantive perspective, had committed an offence but had avoided prosecution because of the discontinuation of the prosecution.

44. The Government further emphasised that compensation proceedings under Act no. 82/1998 were a special type of civil proceedings which were separate and distinct from criminal proceedings and in which the courts were called on to examine whether the statutory conditions for a compensation award had been met but did not have jurisdiction to consider, as a preliminary question, the claimant’s criminal liability or guilt. Thus, in the present case, the civil courts had been tasked with examining whether the applicant’s criminal prosecution was to be considered unlawful and giving grounds for compensation, or whether section 12 of the State Liability Act applied, which prevented the awarding of compensation in cases including those where it had been established that the accused had actually committed the offence but his or her prosecution had had to be discontinued owing to objective conditions provided for by law. In line with the evolving domestic practice (see paragraphs 22-23 above), they concluded that in the circumstances at hand, where the applicant’s prosecution had been discontinued as being time-barred but where it had earlier been established that he had committed an offence, section 12 had to be applied *per analogiam*. In the Government’s view, the civil courts had thus not directly addressed the applicant’s guilt *per se*, but had rather examined whether his situation fell under the particular provisions of section 12 of the State Liability Act that precluded an award of compensation.

45. The Government also contended that the wording used by the courts in the context of the compensation proceedings specifically reflected the applicant’s procedural situation in which account had to be taken of the fact that, according to the findings of the criminal courts, he had committed an offence but could not be convicted because of the expiry of the statutory limitation period. Although the civil courts could have used more cautious wording, the Government maintained that those courts had not themselves assessed the question of the applicant’s guilt; a finding of guilt in the criminal sense would be incompatible with the nature, purpose and subject matter of the compensation proceedings. Even assuming that the terms used by the first-instance court, which had merely reproduced the criminal courts’ conclusions (see paragraph 12 above), could be considered problematic from

the perspective of the Court's case-law, the Government contended that they had been rectified by the appellate court. Indeed, the latter had considered the reference to the reasoning of the criminal courts superfluous, it being sufficient to dismiss the applicant's compensation claim under the State Liability Act that the expiry of the limitation period did not render his prosecution unlawful (see paragraph 14 above). Thus, the wording used by the Supreme Court had to be read in the light of the fact the latter had only been called upon to assess whether the applicant's appeal on points of law could be considered admissible, that is to say whether or not the appellate court had complied with the existing law and case-law. Indeed, most of the Supreme Court's decision did not refer specifically to the applicant but to a certain type of case that might arise (see paragraph 16 above); therefore, the Supreme Court's decision could not be interpreted as drawing conclusions as to his guilt. Lastly, the Constitutional Court had endorsed the civil courts' decisions not to award the applicant any compensation in respect of his prosecution; it had not, however, explicitly addressed the question whether the reasoning of those decisions had violated the principle of presumption of innocence.

46. Furthermore, the Government considered speculative the applicant's argument that he would most probably have been acquitted had the proceedings not been discontinued. More importantly, he had not made use of the opportunity to ask for the proceedings to be continued and with it the chance to prove his innocence, even though an acquittal would have entitled him to compensation.

47. The Government thus reaffirmed their conviction that the wording and reasoning of the decisions given in the compensation proceedings could not be regarded as declarations of the applicant's guilt, which would have been in breach of the presumption of innocence, but merely as references to the findings lawfully reached by the criminal courts in proceedings during which the applicant had had the opportunity to properly exercise his rights of defence. Such references to the rationale of the discontinuation decision, which could not be interpreted as imputing criminal liability to the applicant, were necessary to justify the application *per analogiam* of section 12 of the State Liability Act and to support the decision not to grant the compensation sought. Indeed, it would have been *contra bonos mores* and against the principle *ex injuria jus non oritur* to award compensation to a person who had committed an offence but could not be held criminally liable for it.

3. The Court's assessment

(a) General principles

48. The Court reiterates that the second aspect of the protection afforded by the presumption of innocence comes into play when the criminal proceedings end with a result other than a conviction. It aims 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 with which they had been charged (see also paragraph 32 above). That is because those persons are innocent in the eyes of the law and must be treated in a manner consistent with that innocence. To this extent, therefore, the presumption of innocence will remain after the conclusion of criminal proceedings in order to ensure that, as regards any charge which is not proven, the innocence of the person in question is respected (see *Nealon and Hallam*, cited above, § 108).

49. The Grand Chamber has recently considered that regardless of the nature of the subsequent linked proceedings, and regardless of whether the criminal proceedings ended in an acquittal or a discontinuance, the decisions and reasoning of the domestic courts or other authorities in those subsequent linked proceedings, when considered as a whole, and in the context of the exercise which they are required by domestic law to undertake, will violate Article 6 § 2 of the Convention in its second aspect if they amounted to the imputation of criminal liability to the applicant. To impute criminal liability to a person is to reflect an opinion that he or she is guilty to the criminal standard of the commission of a criminal offence, thereby suggesting that the criminal proceedings should have been determined differently (see *Nealon and Hallam*, cited above, § 168).

50. This approach reflects the fact that at national level judges may be required, outside the context of a criminal charge, to sit in cases arising out of the same facts as a previous criminal charge which did not result in a conviction. The protection afforded by Article 6 § 2 in its second aspect should not be interpreted in such a way as to preclude national courts in subsequent proceedings – in which they are exercising a different function to that of the criminal judge, in accordance with the relevant provisions of domestic law – from engaging with the same facts as were decided in the previous criminal proceedings, provided that in doing so they do not impute criminal liability to the person concerned. A person who was acquitted or in respect of whom criminal proceedings were discontinued will remain subject to the ordinary application of domestic rules as to evidence and the standard of proof outside criminal trials (*ibid.* § 169).

51. Lastly, the Court notes that, unlike cases involving civil compensation claims lodged by victims or cases concerning disciplinary proceedings which concern the obligations of the former accused vis-à-vis the community, cases relating to claims by former accused for costs and compensation concern damage engaging the responsibility of the State. In this respect, it reiterates that Article 6 § 2 does not guarantee a person charged with a criminal offence a right to compensation for lawful detention on remand or for costs where proceedings are subsequently discontinued or end in an acquittal (*ibid.* § 164).

(b) Application of the general principles to the facts of the case at hand

52. The Court observes that, in the present case, the criminal proceedings against the applicant were discontinued as being time-barred. Consequently, by reference to the aforementioned test, a violation of Article 6 § 2 of the Convention would therefore only arise if the domestic decisions on the compensation sought by the applicant under Act no. 82/1998 imputed criminal liability to him. In assessing the compatibility of those decisions and their reasoning with Article 6 § 2 of the Convention, the Court will thus focus on the language used by the courts, which is of critical importance in this regard.

53. In the instant case the Government contended that, after having determined, for the purposes of the statutory limitation period, the correct legal classification of the acts for which the applicant had been prosecuted (see paragraph 25 above), the criminal court had also established in the reasoning of its decision of 23 July 2010 (see paragraph 7 above) that the applicant had committed the criminal offence in question, although he could not be convicted because of the expiry of the statutory limitation period. According to the Government, the civil courts dealing with the applicant's subsequent compensation claim had no other choice than to reflect and refer to those findings, without having themselves assessed the question of his guilt (see paragraphs 43 and 45 above).

54. The Court acknowledges that a correct legal classification of the acts allegedly committed by the applicant was necessary to determine the relevant period of statutory limitation (see also *Peltureau-Villeneuve v. Switzerland*, no. 60101/09, § 34, 28 October 2014). However, the formal outcome of the criminal proceedings being that they were discontinued as being time-barred, it cannot be argued that those proceedings resulted or were intended to result in the applicant being "proved guilty according to law" (see also paragraph 34 above). That could only have been a possible outcome if the applicant had asked that the proceedings against him be pursued despite the statutory limitation, which he did not (see paragraph 8 above).

55. The Court observes that in the discontinuation decision of 23 July 2010 the criminal court mainly noted that the applicant's actions could only be classified as mismanagement of another's property, in respect of which offence the five-year limitation period had expired before the charges had been brought against him (see paragraph 7 above). The problematic statement, according to which the facts as established allowed for the conclusion that the applicant had committed that offence, actually had its source in the previous decision of 9 January 2009 (see paragraph 6 above), which had been quashed. In any event, the Court does not consider it necessary to determine in the present case whether the criminal courts' decisions terminating the criminal proceedings against the applicant indicated that he had committed the offence or expressed statements in respect of his guilt. Indeed, the applicant did not share the Government's view that the

criminal courts had concluded that he was guilty, and complained exclusively about the decisions issued by the civil courts (see paragraphs 40 and 42 above).

56. Thus, the question for the Court in the present case is whether the wording used by the civil courts amounted to the imputation of criminal liability to the applicant, contrary to Article 6 § 2 of the Convention. The Court will look at the context of the proceedings as a whole and at any special features thereof in order to determine whether the civil courts breached that provision (see *Agapov*, cited above, § 40). It reiterates in that context that extra 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, 3 October 2019, and *Pasquini*, § 53, cited above).

57. The civil courts in the instant case were called upon to examine the applicant's claim for compensation for legal expenses he had incurred in the criminal proceedings and for loss of income, with the applicant arguing that since he had not been convicted, his prosecution had been unlawful (see paragraphs 9 and 11 above). The first-instance court dismissed his claim on the grounds that it was clear from the reasoning of the criminal courts that he had committed the offence and that only objective reasons (namely, the passage of time) had prevented the courts from convicting him (see paragraph 12 above). That finding, which in the Court's view clearly constituted a statement about the applicant's criminal guilt, allowed the civil court to apply *per analogiam* section 12(1)(b) of the State Liability Act. Under that provision, compensation could not be granted to a person whose criminal prosecution had been discontinued on the ground that he or she was not criminally liable for the offence committed, which situation could, in the civil court's view, be equated to discontinuation on account of the statutory limitation period, as occurred in the applicant's case. The civil court's findings were endorsed by the Supreme Court, which referred to the criminal court's statement that the applicant had committed an act fulfilling the constituent elements of the offence (see paragraph 16 above).

58. Thus the Court concludes that the civil courts, and mainly the Supreme Court, went too far, and beyond the civil-law terms, when they based their decisions on a clear finding that the applicant's actions amounted to the criminal acts with which he had been charged. They did so with reference to the statements made by the criminal court, in particular to the statements originating from the (quashed) decision of 9 January 2009, without there being any criminal decision binding on them (see paragraphs 14 and 19 above) and without any reservation or any regard to the applicant's presumed innocence. The Court notes in this respect that it follows from the appellate court's decision of 28 April 2014 (see paragraph 14 above), as well as from the Supreme Court's practice (see paragraph 18 above), that the mere fact that the limitation period had expired did not imply that the decision on

the opening of the prosecution had been unlawful, which was sufficient to exclude any right of the applicant to compensation.

59. Moreover, the authorities seemed to blame the applicant for not having sought to have the criminal proceedings against him continued and the question of guilt determined (see paragraphs 10 and 14 above). It has to be noted, however, that that avenue is criminal in nature and concerns the issue of criminal liability (compare *Teodor*, cited above, § 42).

60. Against such a background, the Court considers that the wording used by the civil courts was not only unfortunate but also reflected those courts' unequivocal opinion that a criminal offence had been committed and that the applicant was guilty of that offence, even though he had never been convicted of it. In the Court's view, the civil courts' statements were inconsistent with the discontinuation of the criminal proceedings owing to the expiry of the limitation period and amounted to the imputation of criminal liability to the applicant (compare *Farzaliyev v. Azerbaijan*, no. 29620/07, §§ 65-69, 28 May 2020; *Agapov*, cited above, § 44; and *Pasquini*, cited above, § 64).

61. Although the applicant raised the complaint concerning a breach of the presumption of innocence in his constitutional appeal, the Constitutional Court failed to address the language used by the civil courts, as was conceded by the Government (see paragraph 45 above). However, as the Court has previously held, where the use of unfortunate language may give rise to concern about respect for the presumption of innocence, it is important for it, when examining the context of the proceedings as a whole and the specific features thereof, to consider whether the higher courts expressly engaged with that issue (see *Vardan Martirosyan v. Armenia*, no. 13610/12, § 84, 15 June 2021; *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14, § 71, 22 April 2021; and *Milachikj v. North Macedonia*, no. 44773/16, § 37, 14 October 2021).

62. Lastly, the Court finds it important to reiterate that, according to its settled case-law, neither Article 6 § 2 nor any other provision of the Convention gives a person "charged with a criminal offence" a right to reimbursement of his or her legal costs or a right to compensation for lawful detention on remand where proceedings against that person have been discontinued (see, as the most recent authority, *Nealon and Hallam*, cited above, § 164). Thus, the mere refusal to pay to the applicant, out of public funds, the compensation sought, on the ground that the discontinuation of the criminal proceedings against him did not render the decision on the opening of the prosecution unlawful, would not in itself have infringed the presumption of innocence. However, as stated above, the breach of the presumption of innocence stems in the instant case from the reasoning and the language employed by the civil courts, which explicitly imputed criminal liability to the applicant.

63. The foregoing considerations are sufficient to enable the Court to conclude that there has accordingly been a violation of Article 6 § 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage, comprising legal costs and loss of profit, which he had unsuccessfully sought at the domestic level. He also claimed EUR 15,000 in respect of non-pecuniary damage, pointing to media coverage of his case, to the period of time over which he had been exposed to charges of criminal conduct by the civil courts and to the publication of the civil courts’ decisions in a publicly accessible database.

66. As to pecuniary damage, the Government observed, firstly, that neither Article 6 § 2 nor any other provision of the Convention guaranteed to a person charged with a crime the right to compensation when the prosecution had to be discontinued. Secondly, they noted that in the event of the Court’s finding a violation, the applicant would be able to apply for the reopening of the proceedings before the Constitutional Court. Concerning the claim for non-pecuniary damage, the Government argued that there was no causal link between it and the alleged damage, that in the event of success before the Court the applicant would be able to request the reopening of the proceedings before the Constitutional Court, and that the amount sought by the applicant was excessive.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It further considers that the non-pecuniary damage alleged by the applicant is adequately compensated for by the finding of a violation of Article 6 § 2 of the Convention.

B. Costs and expenses

68. The applicant also claimed EUR 8,357 in respect of the costs and expenses incurred before the domestic courts and the Court.

69. The Government contended that the applicant should not be reimbursed the costs incurred prior to the first-instance civil judgment and

that the invoices and the proof of payment submitted covered only part of the sum claimed.

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 were 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 3,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Mattias Guyomar
President