CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FORMER THIRD SECTION

CASE OF RINGVOLD v. NORWAY

(Application no. 34964/97)

JUDGMENT

STRASBOURG

11 February 2003

FINAL

11/05/2003

In the case of Ringvold v. Norway,

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

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Mrs H.S. GREVE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 17 September 2002 and 21 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 34964/97) against the Kingdom of Norway lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Norwegian national, Mr Ivar Ringvold ("the applicant"), on 5 December 1996.

2. The applicant was represented by Mr S. Næss, a lawyer practising in Lillestrøm. The Norwegian Government ("the Government") were represented by Mr F. Elgesem, who acted as Agent until he left the Attorney-General's Office (Civil Matters) in June 2002. Thereafter, they were represented by Mr H. Harborg of that Office.

3. The applicant alleged a violation of Article 6 § 2 of the Convention on account of the national court's decision, despite his acquittal on criminal charges, to order him to pay compensation to the victim.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 11 September 2001 the Chamber decided that, in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in *O. v. Norway*, *Hammern*

v. Norway and *Y. v. Norway* (applications nos. 29327/95, 30287/96 and 56568/00 – Rule 43 § 2).

7. On 11 September 2001 the Chamber also declared the application admissible.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within the former Third Section.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 17 September 2002 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr H. HARBORG, Attorney-General's Office
(Civil Matters), *Agent*,
Mr F. ELGESEM, *Advokat*, *Counsel/Adviser*,
Mr K. KALLERUD, Senior Public Prosecutor,
Office of the Director of Public Prosecutions,
Ms E. HOLMEDAL, Attorney-General's Office
(Civil Matters),
Ms T. STEEN, Attorney-General's Office, *Advisers*;

(b) *for the applicant*

Mr S. NÆSS, *Advokat*, *Counsel*.

The Court heard addresses by Mr S.J. Klomsæt (counsel for Mr Y., who pleaded the common issues relevant to both his case and that of Mr Ringvold), Mr Næss, Mr Elgesem and Mr Harborg.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1965 and lives in Oslo.

11. On 24 June 1993 the applicant was charged under Articles 192 and 195 of the Criminal Code (*straffeloven*) with the sexual abuse of a minor, G., born in December 1979, during the period from 1986 to 1990. Under these provisions he was charged with having, on one or several occasions, threatened to hit G. if she cried out, and/or having held her tight, whereupon he had introduced his penis into or pointed it towards her sex and/or made

her masturbate him. At the time, G.'s father was cohabiting with the applicant's mother. The alleged offences were said to have occurred in the applicant's home when the child visited her father.

12. Criminal proceedings were instituted before the Eidsivating High Court (*lagmannsrett*) which heard the case between 16 and 18 February 1994, including G.'s compensation claim of (up to) 110,000 Norwegian kroner (NOK) for non-pecuniary damage, made under section 3-5 of the Damage Compensation Act 1969 (*skadeerstatningsloven*), and joined to the trial in accordance with Article 3 of the 1981 Code of Criminal Procedure (*straffeprosessloven*). By a judgment of 18 February 1994, the High Court, noting that the jury had answered the questions concerning criminal guilt in the negative, acquitted the applicant of the charges. Moreover, it decided to reject G.'s compensation claim.

13. G. subsequently appealed to the Supreme Court (*Høyesterett*) under the rules of the 1915 Code of Civil Procedure *(tvistemålsloven*) against the refusal to award compensation. The Supreme Court then ordered the taking of oral evidence by the Oslo City Court (*byrett*). Evidence was taken between 26 and 30 June 1995, 18 and 20 October 1995, 20 November 1995 and 3 January 1996, during which time more than twenty witnesses were heard.

14. In the appeal proceedings before the Supreme Court, G.'s lawyer requested that documents produced in the context of the criminal case be submitted as evidence to the Supreme Court. These included records of the judicial examination of G., medical certificates, letters and witness statements given to the police in connection with the criminal proceedings. The applicant's lawyer, relying on Article 6 § 2 of the Convention, objected to this request.

15. By a decision of 29 May 1996, the Supreme Court authorised the documents from the criminal case to be joined to the case file in the compensation proceedings. Its decision included the following reasons:

> "In their pleadings, the lawyers for the parties have dealt extensively with the issue under Article 6 § 2 of the Convention. The only question for the Supreme Court to determine is whether the submission of the criminal-case documents in the civil case would as such violate this Convention provision. The question as to the significance of this provision for the decision on the compensation claim falls to be considered in connection with the decision on the merits of the appeal.
>
> The use of documents from the criminal case as evidence in this case does not in my view fall foul of the requirement in Article 6 § 2 ... The submission of the documents does not as such imply that the acquittal in the criminal case is open to doubt.
>
> The statement in the *Sekanina* case, which the lawyer for the defendant has referred to, must be read in its context. The ruling cannot be perceived as a general procedural bar against the production of the case documents from criminal proceedings in a later case.

Furthermore, I should like to add that, although this is not decisive for my view on the issue under Article 6 § 2, both parties were given the usual opportunity to supply evidence in connection with the taking of evidence by the Supreme Court.

In my view, the request for submission of the criminal-case documents in question must therefore be granted."

16. The Supreme Court examined the case under the rules of civil procedure. After hearing the parties and a large number of witnesses, the Supreme Court, in a judgment of 5 June 1996, ordered the applicant to pay NOK 75,000 to G. in compensation for non-pecuniary damage, under section 3-5(1)(b) of the Damage Compensation Act.

17. The first voting judge, Mrs Justice Gjølstad, stated on behalf of a unanimous court, *inter alia*:

"In so far as the appeal concerns the merits, two general questions arise, namely the relationship to the acquittal in the criminal case (see Article 6 § 2 of the Convention) and the requirement of proof in such cases.

Under Chapter 29 of the Code of Criminal Procedure, civil compensation claims may ... be made in criminal proceedings by the prosecution or by the injured party. This arrangement is intended to make it easier for the injured party to have a civil compensation claim examined, but it does not preclude the possibility of making such a claim in separate civil proceedings instead.

Contrary to what followed from the old Code of Criminal Procedure, it is not a condition for the examination of civil compensation claims that the accused person should have been convicted in respect of the charge. Thus, it is in principle possible to either reject or uphold a civil compensation claim, irrespective of the decision concerning criminal liability. This has its background in the fact that the injured party, who does not enjoy rights as a party in the criminal case, should not forfeit his or her compensation claim as a result of an acquittal in the criminal case. Although it will hardly be a frequent occurrence that the decision on the civil compensation claim goes in a different direction from that on criminal liability, this may happen for various reasons. Amongst others, the requirement of evidence for the criminal and the civil consequences of an action ... is different.

By Article 6 § 2 of the Convention, a person who is charged with a criminal offence is to be deemed innocent until proved guilty. The presumption of innocence applies even after an acquittal (see in this connection the *Sekanina* case and the decision reported in *Norsk Retstidende* 1994, p. 721, dealing with the significance of the presumption of innocence in a case concerning the right of the accused to compensation after an acquittal).

However, in my opinion it must be clear that the said provision cannot constitute an obstacle for a person injured by an act to claim compensation from the alleged perpetrator, even though the latter has been acquitted of a criminal offence, and that the court in such a case can rely on a finding that the defendant has in fact committed the act in relation to which he has been acquitted. Even assuming that the Convention provision applies to the treatment of such claims, it has not been infringed as long as no disagreement or doubt has been expressed with regard to the decision on criminal liability. I cannot see that the arrangement under Norwegian criminal procedural law,

whereby it is possible to have civil compensation claims determined after an acquittal, gives rise to any particular problems in relation to Article 6 § 2 [of the Convention]. Moreover, in the case at hand, it is above all the High Court's decision concerning compensation which has been brought before the Supreme Court under the provisions of the Code of Civil Procedure."

18. As regards the requirement of evidence, Mrs Justice Gjølstad noted that under the law on compensation the test was normally the balance of probabilities. However, bearing in mind the burden which an allegation of reprehensible conduct might have for the defendant and the serious consequences it might have for his or her reputation, the requirement as to the strength of the evidence had to be stricter than that which applied to the test of the balance of probabilities. Nevertheless, the requirement could not be as strict as that which applied for establishing criminal liability. In a case of the kind under consideration, the test had to be whether on the balance of probabilities it was clearly probable that the alleged abuse had been committed.

19. In dealing with the particular facts of the appeal concerning compensation, the Supreme Court had regard to the video recording of the judicial examination of the alleged victim in the criminal proceedings before the High Court. The Supreme Court did not share the High Court's view that the evidentiary value of the video recording was diminished by certain misgivings concerning the lack of synchronisation of sound and picture when shown to the High Court. Those shortcomings had been remedied before the Supreme Court. The Supreme Court also had regard to evidence taken by it from this person, which deviated slightly from the judicial examination before the High Court. It further had regard to the statements of an expert witness and the statements of a therapist who had treated the alleged victim. Considering the evidence as a whole, Justice Gjølstad found that the evidence satisfied the standard of proof, establishing that sexual abuse had occurred and that, on the balance of probabilities, it was clear that the applicant was the abuser. Accordingly, there was a basis for awarding the victim compensation under section 3-5(1)(b) of the Damage Compensation Act. However, Justice Gjølstad emphasised that this decision was taken independently of the decision in the criminal case and that it did not undermine the acquittal. Finally, as regards the amount of compensation, she observed, *inter alia*, that she based her assessment on her finding that several infringements had occurred and that, even though their extent was not possible to ascertain with precision, there had been serious violations involving a certain use of force or threats, as a result of which G. had sustained damage.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. Under Norwegian criminal law there are four basic conditions that must be met in order to establish criminal liability:

(1) the accused has committed an act or omission (*actus reus*) which is contrary to a provision of the Criminal Code or to a special statutory criminal provision in force at the time when the act or omission occurred;

(2) there are no exonerating circumstances (for example, self-defence);

(3) the accused has acted with intent (*mens rea*), unless otherwise expressly stated in the relevant criminal provision; and

(4) the accused was of sound mind at the time of the commission of the offence.

21. As a general rule, the prosecution has to prove these four elements beyond reasonable doubt. Any reasonable doubt must benefit the accused (*in dubio pro reo*).

22. Under the Norwegian jury system, when an accused is acquitted the jury is not entitled to disclose whether any of its members held a different opinion, and no records are kept which could disclose that a negative answer as to the applicant's guilt was not unanimous. Only two conclusions are possible in a criminal case – guilt or acquittal (see Articles 365, 366, 372 and 373 of the Code of Criminal Procedure). There is no third alternative, such as that formerly known in some other European countries, where a criminal charge could result in the finding that there was not sufficient evidence to establish guilt.

23. Under the 1981 Code of Criminal Procedure, a civil claim may be pursued in connection with a criminal trial, provided that the claim arises from the same set of facts. The civil claim of a victim may be decided either in connection with a criminal case or in separate proceedings. Article 3 reads:

> "Any legal claim that the aggrieved person or any other injured person has against the person charged may, in accordance with the provisions of Chapter 29, be pursued in connection with such cases as are mentioned in Article 1 or Article 2, provided that the said claim arises from the same act that the case is concerned with. On the above conditions the following claims may also be pursued:
>
> ...
>
> The claims specified in the first and second paragraphs shall be deemed to be civil claims and shall be dealt with in accordance with the provisions of Chapter 29 ..."

Other provisions concerning civil compensation claims may be found in Chapter 29 of the Code of Criminal Procedure, notably the following:

Article 427

"In a public prosecution the prosecuting authority may on application pursue such civil legal claims as are specified in Article 3. ...

When civil claims are pursued against a person other than the person charged, the person concerned assumes the position of a party to the case in so far as this issue is concerned. ..."

Article 428

"Any person who has any such civil claim as is specified in Article 3 may himself pursue it in connection with a public prosecution if a trial hearing is held. ..."

Article 435

"A separate appeal against a decision on civil claims shall be brought in accordance with the provisions of the Code of Civil Procedure. The same shall apply to a reopening of the case."

24. Under the Damage Compensation Act 1969, the alleged victim may, regardless of the outcome of the criminal proceedings, claim compensation for pecuniary and non-pecuniary damage.

Section 3-5, as in force at the relevant time, read as follows:

"Anyone who with intent or through gross negligence has

(a) caused personal injury or

(b) committed ... an act of misconduct as mentioned in section 3-3

may ... be obliged to pay the victim such a lump sum as the court deems would constitute reasonable compensation [*oppreisning*] for the pain and suffering and other non-pecuniary damage caused thereby. ...

A person who with intent or through gross negligence has caused the death of another person may be ordered to pay such compensation to the deceased's ... parents."

Section 3-3, referred to in the above provision, expressly applies to misconduct mentioned in, amongst other provisions, Articles 192 and 195 of the Criminal Code.

A claim for compensation for non-pecuniary damage submitted by a victim under section 3-5 of the Act is subject to his or her showing that the alleged perpetrator, with intent or through gross negligence, committed the wrongful act. The test is normally the balance of probabilities and the burden of proof lies with the claimant. This burden may be heavier where liability may have serious consequences for the respondent's reputation, though it will be less than for criminal liability. The competent court has to

determine liability in the light of all the evidence available at the time of the adjudication of the case.

25. The objective constitutive elements of acts which may give rise to both criminal liability and civil liability to pay compensation are not always the same. The subjective constitutive elements in principle differ: normally criminal liability requires intent whereas liability to pay compensation requires gross or simple negligence. There may be exonerating circumstances – such as self-defence, necessity, provocation or ignorance – which exclude criminal liability but which do not exclude liability to pay compensation. A person of unsound mind may be exempted from criminal liability but not necessarily from civil liability to pay compensation (see *Norges Offentlige Utredninger* (Norwegian Official Reports) 2000:33, "*Erstatning til ofrene hvor tiltalte frifinnes for straff*" ("Compensation to victims in cases where the accused has been acquitted on the criminal charge"), a study by J.T. Johnsen, Professor of Law, Chapter 1, section 1.3.2).

The purposes of the criminal law and the law on compensation are not identical. While deterrence and restoration are important considerations in both areas of law, the former places emphasis on retribution and the latter on the allocation of financial loss. The two systems also supplement one another in important respects. While criminal-law sanctions are particularly designed to deter actual and potential offenders from committing offences, those of the law of compensation are particularly designed to meet the aggrieved person's need for economic redress (ibid., Chapter 1, section 1.2.1).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

26. The applicant complained that the Supreme Court's judgment awarding G. compensation entailed a violation of his right under Article 6 § 2 of the Convention to be presumed innocent until proved guilty of the commission of an offence.

27. Article 6 § 2 of the Convention provides:

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

28. The Government contested this allegation and requested the Court to hold that this provision was not applicable and had not been violated in the instant case.

A. Submissions of those appearing before the Court

1. The applicant

29. The applicant maintained that, during the compensation case following his acquittal, he had still been "charged with a criminal offence", at the least within the autonomous sense of Article 6 § 2. Relying on the Court's interpretation of this expression, he submitted that, under domestic law, he had been formally considered to be charged until the acquittal gained legal force. Moreover, an award of compensation for non-pecuniary damage had a punitive purpose, was deliberately used to express the community's disapproval of the act concerned and signalled that the wrong committed ought to be righted. This was apparent from the compensation award, which had undoubtedly served to weaken the applicant's earlier acquittal.

30. The applicant invited the Court to treat his case as similar to that of *Sekanina v. Austria* (judgment of 25 August 1993, Series A no. 266-A), in which it had attached primary weight to the degree of linkage between the criminal proceedings and the compensation case in its finding that Article 6 § 2 was applicable to the latter. The compensation claim had been pursued in the context of the accused's acquittal. The Supreme Court had in its judgment of 5 June 1996 awarding G. compensation based itself to a significant extent on the evidence from the criminal proceedings before the High Court, thus showing that there was a connection between the two sets of proceedings.

Furthermore, in determining under the law on compensation whether the applicant had committed the criminal act of which he had previously been acquitted, the Supreme Court had been called upon to establish a form of guilt. The Supreme Court had stated that, considered as a whole, the evidence satisfied the standard of proof for establishing that sexual abuse had occurred and that, on the balance of probabilities, it was clear that the applicant had committed acts of abuse against G. Its assessment had amounted to a finding of a criminal nature, in violation of the presumption of innocence. Only the applicable evidentiary standard had differed from that applicable to criminal liability, but the difference had been merely theoretical. All the other relevant criteria were the same as for criminal liability.

31. In those circumstances, the applicant submitted, the compensation proceedings were so closely linked to the criminal proceedings as to attract the application of Article 6 § 2, which provision had been violated.

32. The applicant disputed the Government's contention that the right of access to a court of the victim under Article 6 § 1 militated against the applicability of Article 6 § 2 to his case. That right was not absolute but could be subject to limitations. In addition, the fact that the aggrieved party

had received the assistance of the public prosecutor, backed by the entire State apparatus with regard to measures of investigation, could have adversely affected the defendant's right to "equality of arms" in a manner incompatible with Article 6 § 1.

2. The Government

33. The Government disputed the applicant's contention that he had been "charged with a criminal offence" in the civil compensation proceedings. They moreover requested the Court to distinguish this case from *Sekanina*, cited above, as well as from its judgments in *Rushiti v. Austria* (no. 28389/95, 21 March 2000) and *Lamanna v. Austria* (no. 28923/95, 10 July 2001), and to hold that Article 6 § 2 was not applicable and had not been violated. While the prosecution had acted as a defendant party in those cases, the present case had involved other types of litigants. The compensation proceedings had only involved counsel for the victim and for the applicant – two private civil parties. Moreover, there had been no link between the outcome of the criminal proceedings and the compensation case, the right of the victim to claim compensation being entirely independent of the criminal case. On essential points the legal basis and the legal issues in the civil compensation proceedings had differed from those in the criminal case. Thus, the criteria for civil and criminal liability had differed, as had the applicable evidentiary standards. Above all, the compensation case had not involved an assessment of the applicant's criminal guilt. What was more, the appeal before the Supreme Court had been limited to the compensation case, had been governed by the Code of Civil Procedure and had comprised extensive new evidence not previously adduced at the criminal trial.

34. In the Government's view, the application of Article 6 § 2 in such matters would run counter to its wording and to the intentions of States upon ratification of the Convention. A fine – but absolutely essential – line had to be drawn between criminal and civil responsibility**.** The Convention principle of the presumption of innocence could not bar judicial or other authorities acting in civil matters from addressing the question whether the acquitted person had perpetrated the act that had formed the basis for the criminal charge against him. It would be unacceptable if an acquittal in a criminal case were binding upon any authority that was subsequently called upon to decide civil-law matters arising from the same set of facts. While a court would of course be bound by a finding that criminal responsibility had not been established, it should be free to establish the civil consequences flowing from the same set of facts. An acquittal could not have as a consequence a requirement that subsequent decisions in civil matters presume that the acquitted person had not perpetrated the act, if it was shown on the balance of probabilities that he or she nevertheless was the perpetrator. Such a view would indeed give rise to serious questions under

the Convention itself, namely the right under Article 6 § 1 of access to a court for, *inter alia,* a victim claiming compensation under the civil law of tort.

35. In the light of the above, the Government requested the Court to hold that Article 6 § 2 was not applicable and had not been violated in the applicant's case.

B. The Court's assessment

36. The Court reiterates that the concept of a "criminal charge" in Article 6 is an autonomous one. According to its established case-law, there are three criteria to be taken into account when deciding whether a person was "charged with a criminal offence" for the purposes of Article 6, namely the classification of the proceedings under national law, their essential nature and the type and severity of the penalty that the applicant risked incurring (see *Phillips v. the United Kingdom*, no. 41087/98, § 31, ECHR 2001-VII, and *A.P., M.P. and T.P. v. Switzerland*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1488, § 39). Moreover, the scope of Article 6 § 2 is not limited to criminal proceedings that are pending (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, p. 16, § 35). In certain instances, the Court has also found the provision applicable to judicial decisions taken after the discontinuation of such proceedings (see in particular the following judgments: *Minelli v. Switzerland*, 25 March 1983, Series A no. 62, and *Lutz*, *Englert* and *Nölkenbockhoff v. Germany*, 25 August 1987, Series A no. 123), or following an acquittal (see *Sekanina*, *Rushiti* and *Lamanna*, cited above). Those judgments concerned proceedings relating to such matters as an accused's obligation to bear court costs and prosecution expenses, a claim for reimbursement of his (or his heirs') necessary costs, or compensation for detention on remand, matters which were found to constitute a consequence and the concomitant of the criminal proceedings.

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

37. Turning to the first of the above-mentioned criteria, the classification of the proceedings under national law, the Court notes the applicant's argument that, formally speaking, he remained "charged" until the acquittal gained legal force. However, this concerned only the initial criminal charges on which he was acquitted; it was of no relevance to the compensation claim. The Court notes that the latter had its legal basis in Chapter 3 of the Damage Compensation Act 1969, which sets out the general principles of the national law on torts applicable to personal injuries. It is clear from both

the wording of section 3-5 and Norwegian case-law that criminal liability is not a prerequisite for liability to pay compensation. The compensation proceedings before the Supreme Court were governed by the provisions of the Code of Civil Procedure and the claim was described in its judgment as being "civil". Thus, the Court finds that the compensation claim in issue was not viewed as a "criminal charge" under the relevant national law.

38. As regards the second and third criteria, the nature of the proceedings and the type and severity of the "penalty" (in the instant case the allegedly punitive award of compensation), the Court observes that, while the conditions for civil liability could in certain respects overlap, depending on the circumstances, with those for criminal liability, the civil claim was nevertheless to be determined on the basis of the principles that were proper to the civil law of tort. The outcome of the criminal proceedings was not decisive for the compensation case. The victim had a right to claim compensation regardless of whether the defendant 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 in several important respects differed from those that applied to criminal liability. This is indeed borne out by the circumstances of the present case, where the compensation matter was the sole issue in the appeal before the Supreme Court, involving private parties only, which was heard in proceedings governed by the provisions of the Code of Civil Procedure, with extensive new evidence being taken on that issue alone.

In the view of the Court, the fact that an act that may give rise to a civil compensation claim under the law of tort is also covered by the objective constitutive elements of a criminal offence cannot, notwithstanding its gravity, provide a sufficient ground for regarding the person allegedly responsible for the act in the context of a tort case as being "charged with a criminal offence". Nor can the fact that evidence from the criminal trial is used to determine the civil-law consequences of the act warrant such a characterisation. Otherwise, as rightly pointed out by the Government, Article 6 § 2 would give a criminal acquittal the undesirable effect of pre-empting the victim's possibilities of claiming compensation under the civil law of tort, entailing an arbitrary and disproportionate limitation on his or her right of access to a court under Article 6 § 1 of the Convention. This again could give a person who was acquitted of a criminal offence but would be considered liable according to the civil burden of proof the undue advantage of avoiding any responsibility for his or her actions. Such an extensive interpretation would not be supported either by the wording of Article 6 § 2 or any common ground in the national legal systems within the Convention community. On the contrary, in a significant number of Contracting States, an acquittal does not preclude the establishment of civil liability in relation to the same facts.

Thus, the Court considers that, while exoneration from criminal liability ought to stand in the compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof (see, *mutatis mutandis*, *X v. Austria*, no. 9295/81, Commission decision of 6 October 1982, Decisions and Reports (DR) 30, p. 227, and *C. v. the United Kingdom*, no. 11882/85, Commission decision of 7 October 1987, DR 54, p. 162). If the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue falling within the ambit of Article 6 § 2 of the Convention.

In the present case the impugned national ruling on compensation, which appeared in a separate judgment from the acquittal, did not state, 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 paragraphs 17-19 above). The ensuing civil proceedings were not incompatible with, and did not "set aside", that acquittal.

39. Furthermore, the purpose of establishing civil liability to pay compensation was, unlike that of establishing criminal liability, primarily to remedy the injury and suffering caused to the victim. The amount of the award – 75,000 Norwegian kroner – could be considered justified on account of the damage caused. It seems clear that neither the purpose of the award nor its size conferred on the measure the character of a criminal sanction for the purposes of Article 6 § 2.

40. Against this background, the Court does not find that the compensation claim amounted to the bringing of another "criminal charge" against the applicant after his acquittal.

41. The question remains whether there were such links between the criminal proceedings and the ensuing compensation proceedings as to justify extending the scope of Article 6 § 2 to cover the latter.

The Court reiterates that the outcome of the criminal proceedings was not decisive for the issue of compensation. In this particular case, the situation was reversed: despite the applicant's acquittal it was legally feasible to award compensation. Regardless of the conclusion reached in the criminal proceedings against the applicant, the compensation case was thus not a direct sequel to the former. In this respect, the present case is clearly distinguishable from those referred to above, where the Court found that the proceedings concerned were a consequence and the concomitant of the criminal proceedings, and that Article 6 § 2 was applicable to the former.

42. In sum, the Court concludes that Article 6 § 2 was not applicable to the proceedings relating to the compensation claim against the applicant and that this provision has therefore not been violated in the instant case.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that Article 6 § 2 of the Convention was not applicable to the disputed compensation proceedings;

2. *Holds* by six votes to one that there has not been a violation of Article 6 § 2 of the Convention.

Done in English, and notified in writing on 11 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mrs Tulkens and the dissenting opinion of Mr Costa are annexed to this judgment.

J.-P.C.
S.D.

CONCURRING OPINION OF JUDGE TULKENS

(Translation)

1. In principle, the fact that a civil action for damages may be brought after a person has been acquitted by a criminal court on the same facts does not *in itself* give rise to any particular problem in relation to Article 6 § 2 of the Convention. In other words, under that provision an acquittal does not prevent a court from considering whether the same act, divested of all the circumstances which gave it a criminal character, does not at least constitute prejudice such that the accused incurs civil liability if fault is established. It is, of course, important that the court in which the action for damages is brought should specify the wrongful act on which its decision is based, as distinct from the criminal offence in respect of which a final judgment has been given. In thus accepting the argument that criminal and civil wrongs are separate, I agree with the position expounded by the Court, namely: "[W]hile the exoneration from criminal liability ought to stand in the compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof ... Furthermore, the purpose of establishing civil liability to pay compensation was, unlike that of establishing criminal liability, primarily to remedy the injury and suffering caused to the victim" (see paragraphs 38-39 of the judgment).

2. The fundamental principle enshrined in Article 6 § 2 is that no person may be treated by representatives of the State as guilty of an offence until this has been established in accordance with the law by a competent court. Furthermore, this provision must be interpreted in such a way as to ensure that the scope of the presumption of innocence is not theoretical and illusory but practical and effective. Accordingly, Article 6 § 2 of the Convention will be applicable if the judicial authorities' assessment of the conduct of an applicant or a defendant in a civil action for damages undermines the fact that he has been finally acquitted on all the charges against him. The Court expressly acknowledges this in pointing out: "If the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue *falling within the ambit of Article 6 § 2 of the Convention*" (see paragraph 38 of the judgment). To that end, "the right to the presumption of innocence is binding not only on the criminal courts trying a case but also on courts which are not directly involved in determining the criminal charge" (see *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, opinion of the Commission, p. 38, § 85).

3. The Court's task is therefore to ascertain whether, in practice, civil proceedings for damages brought on the basis of the same facts as those in respect of which criminal proceedings have been conducted contain

imputations whose nature and scope are such as to establish a link with the criminal proceedings, thereby making Article 6 § 2 of the Convention applicable. That was not the case in this instance. The Supreme Court's judgment of 5 June 1996 ordering the applicant to pay compensation for non-pecuniary damage under section 3-5(1)(b) of the Damage Compensation Act neither stated nor implied that the applicant was criminally responsible for the offences of which he had been acquitted. That judgment was not incompatible with the applicant's final acquittal, and the finding that there has been no violation of Article 6 § 2 of the Convention is therefore justified.

DISSENTING OPINION OF JUDGE COSTA

(Translation)

It seems clear to me that the right to presumption of innocence may continue to apply even after the criminal action has been terminated or the accused has been acquitted, as the Court has held on many occasions, for example in the cases of *Minelli v. Switzerland* (judgment of 25 March 1983, Series A no. 62), *Sekanina v. Austria* (judgment of 25 August 1993, Series A no. 266-A), *Rushiti v. Austria* (no. 28389/95, 21 March 2000) or indeed *O. v. Norway*, *Hammern v. Norway* and *Y. v. Norway* (judgments delivered on the same date as the present judgment).

It also seems clear to me that, as my colleague Judge Tulkens rightly states in her concurring opinion, civil and criminal liability do not fully overlap and there may be a civil wrong, entailing an obligation to redress the damage sustained by the victim on account of the accused, even if the latter has been finally acquitted and has therefore lawfully been declared innocent in the criminal proceedings.

However, in my opinion the civil wrong still has to be *distinct* from the criminal wrong and the acts regarded as wrongful and prejudicial in civil law must not be *exactly* the same as those of which the defendant was accused in the criminal proceedings. Otherwise, both the presumption of innocence and the finding that the person acquitted was not guilty would be deprived of any useful purpose if judgment were given against that person in civil proceedings, as it would be paradoxical to protect a mere presumption for as long as it had not been rebutted by a ruling and yet to disregard the proof which reinforced that presumption.

What, then, is the position in the present case? The applicant, who was charged with the sexual abuse of a minor, was acquitted by the High Court after the jury had found him not guilty, and the High Court consequently dismissed the victim's claim for compensation. The Supreme Court subsequently quashed that decision on appeal, basing its judgment on the following grounds, cited in paragraph 19 of the judgment: "Justice Gjølstad found that the evidence satisfied the standard of proof, establishing that *sexual abuse had occurred* [emphasis added] and that, on the balance of probabilities, *it was clear that the applicant was the abuser* [*idem*]."

Admittedly, Justice Gjølstad added: "This decision was taken independently of the decision in the criminal case and ... it did not undermine the acquittal."

However, these carefully chosen words do not persuade me. Of course, in law an acquittal is irrevocable, but in the present case the acquittal was, in reality, seriously disregarded.

The grounds given for the Supreme Court's judgment, as set out above, are manifestly indissociable from the judgment's operative provisions. They

form the *ratio decidendi* of the judgment and have the same binding effect as the operative provisions themselves.

What benefit, then, did the applicant derive from his acquittal (apart from the important fact that he was not subject to criminal penalties)? He was told that he had been acquitted of the offence with which he had been charged, but he was subsequently told (on the basis of the same facts) *that it was clear that he had committed the offence*, and ordered to pay compensation to the victim. Where is the legal certainty in all that?

I have therefore reached a different conclusion from my colleagues in the majority. I do not consider this case to be distinguishable from those of *O.*, *Hammern* and *Y.*; I am of the opinion that Article 6 § 2 is also applicable in this case and that it has, moreover, been breached.

I can, of course, appreciate the national courts' legitimate concern about the interests of victims (who, by definition, are innocent) and of their beneficiaries. That is why, by applying standards of proof that are, in principle, stricter in criminal cases (precisely because of the presumption of innocence) than in civil cases, those courts may seek to establish the civil liability of a person who has been acquitted in criminal proceedings, the view being that the person is essentially liable but not guilty. It is difficult, however, to assert one thing and then the opposite: it cannot simultaneously be maintained that a man has been lawfully declared innocent of an offence (in this case, sexual abuse of a minor) and that he nonetheless probably did commit the offence (even if the probability is only 51%!) and should pay for it.

A fortiori, it cannot be asserted, as in this case, that an innocent person is clearly a criminal. In my opinion, a better means of achieving the aim of fairness in such situations would be to set up a compensation fund for the victims of crimes which remain unpunished or whose perpetrators are not identified. Just as revenge is not justice, compassion is no ground for circumventing justice.