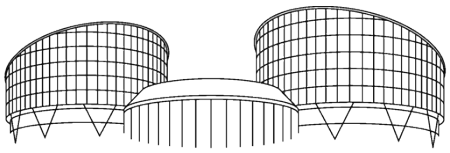

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VELLA v. MALTA

(Application no. 69122/10)

JUDGMENT

STRASBOURG

11 February 2014

FINAL

07/07/2014

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

In the case of Vella v. Malta,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Paul Mahoney, *judges,*
Geoffrey Valenzia, *ad hoc judge,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 21 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 69122/10) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Maltese national, Mr Francis Vella ("the applicant"), on 22 November 2010.

2. The applicant was represented by Dr J. Brincat, a lawyer practising in Marsa, Malta. The Maltese Government ("the Government") were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicant alleged that the Court of Appeal's civil judgments and the specific declarations made therein were incompatible with his right to be presumed innocent, as provided by Article 6 § 2 of the Convention.

4. On 23 August 2011 the application was communicated to the Government.

5. Mr V. De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber accordingly appointed Mr G. Valenzia to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Paola.

A. Criminal proceedings against the applicant

7. On an unspecified date the applicant was charged with multiple counts of theft (burglaries dating from 1976 to 1983) and/or receiving stolen goods.

8. By a judgment of 26 October 1992 the Court of Magistrates (as a court of criminal judicature) found the applicant guilty of a series of offences of receiving stolen goods, but acquitted him of the theft of those goods, holding that it was clear that he had had nothing to do with the thefts. The court found it curious that the applicant had given a detailed explanation as to the origin of each item, and yet a number of the victims of the thefts had identified the objects as belonging to them. During the investigation stage the applicant had admitted to the police that because of his fascination with antiques, he would purchase items even though he would have been aware that they had been stolen. During the proceedings, other than declaring that such statements were false, the applicant did not contest the statements or explain why he had made them in such detail and precision, and why he eventually showed the police where the items were kept. The police also confirmed that such statements had been made. Moreover, the court observed that, even though the applicant was a coin collector, the fact that he had been found in possession of tools for melting down metals such as silver and of a number of pieces of silver bullion did not favour his credibility. Furthermore, although not all the items stolen had been found in the applicant's possession, in the court's view it was curious that all the items found had been connected with specific, well-organised thefts, where it was clear that the robbers knew what they were looking for and were well aware of where they would place the merchandise. Indeed, the court had no doubt that the applicant had been aware of the illicit origins of the items in his possession. It sentenced him to five years' imprisonment.

9. On 3 November 1992 the applicant appealed on various grounds and complained that he had not been able to prove the origins of all the items because the police had raided his house, seizing all the relevant documents and receipts, which had then gone missing in their custody.

10. By a judgment of 30 October 2001, the Criminal Court of Appeal modified the judgment in part. It affirmed the applicant's innocence in respect of the theft charges, as there had not been a shred of evidence in that respect, and it reversed the part of the judgment concerning the majority of the remaining charges of receiving stolen goods (see below for detail). It disagreed with the first-instance court's conclusion that the applicant could not but have been a receiver of stolen goods on the ground that since a number of people had recognised the items they could not all have been lying, and therefore it must have been the applicant who was wrong and was therefore responsible. The Criminal Court of Appeal observed that the applicant was a collector of and dealer in antiques, who appeared to

purchase any item of interest without enquiring in detail into its legitimate origins. It appeared, from both the case file and the fact that certain items had been hidden, that the applicant was aware that some items had previously been stolen. However, the appeal court considered that the applicant should not suffer prejudice as a result of his inability to prove the origins of certain items, since this was a result of negligence on the part of the police, who had lost the relevant documentation (and some of the items). Moreover, no inferences could be drawn from the fact that he possessed certain tools, as it was normal for a coin collector to melt down coins which had become worthless. Examining the records of the proceedings, the court concluded that the crime of receiving stolen goods had only been proved in respect of objects of antiquarian value stolen from three specific venues, A., B., and C., (during two burglaries) and found in the applicant's possession. His sentence was in consequence reduced to a two-year suspended sentence.

B. Civil actions against the applicant

11. Pending the criminal proceedings against the applicant, a number of individuals alleging that they owned the items referred to in the list of charges against the applicant (also alleged victims of the relevant thefts) instituted civil proceedings to vindicate their ownership of the items. They requested that the items be returned to them and, where necessary, in the event that they could not be returned, that the applicant be held liable for damages. The relevant decisions on appeal were delivered subsequent to the Criminal Court of Appeal's judgment finding the applicant innocent of the charges of receiving stolen goods in relation to a majority of the items.

1. Maurice Meli Bugeja et v. Francis Vella

12. Proceedings were instituted against the applicant on 4 May 1997 in relation to items stolen in 1983 from venue P. The items had been found in his possession and seized by the police. The claimants asked the court to find that they were the owners and to order their return. All were items in relation to which the applicant had eventually been acquitted of charges of theft and receiving stolen goods. The applicant argued that he had acquired the items in accordance with the law and in good faith.

13. By a judgment of 26 January 2001, having heard the parties' addresses and having assessed the evidence, the Civil Court found that the claimants were the owners of the items at issue in the case (except for five items, the ownership of which had been claimed by other third parties). Costs were to be divided accordingly. The court found, however, without prejudice to any further action, that it would be premature to order the return of the said items.

14. The court observed that the applicant had declared that he did not know the claimant, but that she had recognised the applicant as a person who had gate-crashed a party she had once given at venue P. Moreover, G., a police officer, had testified that during the criminal investigations the applicant had admitted that "a number of items seized by the police had not been purchased honestly (*bis-sewwa*)". Thus, contrary to the applicant's testimony, it could be inferred that certain objects had not come into the applicant's possession by proper means. Although the court was convinced that the applicant had been involved in the antiques trade for a number of years, he had not been able to put forward any evidence in relation to the items at issue or any detail as to his trade. By contrast, the claimants had identified as theirs the items which had previously been stolen. The court thus, having to choose between the two versions, opted for that of the claimants. The court considered that the fact that numerous people had been to the police station and identified various objects of which they claimed to be the owners and which had been seized from the applicant's house was enough evidence to discredit the applicant's testimony.

15. By a judgment of 16 April 2004 the Court of Appeal (civil jurisdiction) upheld the first-instance judgment. From the evidence submitted it appeared that the claimants had suffered two burglaries at venue P. and that the police had seized some of the stolen items from the applicant, amongst many other items identified by various third parties as theirs. While the applicant was able to show that he had been a collector since his youth, he had not managed to prove ownership of the relevant items. As to their origin, he vaguely mentioned names of individuals, some of whom were deceased. He referred to receipts which were currently with the police and which could not be exhibited to the court. The applicant submitted declarations by individuals with whom he had traded. As to his trading, however, it appeared that the applicant had not hesitated to purchase items with dubious or suspicious, if not illicit, origins. Indeed, the applicant had been investigated and various items found in his possession had been seized. The origins of the items gave rise to more than a simple suspicion that they had not been acquired legitimately. According to police officer G., the applicant had even admitted this. During the criminal proceedings G. had been asked whether the applicant had admitted to the theft and the police officer had replied "yes". G. further stated that the applicant had referred to the dishonest purchase of a sofa ("*Dan mhux bis-sewwa*") and had only shown receipts in respect of certain items in connection with which the applicant had been charged, but not all of them. In that light, the court was not satisfied that the applicant had submitted sufficient proof to show that he was the owner of the said items. Moreover, the fact that numerous people, apart from the applicant, had claimed to be the owners of the items did not suffice to support the view that the applicant was the owner.

2. Ian Ellis et v. Francis Vella

16. Proceedings were instituted against the applicant on 26 May 1994 in relation to items stolen in 1983 from venue BC, which had been found in his possession and seized by the police. The claimants asked the court to find that they were the owners of the items and to order their return. All were items in relation to which the applicant had eventually been acquitted of charges of theft and receiving stolen goods. The applicant argued that he had acquired the items in accordance with the law and in good faith.

17. By a judgment of 29 January 2001 the Civil Court found in favour of the claimants. It held, however, without prejudice to any further action, that an order for the return of the said items would be premature.

18. The Civil Court noted that there was a certain disagreement in respect of the list of objects identified by the original claimant (the deceased ancestor of the current claimants), in that certain items had been added later. However, the claimant had produced a number of witnesses who had confirmed his declarations as to which items had been stolen. The applicant declared under oath that all the items referred to by the claimants, as well as all the other items seized, were owned by him, as he had bought them over the years. In his testimony he gave the names of people from whom he had purchased each item. He also submitted a receipt dated 1983, the year of the burglary, which indicated that he had bought a number of objects for the sum of 8,800 Maltese liri (MTL, approximately 20,500 euros (EUR)) from a certain S.A. Nevertheless, the court considered the claimants' version to be more reliable, as it was corroborated by photos and other witnesses. Moreover, police officer G. had testified that the applicant had stated that various items seized from his house "had not been purchased honestly" and this could not but weaken the applicant's testimony. Therefore the court had no other option but to find in favour of the claimants, at least in respect of those items that were not being claimed by other third persons.

19. By a judgment of 16 April 2004, the Court of Appeal (civil jurisdiction) upheld the first-instance judgment. It considered that the Civil Court had properly assessed the evidence and delivered a reasoned judgment. In any case, the Court of Appeal considered that the applicant had not provided a reliable explanation in respect of the origin and purchase of the relevant items. Indeed, during the criminal proceedings G. had testified, *inter alia*, that "at no time had the applicant stated that he had stolen the items from here or there, but he had mentioned that he had bought certain items from T., and that he knew about their dubious origins (*kienu ġejjin bil-ħazin*)". The Court of Appeal considered that had the Civil Court based its decision solely on that testimony and stopped there, the relevant burden of proof might not have been satisfied. However, all the evidence advanced indicated the probability that the relevant items belonged to the claimant's heirs – they had been stolen from venue BC, and had been identified by the claimants, even though third parties had also claimed ownership of some of

the items. Although the applicant had testified under oath that he had purchased the items legally, his testimony had not been consistent and had lacked veracity. In particular, he had given the impression that he was a trader in antiques and that he had traded with various lawyers, but when questioned in respect of each of them, it transpired that he had not bought any of the items relevant to the case. The other people mentioned by the applicant were deceased and could not testify. Neither could the applicant submit receipts for those purchases, giving as the reason for this that they had been seized by the police and were being held as evidence in the criminal proceedings against him. Even if that were so, the applicant had not provided proof. By contrast, the claimants had submitted photographs of the relevant items taken before they had been stolen.

3. Baroness Maria Testaferrata Bonici et v. Francis Vella

20. Proceedings were instituted against the applicant on 4 September 1992 in relation to items stolen from venue B. (including items allegedly transformed into silver bullion), which had been found in his possession and seized by the police. All were items in relation to which the applicant had eventually been acquitted of theft but found guilty of receiving stolen goods. The claimants requested that the applicant be found responsible for the theft or receiving of the stolen goods and therefore liable for damages. They asked the court to quantify such damages and to order the applicant to pay them. The applicant argued that he had acquired the items in accordance with the law and in good faith.

21. By a judgment of 22 June 2001 the court found that the claimants were the owners of the relevant items, ordered the applicant to return the said items, and held the applicant liable for damages for holding the relevant items in bad faith.

22. The court noted the expert evidence, which found that there was sufficient proof that the items were owned by the claimants. Indeed, the applicant had not denied that the items could have been previously owned by the claimants. During the criminal investigations the applicant had admitted that he had previously purchased stolen items. The declarations used in the criminal proceedings were exhibited before the court and the applicant only contended that police officer G. had invented certain things. Having re-read the witness statements, the experts took the view that the applicant rarely acquired items lawfully and in good faith. He actually was perfectly well aware of their dubious origins, as he was told by the sellers that the items had been stolen. This could not be ignored, especially as the applicant never stated that he had sale receipts for the relevant items. The items were found in his possession, he did not remember from whom he had bought them and he had no receipts. In consequence, it could not be said that he had purchased them in good faith. The court held that the applicant's statements used in the criminal proceedings were admissible evidence

(Article 632 (1) of the Code of Organisation and Criminal Procedure ("the COCP" – see Relevant Domestic Law below)). Officer G. presented five statements made by the applicant during the investigation, and the applicant explained which parts of those statements he agreed with and which parts he contested. The court considered that in doing so the applicant was picking and choosing, and yet there existed contradictions. For example, in one statement the applicant said that he had purchased two chalices from a taxi driver, and he subsequently confirmed that statement. In another statement he repeated this in more detail and subsequently stated that he had never made such a statement. At a later date he repeated the story, but differently, saying that he had bought more items. The court noted that the taxi driver had not been called as a witness to corroborate the applicant's version. While the applicant stated that he had purchased the items from various persons, only one of those persons had been called as a witness and the latter only testified to the effect that the applicant had an interest in antiques. Another witness confirmed that the applicant was also a moneylender. Indeed, the applicant submitted a number of documents in evidence of this, but did not submit any evidence in relation to the origins of the items at issue. The court therefore concluded from the totality of the evidence that the claimants had been burgled, that they had identified the stolen items, and that the applicant had not proved that he had acquired the items in good faith. The court found it of particular relevance that in one of the applicant's statements, which he did not contradict, he had said "when I see an antique, whatever it may be ... I go blind. I want it for myself in order to be able to take pleasure in looking at it". Thus, the court considered that any other comment would be superfluous. The court found in the applicant the very image of a receiver of stolen goods (*ricettatur*).

23. As to the claim for damages, the court accepted and shared the expert's conclusions: as had emerged from the evidence, not all the stolen items were found in the applicant's possession, but a quantity of silver bullion was found which the claimants argued was the product of melted-down silver statues which had been stolen from them. Indeed, it had been shown that the bullion seized from the applicant was home-made and not pure. Thus, although there was no proof that the applicant had stolen the items, there was sufficient proof to hold that the claimants were indeed the owners of the relevant items, that those items had been in the applicant's possession in bad faith and that the applicant had previously melted down silver. Indeed, both the bullion and the tools for making it had been found in his possession. The applicant gave an explanation about the bullion, but it was not corroborated by any witness statement. The applicant gave no credible explanation for the clearly home-made bullion. It was therefore very probable that objects stolen from the claimants and acquired in bad faith had, together with other items, been melted down to hide their identity. The court further highlighted, of its own accord, the absence of

corroboration as regards the bullion, and the presence of tools used to melt down silver. Thus, the claimants' case had been made out on the balance of probabilities. The applicant was therefore liable for damages because he had been in possession of stolen goods and because of the damage he had caused by melting down such items. The amount of damages was fixed at MTL 64,870 (approximately EUR 151,100).

24. The applicant appealed, arguing, *inter alia*, that the legal expert whose conclusions had been endorsed by the court had relied on evidence (the applicant's statements during the criminal investigation) which should not be given any weight in civil proceedings, and that the first-instance court had erred in finding him guilty in respect of items which were never found by the police, referring to the items that had allegedly been melted down.

25. By a judgment of 9 November 2004 the Court of Appeal (civil jurisdiction) upheld the first-instance judgment (in so far as relevant). It held, however, that the applicant could not be ordered to return items which were no longer in his possession. It further considered that Article 632 (1) of the COCP (see Relevant Domestic Law below) applied to the statements made by the applicant during the criminal investigation, even though they had not been signed by him. It sufficed that officer G. had witnessed those statements being made by the applicant for them to be admissible in evidence. It was for the first-instance court to assess them and reach its conclusions. Moreover, Article 6 of the Criminal Code (see Relevant Domestic Law below) did not imply that evidence used in criminal proceedings could not be used in analogous civil proceedings. Furthermore, the applicant had not objected to the use of that evidence before the first-instance court. Having examined in detail the evidence produced, the Court of Appeal further considered that the first-instance court had not made an incorrect assessment and that it would therefore not interfere with its finding. It found it pertinent to point out that the fact that only eleven silver bars had been found in the applicant's possession, despite the fact that the items melted down should have amounted to many more bars, was not a thesis favourable to the applicant. Indeed, the applicant could easily have disposed of the other bars resulting from the melted-down items before the police found the bars. He was, thus, responsible for the damage caused by the melting down of the items, in accordance with the estimates provided by the expert. Any difficulties in evaluating the original items were of the applicant's own making, as it had been his choice to melt them down.

C. Constitutional redress proceedings

26. On 22 January 2008 the applicant instituted constitutional redress proceedings, complaining that the three judgments of the Court of Appeal

(civil jurisdiction) referred to above and another still pending set of proceedings had violated, *inter alia*, his right to be presumed innocent.

27. By a judgment of 29 September 2009, the Civil Court (First Hall), in its constitutional jurisdiction, rejected claims lodged by the applicant. In the context of the applicant's various complaints, it held that the civil proceedings against the applicant had not amounted to a repetition of the criminal proceedings, as the intention of the civil proceedings had not been to find whether the applicant was guilty of any charge, but solely to secure the return of the property to its owners and, where that was not possible, to determine the level of compensation due. Moreover, the different proceedings were not comparable in relation to the burden of proof required. Indeed, each of the proceedings was capable of resulting in different findings of responsibility, including findings which conflicted with each other. The court noted that in the civil proceedings the applicant had not been found guilty of any crime. The civil courts had assessed the evidence in relation to the complainants' ownership rights to the property against the applicant's explanation as to how the items had been found in his possession, within the relevant parameters of civil proceedings of that nature. Considering the applicant's complaint under Article 6 § 2 of the Convention, it held that the provision could not be applicable, since the applicant was no longer accused of a criminal offence, and his complaints were directed against civil proceedings which, save for one, had also been concluded. At a later stage, in relation to Article 6 § 2, the court also considered that the conclusions reached by the civil courts were based on a proper assessment of evidence which did not violate the applicant's presumption of innocence. Those conclusions were based on the principle of *juxta allegata et probata* (delivering a judgment on the basis of what has been alleged and proved), as expected in this type of proceedings. The court considered that the applicant's case could not be compared to any of the cases cited by him under Article 6 § 2 concerning the request of acquitted applicants for compensation for detention, and therefore the principles enunciated therein did not apply.

28. By a judgment of 25 May 2010, the Constitutional Court rejected an appeal lodged by the applicant and upheld the first-instance judgment. It considered that there had been no breach of the applicant's rights since criminal and civil proceedings were separate and distinct: one was brought by the State, had a specific set of rules and aimed at the imposition of a punishment, whereas the other was brought by an interested individual for the restitution of his or her property rights. During criminal proceedings various rules played in favour of the accused, who might be found innocent simply because there was not sufficient evidence. This should not deny any third party the possibility of access to court to obtain relevant redress on the basis of a different burden of proof. The applicant had been cleared of all charges except those of receiving certain goods stolen from certain

properties. However, that did not mean that the items in question, found in the applicant's possession, were his own. The civil proceedings instituted by individuals claiming certain items against the possessor were independent of the defendant's good or bad faith. The Court of Appeal had in each case found for the claimants, after considering that the latter had proved that they were the owners of the stolen items and that the applicant had not proved his ownership. The cases had dealt solely with the establishment of the ownership of the items, and nothing more, and if the outcome was that the items were not his own, then he was bound to give them back to their rightful owners, regardless of how they came to be in his possession.

II. RELEVANT DOMESTIC LAW

29. Under Article 6 of the Criminal Code, Chapter 9 of the Laws of Malta, criminal cases and civil actions are prosecuted independently of eachother.

They require different burdens of proof. A criminal case requires proof "beyond reasonable doubt", while a civil action is assessed on "the balance of probabilities".

30. Article 632 (1) of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta, reads as follows:

> "Any declaration made by a party against his interest, or any other writing containing any admission, agreement, or obligation is admissible as evidence."

THE LAW

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

31. The applicant complained that the Court of Appeal's civil judgments and the specific statements made therein were incompatible with his right to be presumed innocent 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."

32. The Government contested that argument.

A. Admissibility

1. The Government's objection ratione materiae

33. The Government considered that the provision was not applicable. They noted that the finding of responsibility in the civil proceedings at issue

did not concern a criminal charge under domestic law. Moreover, the outcome of the criminal proceedings was not decisive for the civil claim. The civil claim depended on a separate legal assessment based on criteria and evidentiary standards which differed from those applicable to criminal liability. In their view, the mere fact that an act may give rise to a civil claim which was also covered by the objective constitutive elements of a criminal offence did not provide a sufficient ground for regarding the proceedings as ones in which the applicant was being charged with a criminal offence.

34. The Government went on to refer to the Court's case-law, arguing that acquittal in the criminal sphere did not deprive an injured party of the opportunity of instituting civil claims for damages, which were subject to a lower standard of proof. In the present case the civil domestic courts had not solely limited themselves to examining evidence given in the criminal proceedings but had also examined other available evidence.

35. The Government also noted that at the domestic level such proceedings were considered civil and as such, Article 6 § 2 of the Convention did not apply to them (see *Carmelo sive Charles Saliba v. The Attorney General* – Civil Court (First Hall)).

36. Referring to *Allen v. the United Kingdom* ([GC], no. 25424/09, ECHR 2013), the Government noted that the second aspect of the protection of Article 6 § 2, namely that of proceedings following discontinuation of criminal proceedings or after an acquittal, required examination on a case-by-case basis. In the present case, given that the applicant had not been acquitted of all the charges brought against him in the case of *Baroness Maria Testaferrata Bonici et v Francis Vella,* (hereinafter "the *Baroness* case"), the circumstances were different from the other two cases.

37. The applicant considered that the civil proceedings (based on delict rather than tort) at issue were linked with the criminal proceedings (as also shown through the legislation on prescriptive periods). The principal evidence used in the proceedings at issue had in fact been that of the investigating police inspector and statements made by the accused in the absence of a lawyer – as at the time the law did not provide for such a guarantee. He noted that the Government had failed to understand the case-law they were citing, which precisely stated that although the proceedings were traditionally civil in nature, Article 6 § 2 could still apply if the national decision on compensation contained statements imputing criminal liability to the individual who had been acquitted.

2. The Court's assessment

(a) General principles

38. Article 6 § 2 safeguards "the right to be presumed innocent until proved guilty according to law". Viewed as a procedural guarantee in the context of a criminal trial itself, the presumption of innocence imposes

requirements in respect of, *inter alia*, the burden of proof, legal presumptions of fact and law, the privilege against self-incrimination, pre-trial publicity and premature expressions, by the trial court or by other public officials, of a defendant's guilt (see *Allen* [GC], cited above, § 93 and the case-law cited therein for examples of the above situations).

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

40. As expressly stated in the terms of the Article itself, Article 6 § 2 applies where a person is "charged with a criminal offence". The Court has repeatedly emphasised that this is an autonomous concept and must be interpreted according to the three criteria set out in its case-law, namely the classification of the proceedings in domestic law, their essential nature, and the degree and severity of the potential penalty (see, among many other authorities on the concept of a "criminal charge", *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22, and *Phillips v. the United Kingdom*, no. 41087/98, § 31, ECHR 2001-VII). To evaluate any complaint under Article 6 § 2 arising in the context of judicial proceedings, it is first of all necessary to ascertain whether the impugned proceedings involved the determination of a criminal charge, within the meaning of the Court's case-law (see *Allen* [GC], cited above, § 95).

41. However, in cases involving the second aspect of the protection afforded by Article 6 § 2, which arises when criminal proceedings have terminated, it is clear that the application of the foregoing test is inappropriate. In these cases, the criminal proceedings have, by necessity, been concluded and unless the subsequent judicial proceedings give rise to a new criminal charge within the Convention's autonomous meaning, if Article 6 § 2 is engaged, it must be engaged on different grounds (*ibid.,* § 96).

42. The Court has in the past been called upon to consider the application of Article 6 § 2 to judicial decisions taken following the conclusion of criminal proceedings, either by way of discontinuation or after an acquittal, in proceedings concerning, *inter alia*, the imposition of civil liability to pay compensation to the victim (see *Ringvold v. Norway*, no. 34964/97, § 36, ECHR 2003-II; *Y. v. Norway*, no. 56568/00, § 39, ECHR 2003-II; *Orr v. Norway*, no. 31283/04, §§ 47-49, 15 May 2008; *Erkol v. Turkey*, no. 50172/06, §§ 33 and 37, 19 April 2011; *Vulakh and Others v. Russia*, no. 33468/03, § 32, 10 January 2012; *Diacenco v. Romania*, no. 124/04, § 55, 7 February 2012; *Lagardère v. France*, no. 18851/07, §§ 73 and 76, 12 April 2012; and

Constantin Florea v. Romania, no. 21534/05, §§ 50 and 52, 19 June 2012). In these cases, concerning the victim's right to compensation from the applicant who had previously been found not guilty of the criminal charge, the Court had held that where the decision on civil compensation contained a statement imputing criminal liability, this would create a link between the two proceedings such as to engage Article 6 § 2 in respect of the judgment on the compensation claim (see *Ringvold*, cited above, § 38; *Y. v. Norway*, cited above, § 42; and *Orr*, cited above, § 49).

43. More recently, in *Allen v. the United Kingdom* (cited above, §§ 103-04) the Grand Chamber formulated the principle of the presumption of innocence in the context of the second aspect of Article 6 § 2 as follows:

"the presumption of innocence means that where there has been a criminal charge and criminal proceedings have ended in an acquittal, the person who was the subject of the criminal proceedings is 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 was not proven, the innocence of the person in question is respected. This overriding concern lies at the root of the Court's approach to the applicability of Article 6 § 2 in these cases.

Whenever the question of the applicability of Article 6 § 2 arises in the context of subsequent proceedings, the applicant must demonstrate the existence of a link, 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 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."

(b) Application to the present case

44. The Court notes that the applicant's complaint concerns not one, but three separate sets of proceedings which were taking place almost simultaneously and as a result of which he claims to have suffered a breach of the presumption of innocence as a consequence of the Court of Appeal's statements, despite the fact that he had been acquitted (of the charge in relation to most of the items at issue) in the criminal proceedings. The Court therefore considers that a global approach should be taken in the instant case, which relates to the second aspect of the protection afforded by Article 6 § 2 (see paragraph 39 above).

45. The Court considers it appropriate to point out that despite the wording of the applicant's complaint which was directed towards the Court of Appeal's judgments, he, nevertheless, made repeated reference to the first-instance judgments. To some extent this is understandable given that the Court of Appeal's judgments confirmed the findings of the lower courts. However, it is important to highlight that the crux of the complaint before this Court and the Constitutional jurisdictions concerned the Court of Appeal's statements - the only statements made after the end of the criminal proceedings – and the Court will therefore address the complaint solely under the second aspect of the protection afforded by Article 6 § 2.

46. The Court observes that the criminal proceedings in the applicant's case, in which he was charged with theft and receiving stolen goods, ended (on 30 October 2001) in a total acquittal in respect of the charges of theft. He was also acquitted of the charges of receiving stolen goods in connection with most of the items. He was, however, found guilty of receiving in connection with a few items which were the subject of proceedings in the *Baroness* case. The subsequent civil proceedings related to the victims' request that the court find that they were the owners of the items at issue and order the applicant to return the said items. In the *Baroness* case, the victims also asked the court to find the applicant responsible for the said actions and liable for damages. They can therefore be equated to compensation proceedings brought by victims of an offence, which may attract the protection of Article 6 § 2.

47. Having regard to all the proceedings together and the circumstances relevant to the cases at issue, in the light of the above-mentioned case-law the Court is ready to accept that there existed a link between the said civil proceedings and the criminal proceedings. As a result, Article 6 § 2 is applicable in the context of the civil proceedings at issue. The application is not therefore incompatible *ratione materiae* with the provisions of the Convention.

48. The Court does not find the complaint manifestly ill-founded within the meaning of Article 35 § 3 (a), nor inadmissible on any other ground. It accordingly dismisses the Government's objection of inadmissibility and declares the complaint admissible.

B. Merits

1. The parties' observations

(a) The applicant

49. The applicant complained that the domestic courts in their ordinary jurisdiction had violated his right to be presumed innocent. He noted that he had been acquitted of all charges of theft and of most of the charges of receiving stolen goods, except a few in respect of certain specific stolen

goods. Nevertheless, the judgments of the ordinary domestic courts made statements to the effect that the applicant was responsible for receiving certain stolen goods, that he was the receiver of things that no longer existed in their original state, that the applicant had the personality of a receiver of stolen goods (and at one point, even though he was later cleared of it, that he had been recognised as having maliciously visited the victim's house).

50. The applicant noted that in *Allen* (cited above, § 126), the Court had asserted that where the domestic court indicated that the criminal file contained enough evidence to establish that a criminal offence had been committed, such language would violate the presumption of innocence. Indeed, in all the cases decided by the Court of Appeal, it had been concluded that the goods found in the applicant's possession had been stolen.

51. In the *Baroness* case, the first-instance court and the Court of Appeal stated that the applicant had the personality of a receiver of stolen goods and found him liable also in respect of bars of silver bullion. The applicant argued that the charge in respect of that had been excluded by the criminal court, and no such new element could be proved. Given that silver had no DNA, the courts could not establish that the melted-down silver had originally been the stolen items. In *Ian Ellis et v Francis Vella* and *Maurice Meli Bugeja et v Francis Vella,* the courts concluded that the applicant was guilty of receiving the items claimed by the claimants, even though he had been acquitted. In the applicant's view, in those two cases it was clear that the first-instance court and the Court of Appeal had presumed that he was guilty of receiving stolen goods (on the basis of his statement during the criminal investigation that some of his possessions had not been acquired legitimately), despite the fact that he had been acquitted by the Criminal Court of Appeal.

52. The applicant noted that in all three ordinary judgments it had been stated that a theft had been committed; that stolen items had been found in his possession; and that he had sometimes acquired items knowing their illicit origin. This was based on the statements made by the applicant to police inspector G. during the investigation. The applicant considered those to be the subjective and objective elements of the crime of receiving stolen property. In his view, those factors, accompanied by the remark in the *Baroness* case to the effect that he was a receiver of stolen property *par excellence,* had shed doubt on the correctness of his acquittal.

(a) The Government

53. The Government submitted that despite the court's phrase in the *Baroness* judgment to the effect that it found the applicant to be the very image of a receiver of stolen goods, it transpired from the judgment as a whole that the court was not in any manner attributing criminal responsibility to the applicant. Indeed, the court made it clear that its

conclusions were based on the fact that the claimants had managed to prove that the silver bullion was made of melted-down silverware belonging to them, and the applicant had not presented any evidence to challenge that. In all three cases the courts limited themselves to the finding of responsibility in the civil sphere, without in any way pronouncing themselves on criminal liability, and only after having considered evidence over and above that which had been available during the criminal trial. It followed that, in the Government's view, there could not be any violation of the Convention (see, *a contrario, Y. v. Norway,* cited above), as the language used by the domestic courts was limited to a finding of civil responsibility and did not demonstrate a lack of respect for the presumption of innocence.

54. According to the Government, in the present case the right of the owners of the stolen property to recover their belongings should prevail over any possible interference with the presumption of innocence which may result from the civil proceedings. In their view, it would not be proportionate to extend the presumption of innocence to such an extent.

2. The Court's assessment

(a) General principles

55. It appears from the Court's case-law that there is no single approach to ascertaining the circumstances in which Article 6 § 2 will be violated in the context of proceedings which follow the conclusion of criminal proceedings. Much will depend on the nature and context of the proceedings in which the impugned decision was adopted (see *Allen*, cited above, § 125).

56. In cases involving civil compensation claims lodged by victims, regardless of whether the criminal proceedings ended in discontinuation or acquittal, the Court has emphasised that while exoneration from criminal liability ought to be respected in the civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, if the national decision on compensation were to contain a statement imputing criminal liability to the respondent party, this would raise an issue falling within the ambit of Article 6 § 2 of the Convention (see *Ringvold*, cited above, § 38; *Y. v. Norway*, cited above §§ 41-42; *Orr*, cited above, §§ 49 and 51; and *Diacenco*, cited above, §§ 59-60).

57. In all cases, and no matter what the approach applied, the language used by the decision-maker will be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2 (see, for example, *Y. v. Norway*, cited above, §§ 43-46; *O. v. Norway*, no. 29327/95, ECHR 2003-..., §§ 39-40; *Hammern v. Norway*, no. 30287/96, ECHR 2003-..., §§ 47-48; *Baars v. the Netherlands*, no. 44320/98, §§ 29-31, 28 October 2003; *Panteleyenko v. Ukraine*, no. 11901/02, § 70, 29 June 2006; *Reeves v. Norway* (dec.), no. 4248/02, 8 July 2004; and *Konstas v. Greece*, no.

53466/07, § 34, 24 May 2011). Thus, in a case where the domestic court held that it was "clearly probable" that the applicant had "committed the offences with which he was charged", the Court found that it had overstepped the bounds of the civil forum and had thereby cast doubt on the correctness of the acquittal (see *Y. v. Norway*, cited above, § 46; and *Diacenco,* cited above § 64). Similarly, where the domestic court indicated that the criminal file contained enough evidence to establish that a criminal offence had been committed, the language used was found to have violated the presumption of innocence (see *Panteleyenko*, cited above, § 70). In cases where the Court's judgment expressly referred to the failure to dispel the suspicion of criminal guilt, a violation of Article 6 § 2 was established (see, for example, *Sekanina v. Austria*, 25 August 1993, §§ 29-30, Series A no. 266-A, and *Rushiti v. Austria*, no. 28389/95, §§ 30-31, 21 March 2000). However, when regard is had to the nature and context of the particular proceedings, even the use of some unfortunate language may not be decisive. The Court's case-law provides some examples of instances where no violation of Article 6 § 2 has been found, even though the language used by the domestic authorities and courts was criticised (see *Allen*, cited above, § 126, and the case-law cited therein; *A.L.F. v. the United Kingdom*, (dec.), no. 5908/12, 12 November 2013, § 24, and *Adams v. the United Kingdom*, (dec.), no. 70601/11, 12 November 2013, § 41).

(b) Application to the present case

58. The Court has to assess whether, having regard to the nature of the task that the domestic courts were required to carry out, the language they employed was compatible with the presumption of innocence guaranteed by Article 6 § 2 (see*, mutatis mutandis, Allen*, cited above, § 129).

59. As to the nature of the courts' task, the Court notes that the domestic courts in the civil proceedings were not required to examine or re-evaluate the judgment delivered in the criminal proceedings. This was evident given that the first-instance civil judgments in the three cases had been delivered before the conclusion of the criminal proceedings. In the appeal proceedings of which the applicant complains, the Court of Appeal was also not required to examine or re-evaluate the criminal judgment which had by then been delivered, its role being to determine solely whether the first-instance court had made a proper non-arbitrary assessment of the evidence in the civil proceedings. In substance, the role of the courts in these civil proceedings was to determine whether the claimants were the rightful owners of the items at issue and, in the *Baroness* case, the court was specifically required to rule on the civil responsibility of the applicant. Although the Court of Appeal had the benefit of a final criminal judgment, it did not, in effect, base its decision on that final judgment, despite the fact that the criminal jurisdictions had found the applicant guilty of some of the offences. Instead, as in the other two cases, the civil jurisdictions determined the issue on the

basis of the evidence presented before them. While some of that evidence had also been the evidence presented before the criminal jurisdictions, the civil jurisdictions did not base their finding on the contents of the criminal file as presented before the Criminal Courts. In the present case, in conformity with domestic law, the relevant evidence was brought before the civil jurisdictions and in some cases also reiterated by the witnesses before those courts. It was also accompanied by other evidence, the totality of which was brought to the courts' attention in adversarial conditions, and it was on the basis of that totality of evidence that the first-instance courts relied on in the judgments that were then upheld by the Court of Appeal.

60. Moreover, the civil jurisdictions had to determine the issue at stake on the basis of civil-law criteria and in a different framework from that of the criminal proceedings (see Relevant Domestic Law above). In the present case, those jurisdictions found against the applicant because he had failed to discharge the relevant burden of proof that he was indeed the owner of the items at issue (see paragraphs 15 and 19 *in fine*), a burden which had, on the other hand, been discharged by the claimants. The courts' findings were based on a "probability" resulting from the evidence put forward. The Court of Appeal had also commented that had the Civil Court based its decision solely on testimony given in criminal proceedings and stopped there, the relevant burden of proof might not have been satisfied (see paragraph 19). Furthermore, a finding to the effect that the claimants were the rightful owners of the items at issue, and in the *Baroness* case, that the applicant was liable for damages (including for the smelted silver bullion), cannot be equated to a finding of guilt. Indeed, if the mere finding of liability for damages despite an acquittal were to raise such an issue under this provision, one would have to abolish such civil liability actions, which are in fact present and popular in many judicial systems and which are in principle compatible with the Convention, as evidenced by case-law (see, for example, *Ringvold*, cited above, and *Y. v. Norway*, cited above). Indeed, as noted by the Government, the Court has previously accepted that the presumption of innocence should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict burden of proof. However, in reply to the Government's last submission, the Court emphasises that even in such proceedings the innocence of the person in question must be respected (see, by implication, *Allen*, cited above, § 103).

61. The operative finding must therefore be viewed in the light of the statements made by the relevant courts. Taking into account all the relevant statements made by the Court of Appeal in the three cases, as well as the comment in the *Baroness* case, at first-instance, to the effect that the applicant was the very image of a receiver of stolen goods, which was not specifically reiterated by the Court of Appeal (in fact the applicant was in that case convicted of receiving some items), and while accepting that there

may have been some unfortunate statements, the Court considers that they did not in themselves impute criminal liability to the applicant beyond that found by the Criminal Court. Nor did the Court of Appeal comment on whether the applicant should have been found guilty and neither did it question the criminal findings.

62. In conclusion, the Court does not consider that the language used by the Court of Appeal in the three judgments at issue, when considered in the context of the proceedings before it, can be said to have undermined the applicant's acquittal or to have treated him in a manner inconsistent with his innocence.

63. There has accordingly been no violation of Article 6 § 2 of the Convention.

FOR THESE REASONS, THE COURT,UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 11 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President