

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

SECOND SECTION

CASE OF SEVEN v. TURKEY

(Application no. 60392/08)

JUDGMENT

STRASBOURG

23 January 2018

FINAL

23/04/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Seven v. Turkey,

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

Robert Spano, *President,*
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 19 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 60392/08) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Hamit Seven, ("the applicant"), on 24 November 2008.

2. The applicant was represented by Mr Ü. E. Dağdeviren, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that his dismissal from the police force on the grounds that he had attempted to rape a woman called S.K., while criminal proceedings on those charges were still pending, had violated his right to the presumption of innocence, as guaranteed by Article 6 § 2 of the Convention.

4. On 8 September 2016 the complaint concerning Article 6 § 2 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Ankara.

6. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

1. Criminal proceedings against the applicant

7. At the time of the events giving rise to the application the applicant was serving as a chief police officer in Ankara.

8. On 12 April 2002 a woman named S.K. filed a criminal complaint with officers at Demirfırka police station, alleging that she had been taken into a police car by two officers on the pretext of her being a suspect. Afterwards, they had driven her around in the car and finally had taken her to an empty plot of land where she had been raped in the car by one of the police officers. He had been wearing glasses and had held a police radio in his hand. She identified the vehicle's licence plate.

9. The applicant and the other police officer were immediately called into the police station for questioning as they had been assigned to the vehicle which had the licence plate identified by S.K.

10. In his statement to the police, made in the presence of his lawyer, the applicant said that he had picked up S.K. around 2 a.m. while he was patrolling with his colleague, S.A., on Talatpaşa Boulevard. He submitted that S.K., who had looked intoxicated, had hailed them, stopped their car, and told them that she worked as a "*konsomatris*", a bar hostess who entertains male guests by keeping them company. She had asked for their help to go to a safe place and the applicant had offered to take her to her home, which she had declined. According to the applicant they had also offered to take her to the police station, which she had also declined. Finally, they had taken her to S.A.'s home with the intention of sobering her up. The applicant stated that when S.A. was in the kitchen preparing something to eat, S.K. had started behaving strangely, taking off her clothes and acting in a sexually inviting manner. The applicant said that as a result of being aroused he had simply ejaculated in his own hand but had not touched her. He had then called S.A. and told him that they had to leave immediately. The applicant stated that they had left S.K. in front of a hotel at 3 a.m. and had continued with their patrol until they had been called into the police station for questioning.

11. S.A. confirmed the applicant's version of events in his statement to the police on the same day.

12. In an additional statement to the police, also made on the same day, S.K. told the police that she could not remember whether the police officers had taken her to an apartment or some other place as she had been very intoxicated.

13. A forensic medical examination of S.K. was carried out on the same day, showing that she had no bruises on her body.

14. A forensic expert report drafted on 15 April 2002 stated that the underwear that the applicant had been wearing on the night in question had

S.K.'s and his own DNA on it. Furthermore, napkins found in the rubbish bin on the balcony of S.A.'s apartment had traces of the applicant's semen.

15. On 6 June 2002 the Ankara governor decided to authorise the prosecution of the applicant and S.A. for alleged rape and abuse of authority. The applicant lodged an objection with the Ankara District Administrative Court seeking annulment of the governor's decision, but it was dismissed.

16. On 15 November 2002 the Ankara public prosecutor filed an indictment with the Ankara Criminal Court of First Instance, charging the applicant and S.A. with abuse of public authority and the unlawful use of a public vehicle under Article 240 of the former Turkish Criminal Code and section 16 of the Law on Vehicles (Law no. 237).

17. In her statement in the first-instance proceedings, S.K. said that she had flagged down a police car that day to ask for help. As she had been intoxicated, she could not remember exactly what had happened later or which officer had raped her.

18. The chief public prosecutor submitted an opinion on the merits and stated that the applicant's conduct should be reclassified as rape and unlawful detention and that of S.A. as having aided and abetted those acts. He therefore argued that the case should be referred to the Ankara Assize Court, which has jurisdiction to hear such charges.

19. On 13 July 2004 the Ankara Criminal Court of First Instance ruled that it did not have jurisdiction to hear the case. It found that the offences committed by the applicant while performing his official duties were rape and the unlawful detention of an adult, which were governed, *inter alia*, by Articles 251, 416 § 1 and 429 § 1 of the former Criminal Code, and the unlawful use of a public vehicle, which came under section 16 of Law no. 237. It stated that those offences had to be tried by assize courts and it therefore referred the case to the Ankara Assize Court.

20. At a hearing held on 24 March 2005, the Ankara Assize Court heard S.K. who, contrary to her previous statements, submitted that the officers had not raped her and had not taken her anywhere without her consent. She then submitted that she wished to withdraw her complaint.

21. On 13 September 2005 the Ankara Assize Court acquitted the applicant and S.A. of all charges, holding that there was no evidence of force on S.K.'s body, one of the constituent elements of the offences of rape and unlawful detention. The court further held that despite S.K.'s statement of 24 March 2005, the forensic report of 15 April 2002 had established that the applicant had had intercourse with her. In the absence of evidence that corroborated the fact of the applicant having forced himself on S.K., it could not be established beyond doubt that the act of sexual intercourse itself had not been consensual. The court stated in that connection that even if S.K. had been drunk that night, her allegations of rape and of being held against her will needed to be supported by some sign of resistance. In the light of

the conclusion that there had been no indication of a criminal offence committed by the police officers, the court then held that the applicant and S.A. could not be deemed to have committed the separate offence of the unlawful use of a public vehicle. It therefore acquitted them of all the charges.

22. On 21 September 2005 the acquittal became final as no appeals had been made.

2. Disciplinary proceedings against the applicant

23. In the aftermath of the events of 12 April 2002 a preliminary disciplinary investigation was launched against the applicant and S.A. on 24 April 2002.

24. On 2 and 29 May 2002 the applicant was questioned in relation to the allegations of rape against him. He submitted that he had not had sexual intercourse with S.K. He repeated his earlier statements that S.K. had seduced him to the point where he had had to ejaculate in his own hand. The applicant was also requested to submit a written defence statement. He wrote that he had taken S.K. into the police car with the intention of helping her and had not forced himself on her, as alleged by S.K. He pointed out that the forensic expert evidence had established that there had been no traces of violence, whether on S.K.'s body or in the form of any other type of evidence, such as damage to property or blood stains at S.A.'s apartment or inside the police car.

25. An investigation report dated 6 June 2002, prepared by the police investigator, concluded that the applicant had committed the offence of rape, while S.A. was guilty of the offence of conduct unbecoming and incompatible with the civil service and therefore recommended that the applicant be sanctioned with a deferral of advancement to a higher rank for a period of twenty-four months. The report further stated that a recommendation for a separate criminal investigation against the applicant and S.A. had already been submitted to the governor's office for authorisation.

26. On 28 November 2002, the Supreme Disciplinary Council found the applicant guilty of abuse of his authority as a police officer and of sexually assaulting S.K. Noting that the applicant's appraisal scores had only been average for the years 1999 and 2000, and taking account of the shameful nature of the act he had committed, it found that the applicant could not be given a penalty that was less severe than the one decided on. The relevant parts of the decision read as follows:

> "... the victim complained to the police and confirmed the event by giving the licence plate number of the vehicle and accurately describing the officer as wearing glasses and holding a police radio in his hand. The applicant, on the other hand, hid the facts by denying that he had had intercourse with S.K. [D]espite the fact that the vaginal examination of the victim did not reveal the presence of any active or passive

semen, the victim's statement that she was menstruating on the night in question and the forensic evidence finding traces of both the applicant's and S.K.'s DNA on the applicant's underwear and the two napkins found in S.A.'s apartment containing the applicant's DNA, point to the conclusion that the applicant must have ejaculated prematurely before sexual intercourse. He has therefore committed the offence of 'sexual assault' and he furthermore used his position as a police officer by calling the victim a 'suspect' in order to lure her into the police car ... Criminal proceedings are pending against the applicant on charges of abuse of authority under Article 240 of the Turkish Criminal Code.

... It has been decided unanimously to dismiss the accused from the police force, in accordance with section 8(6) and (7) of the Disciplinary Regulation of the Security Forces on the grounds that it has been proven that he has committed the offence of sexual assault and of using his position as a police officer for personal ... advantage."

27. On an unspecified date the applicant objected to the Supreme Disciplinary Council's decision before the Ankara Administrative Court. The applicant argued that his dismissal on the basis of a finding that he had committed sexual assault, although he had not been found guilty of that offence by a criminal court, had violated his right to the presumption of innocence.

28. On 4 July 2003 the Ankara Administrative Court dismissed the applicant's case, holding that the decision to dismiss the applicant from the police force had been in accordance with the law. The relevant parts of the judgment read as follows:

"Acts, conduct and behaviour of the kind listed in section 8(6), '... rape, sexual assault, ... or attempting to commit any of those offences' and in section 8 (7), 'using his position as a police officer for his own or another person's advantage', are sanctioned with dismissal from the police force.

After examination of the file, it appears that the case concerns the applicant's dismissal from the police force on the basis of a disciplinary investigation which established that he had intercourse with a woman without her consent on the pretext of calling her a suspect .., by asking her to get into a police car so that he could verify her identity at the police station, although in the end he took her to a piece of empty land and had intercourse with her without her consent.

On the basis of the case file, statements, the forensic report and other information, the veracity of the accusation is reinforced and therefore the decision to dismiss the applicant is in accordance with the law."

29. On 13 March 2006 the Supreme Administrative Court dismissed the applicant's appeal by a majority by endorsing the reasons provided by the Ankara Administrative Court. One judge out of the five expressed a dissenting opinion, reasoning that the applicant had been acquitted of the charges in the parallel criminal proceedings, including of rape, and that therefore the disciplinary decision to dismiss him from the police force on those grounds could no longer be upheld. The dissenting judge further argued that the courts should have reclassified the applicant's conduct as conduct that was incompatible with the reputation and trust inherent in the

functions of an official and sanctioned him with the corresponding penalty of the deferral of moving to a higher rank for a period of sixteen months.

30. On 23 June 2006 the applicant submitted a request to rectify the decision of 13 March 2006, arguing in the main that the fact that he had been acquitted in the criminal proceedings and had been found innocent of the allegations of rape had not been taken into account in the Supreme Administrative Court's decision. He further argued that the contradictory conclusions of the criminal and administrative courts in relation to what had happened on the night in question had cast doubt on his innocence.

31. The Supreme Administrative Court dismissed the applicant's request on 17 June 2008, holding that none of the reasons for rectification he had put forth fell within the exhaustive list of permissible grounds for such a decision in section 54 (1) of the Administrative Procedure Act (Law no. 2577).

3. Request to reopen proceedings

32. In their observations the Government submitted that on 26 November 2008 the applicant had brought proceedings against the Ministry of the Interior and had requested that the reopening of the proceedings for his dismissal from the police force. The applicant relied on the Ankara Assize Court's final judgment of 13 September 2005, acquitting him of the charges of, *inter alia*, attempted rape and abuse of authority. He argued before the Ankara Administrative Court that the establishment of his innocence should be regarded as new grounds for reopening the dismissal proceedings. On 27 May 2009 the applicant's request was dismissed. The Court was not provided with a copy of that decision; however, the Government provided a summary of parts of it, which was not contested by the applicant. According to the Government, the administrative court held that "the decision of the Assize Court was available on the dates the Supreme Administrative Court examined the applicant's appellate review and request for rectification of the decision, and that accordingly the court in question made an assessment of the decision rendered by the Assize Court".

33. According to the information submitted by the Government, the applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. The relevant domestic law and practice at the material time can be found in *Kemal Coşkun v. Turkey* (no. 45028/07, §§ 29-34, 28 March 2017).

35. Sections 6 and 7 of the Disciplinary Regulation of the Security Forces sanction conduct that is incompatible with the reputation and trust inherent in the official function with a deferment of advancement to a higher rank.

36. Section 8 of the Disciplinary Regulation of the Security Forces in force at the material time and in so far as relevant provides as follows:

"The following acts, procedures, behaviour and conduct entail expulsion from the profession:

...

6. To commit larceny, robbery, fraud, extortion, bribery, embezzlement, defalcation, rape, sexual assault, forgery, counterfeiting, intentional killing or attempting any of these offences, abuse of trust, bearing false witness, perjury, false accusation, slander,

7. To use his position as a police officer for his personal or another person's advantage..."

37. The relevant sections of the Administrative Procedure Act (Law no. 2577), as in force at the relevant time, provide as follows:

Section 49 – Decisions on appeal review

"Section 49 - Grounds for setting aside a judgment

1. On appeal review, the Supreme Administrative Court may quash a judgment on the following grounds:

a) lack of jurisdiction,

b) incompatibility with the law,

c) incompatibility with the procedure.

..."

Section 54 – Rectification of a Decision

"1. Rectification of a Supreme Administrative Court decision,... may be requested by the parties within fifteen days after the notification of the impugned decision on the following grounds:

a) The decision does not address the arguments and objections of the parties concerning the merits of the dispute,

b) The decision contains contradictory provisions,

c) The decision is not in accordance with the law or procedure,

..."

THE LAW

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

38. Firstly, the applicant complained that his dismissal from the police force while the criminal proceedings for the attempted rape of S.K. were still pending had been incompatible with his right to the presumption of innocence.

39. He also complained that the administrative courts' subsequent refusal to annul his dismissal from the police force once he had been acquitted of rape in the criminal proceedings had been unfair and contrary to the guarantees of presumption of innocence. He further argued that as a result of the Supreme Administrative Court's failure to take into account the final acquittal decision in the criminal proceedings, he had been left with two equally valid final court judgments, one pronouncing him guilty of rape and the other denying that conclusion.

40. In respect of his complaints, the applicant relied on Article 6 § 2 of the Convention, which reads as follows:

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

A. Scope of the complaint

41. As regards the applicant's complaint that the administrative courts refused to annul his dismissal from the police force once he had been acquitted in the criminal proceedings, the Court notes that its task is not to assess whether the applicant on 12 April 2002 committed acts that amounted to a disciplinary offence and could justify a disciplinary sanction. More specifically, it is not the Court's task to assess whether the applicant, after having been acquitted in the criminal proceedings, was entitled to have the dismissal annulled or to be reinstated in the police force, a question that may be independent from the acquittal in the criminal proceedings. In the view of the Court, Article 6 § 2 of the Convention does not guarantee a person acquitted of a criminal offence a right to reinstatement to his previous job even where there is a link between the criminal and disciplinary proceedings (see, *mutatis mutandis*, *Allen v. the United Kingdom* [GC], no. 25424/09, § 82, ECHR 2013). The Court has stated in this context that Article 6 § 2 does not concern the question whether the outcome of the disciplinary proceedings is as such compatible with the guarantees enshrined in Article 6 § 2 of the Convention (see *Kemal Coşkun*, *v. Turkey*, no. 45028/07, § 56, 28 March 2017).

42. Therefore, the question before the Court is not whether the refusal to annul the applicant's dismissal *per se* violated his right to be presumed innocent. The Court's examination of the complaint is directed solely at whether the reasoning and the language used by the disciplinary and administrative authorities were compatible with the principle of the presumption of innocence (ibid.).

B. Admissibility

43. Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law". The Court has acknowledged in its

case-law the existence of two aspects to the protection afforded by the presumption of innocence: a procedural aspect relating to the conduct of the criminal trial, and a second aspect, which aims to ensure respect for a finding of innocence in the context of subsequent proceedings, where there is a link with criminal proceedings which have ended with a result other than a conviction (see, generally, *Allen*, cited above, §§ 93-94). Under its first aspect, the principle of the presumption of innocence prohibits public officials from making premature statements about the defendant's guilt and acts as a procedural guarantee to ensure the fairness of the criminal trial itself. However, it is not limited to a procedural safeguard in criminal matters: its scope is broader and requires that no representative of the State should say that a person is guilty of an offence before his guilt has been established by a court (*Konstas v. Greece*, no. 53466/07, § 32, 24 May 2011). In that respect the presumption of innocence may be infringed not only in the context of a criminal trial, but also in separate civil, disciplinary or other proceedings that are conducted simultaneously with the criminal proceedings (see *Kemal Coşkun*, cited above, § 41). While the scope of the first aspect under Article 6 § 2 of the Convention covers the period in which a person has been charged with a criminal offence until the criminal proceedings are final, the second aspect of the protection of the presumption of innocence comes into play when the criminal proceedings end with a result other than a conviction, and requires that the person's innocence *vis-à-vis* the criminal offence is not called into doubt in subsequent proceedings (see *Allen*, cited above, § 94).

44. In the present case, the Court notes that the applicant's complaint concerns his dismissal from the police force and the way in which his objection concerning the alleged violation of his right to the presumption of innocence was treated by the administrative courts reviewing his dismissal. The Court observes in that connection that disciplinary and criminal proceedings were begun simultaneously against the applicant following the allegations that he had raped S.K. while on duty and while using his authority as a police officer. The disciplinary decision to dismiss the applicant from the police force was adopted on 28 November 2002, while the criminal proceedings were still pending. The reasoning of the disciplinary decision was endorsed by the Ankara Administrative Court in its judgment of 4 July 2003. In that connection, the Court observes that the judgment of the Ankara Administrative Court preceded the applicant's acquittal on 13 September 2005 of the charge of rape in the criminal proceedings.

45. As to which aspect of Article 6 § 2 should apply to the applicant's complaint, the Court considers that it concerns both aspects of the protection afforded by that provision. The first aspect comes into play because of the impugned statement made during the course of the disciplinary proceedings while the criminal proceedings arising out of the

same facts were still pending. The second aspect of Article 6 § 2 is relevant because of the subsequent administrative court decisions upholding the impugned statement and which allegedly did not take into account the applicant's acquittal, which had been pronounced in the meantime. Therefore, the Court can assess under the first aspect of Article 6 § 2 of the Convention whether the reasoning adopted in the disciplinary proceedings, before the final decision in the criminal proceedings, violated the applicant's right to be presumed innocent (see, in particular, *Kemal Coşkun,* cited above, § 44). It can further determine whether the Supreme Administrative Court's decisions, which came after the final decision in the criminal proceedings, complied with the requirement to respect the establishment of the applicant's innocence. As a result, Article 6 § 2 is applicable in the context of the disciplinary proceedings at issue. The application is therefore not incompatible *ratione materiae* with the provisions of the Convention.

46. Finally, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

47. The applicant maintained his arguments.

48. The Government argued that the applicant had not only been dismissed from the police force because he had had sexual intercourse with S.K., but because his conduct had been considered as an abuse of authority. In their view, the wording of the administrative court judgment of 4 July 2003 did not impute criminal liability to the applicant but was founded on the premise that the applicant had had sexual intercourse with a woman by abusing his position as a police officer while he was on duty. The Government argued that the administrative court judgment did not contain any statement that explicitly accused the applicant of rape. The Government further argued that the disciplinary proceedings had been autonomous from the criminal proceedings and could therefore not be regarded as having infringed the applicant's right to be presumed innocent in those other proceedings.

49. As regards the question of whether the Supreme Administrative Court had a duty to take account of the fact the applicant had been found innocent when it was conducting its appeal review of the dismissal decision, the Government submitted that acquittal decisions were not binding on administrative courts when they had been rendered for lack of sufficient evidence. In that regard, they contended that the burden of proof applicable to disciplinary proceedings was less strict than in criminal proceedings. They explained that when an acquittal in criminal proceedings was based on

the lack of the constitutive elements of an offence, the conduct in question could still qualify as a disciplinary offence under a different standard of proof. They further submitted that the Supreme Administrative Court's case-law supported the position that when criminal proceedings came after disciplinary proceedings and ended with a complete acquittal, such as a decision on the grounds that the acts had not been committed by the accused, the administrative courts reviewing the lawfulness of the disciplinary sanction could annul it or reclassify it under different legal grounds.

50. The Court reiterates that Article 6 § 2 of the Convention safeguards first and foremost the way in which an accused is treated in the context of criminal proceedings by public authorities. The presumption of innocence is infringed if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question (see, among others, *Matijašević v. Serbia*, no. 23037/04, § 48, ECHR 2006‑X; *Garycki v. Poland*, no. 14348/02, § 71, 6 February 2007; and *Wojciechowski v. Poland*, no. 5422/04, § 54, 9 December 2008). The latter infringe the presumption of innocence, whereas the former have been regarded as unobjectionable in various situations examined by the Court (see, among others, *El Kaada v. Germany*, no. 2130/10, § 54, 12 November 2015). In that connection the Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence. While the use of language is of critical importance in this respect, the Court has further pointed out that whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see, *Daktaras v. Lithuania*, no. 42095/98, §§ 41-42, ECHR 2000-X; *Konstas*, cited above, § 33; *Allen*, cited above, §§ 125 and 126; and *El Kaada*, cited above, § 55).

51. In previous cases similar to the present one, the Court has held that it is neither the purpose nor the effect of the provisions of Article 6 § 2 to prevent the authorities vested with disciplinary power from imposing sanctions on a civil servant for acts with which he has been charged in criminal proceedings, where such misconduct has been duly established (see *Allen*, cited above, § 124 and the cases cited therein). The Court reiterates that the Convention does not preclude that an act may give rise to both criminal and disciplinary proceedings, or that two sets of proceedings may be pursued in parallel. The Court reiterates that even exoneration from criminal responsibility does not, as such, preclude the establishment of civil

or other forms of liability arising out of the same facts on the basis of a less strict burden of proof (see, for example, *Ringvold v. Norway*, no. 34964/97, § 38, ECHR 2003-II; *Jakumas v. Lithuania*, no. 6924/02, § 57, 18 July 2006; *Çelik (Bozkurt) v. Turkey*, no. 34388/05, § 30, 12 April 2011; and *Vella v. Malta*, no. 69122/10, § 56, 11 February 2014). However, there would be an issue under Article 6 § 2 if, in the absence of a final criminal conviction, there was a statement imputing criminal liability to an applicant for the misconduct alleged against him in disciplinary proceedings (see *Kemal Coşkun*, cited above, § 53 and the cases cited therein).

52. Turning to the present case, the Court notes at the outset that the applicant became the subject of criminal and disciplinary proceedings because of the incident that took place on 12 April 2002. Furthermore, because he had allegedly committed the offences in question while he was on duty and while using his authority as a police officer, it was inevitable to a certain extent that the subject matter of both proceedings would overlap in trying to shed light on what happened between the applicant and S.K. on the night of the incident. Be that as it may, the Court observes that the aim of the disciplinary investigation was to determine whether the applicant had raped or assaulted S.K., offences which categorically belong to the sphere of criminal law. Yet the principle of the presumption of innocence dictates that disciplinary authorities stay within their respective forum and refrain from imputing criminal liability to an applicant where no such liability has been established by a competent criminal court. That is the fine line that divides disciplinary liability from criminal liability, the nuances of which the domestic authorities are required to reflect in the wording of decisions in order to respect an accused's right to the presumption of innocence. The need to maintain the distinction between disciplinary and criminal liability in the language used by the domestic authorities becomes all the more necessary in circumstances where, as in the present case, the disciplinary and criminal proceedings end at different times and come to conclusions that appear to be contradictory.

53. In *Kemal Coşkun* (cited above, § 55) the Court identified the ambiguous wording of the disciplinary regulations in question at the material time, which was what partly gave rise to its finding of a violation of Article 6 § 2 of the Convention. The prohibited acts and conduct listed in the impugned section 8 (6) of the disciplinary regulations, which are defined as disciplinary misconduct and which provided legal grounds for disciplinary sanctions, constitute criminal offences, however, there is no indication whether a criminal conviction is necessary in order for the disciplinary authorities to rely on those grounds. In the absence of such clarification in the text of the disciplinary regulations itself, the Court finds that in the present case the lines between disciplinary and criminal liability were blurred in the applicant's case from the very beginning of the disciplinary investigation. Furthermore, taking into account the fact that the

disciplinary authorities referred to the applicant as "the accused" in the decision to dismiss him, while describing his conduct as "sexual assault", without any qualification that would keep that assessment to the disciplinary sphere, the Court holds that they violated the applicant's right to be presumed innocent in the pending criminal proceedings. Moreover, the administrative court's judgment of 4 July 2003, which upheld the impugned reasoning given by the disciplinary authorities, described the applicant's conduct as "having intercourse with S.K. without her consent". In the Court's opinion, that statement amounted to pronouncing the applicant guilty of rape. In that regard, the Court cannot agree with the Government that the statement did not impute criminal guilt to the applicant. The Court considers that impugned statements must always be read in their context. Regard being had to the disciplinary context of the case, in which one of the legal grounds for the applicant's dismissal was "rape or sexual assault" under section 8(6) of the disciplinary regulations, and the way in which the administrative court summarised the events of 12 April 2002, the statement that the applicant had intercourse with S.K. without her consent cannot but convey to a reader of the judgment the impression that the applicant was guilty of raping S.K. (see, *mutatis mutandis, Cleve v. Germany*, no. 48144/09, §§ 60-61, 15 January 2015).

There has accordingly been a violation of Article 6 § 2 of the Convention as regards its first aspect.

54. As to whether the second aspect of Article 6 § 2 was respected by the Supreme Administrative Court when it conducted its appeal review of the judgment of the first-instance administrative court of 4 July 2003, the Court first reiterates that once an acquittal becomes final, the voicing of suspicions regarding an accused's innocence is no longer compatible with Article 6 § 2 of the Convention (see *Sekanina v. Austria*, 25 August 1993, § 30, Series A no. 266-A). In that connection, the second aspect of the protection afforded by Article 6 § 2 requires that a person must be treated in a manner that is consistent with his or her innocence after the conclusion of criminal proceedings which have terminated in an acquittal or discontinuation (see *Allen,* cited above, § 103). Its general aim, in this second aspect, is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged. In these cases, the presumption of innocence has already operated, through the application at trial of the various requirements inherent in the procedural guarantee it affords, to prevent an unfair criminal conviction being imposed. Without protection to ensure respect for the acquittal or the discontinuation decision in any other proceedings, the fair trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which

that person is perceived by the public. To a certain extent, the protection afforded under Article 6 § 2 in this respect may overlap with the protection afforded by Article 8 (see *Allen*, cited above, § 94).

55. Turning to the present case, the Court observes that the Supreme Administrative Court's appeal review did not make any additional comments concerning the applicant's disciplinary or criminal liability; it rather endorsed the reasoning in the first-instance judgment of 4 July 2003. Although the use of such a technique of reasoning by an appellate court is, in principle, acceptable for the purposes of a fair hearing, there might be circumstances, such as in the present case, where it could fall short of that requirement.

56. The Court considers it relevant to note that the nature of the task that the Supreme Administrative Court was required to carry out, both in its appeal review and during the rectification request, was to assess the compatibility of the administrative court's judgment with the law and to ascertain whether the arguments of the parties on the merits of the dispute had been sufficiently addressed (see paragraph 36 above). The applicant explicitly argued before the Supreme Administrative Court that he had been acquitted of all charges in the criminal proceedings and that therefore the grounds of his dismissal under section 8(7) of the disciplinary regulations could no longer be considered compatible with the law. Against that background, the Court considers that the Supreme Administrative Court needed to explain why it regarded that the reasoning employed by the disciplinary authorities and the first-instance court could continue to be in accordance with the law, although the applicant had been acquitted in the meantime in the criminal proceedings. That was the only way it could have avoided the situation complained of by the applicant, namely that he was left with two contradictory judgments. By keeping silent on that point, it missed the opportunity to rectify the previous reasoning, which the Court has already found incompatible with the presumption of innocence by virtue of the first aspect of Article 6 § 2 of the Convention (see paragraph 53 above), and therefore cast doubt on the applicant's innocence, which had already been established.

57. The foregoing considerations are sufficient to enable the Court to conclude that there has also been a violation in respect of the second aspect of Article 6 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

58. The applicant complained that the disciplinary proceedings against him had been unfair.

59. The Government did not provide separate arguments.

60. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

61. However, having regard to its findings relating to Article 6 § 2 (see paragraphs 53 and 57 above), the Court considers that it is not necessary to examine this issue separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

63. The applicant claimed 262,500 euros (EUR) in respect of pecuniary damage and EUR 600,000 in respect of non-pecuniary damage.

64. The Government objected and argued that the amounts claimed were excessive, unfounded and unsubstantiated as there was no causal link between the violations complained of and the applicant's claims for damage.

65. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and it therefore rejects that claim. Further, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicant may have sustained in the present case (see, for example, *Helmut Blum v. Austria*, no. 33060/10, § 95, 5 April 2016, with further references).

B. Costs and expenses

66. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts, without submitting any documents in support of his claims. He further claimed EUR 2,850 for costs and expenses incurred before the Court, of which EUR 350 represented translation costs and EUR 2,500 lawyer's fees. He submitted a fee agreement in respect of those claims.

67. The Government contested these claims.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, § 187, ECHR 2016 (extracts)). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the

domestic proceedings and considers it reasonable to award the sum of EUR 2,850 for the costs and expenses incurred before the Court.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

3. *Holds* that there is no need to examine the merits of the complaint under Article 6 § 1 of the Convention separately;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,850 (two thousand eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President