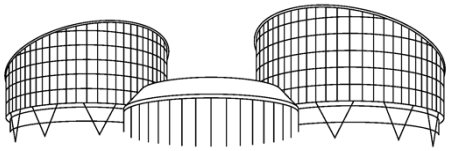

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VICTOR LAURENȚIU MARIN v. ROMANIA

(Application no. 75614/14)

JUDGMENT

Art 2 (procedural) • Effective investigation • Adequate domestic proceedings and collection of evidence for case involving fatal car accident of applicant's father Art 6 § 1 (civil) • Fair hearing • Pre-trial judge proceedings confirming discontinuation of criminal proceedings not weakening the applicant's position to such extent that subsequent proceedings aimed at determining the merits of civil claims rendered unfair from the outset • Art 6 § 1 civil limb applicable • Pre-trial judge proceedings not breaching "tribunal" requirements merely due to judge being called on to perform certain tasks without the same powers as a court examining the merits of the case Art 13+2 and 6 § 1 • Effective remedy • No formal obstacles to sending a case for trial in circumstances were such was rendered necessary by evidence, nor to applicant bringing separate civil proceedings

STRASBOURG

12 January 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Victor Laurențiu Marin v. Romania,

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

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Carlo Ranzoni,
Pere Pastor Vilanova,
Jolien Schukking, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 75614/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Victor Laurențiu Marin ("the applicant"), on 20 November 2014;

the decision to give notice of the application to the Romanian Government ("the Government");

the parties' observations;

Having deliberated in private on 10 December 2020,

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

INTRODUCTION

1. The applicant complained that both the criminal investigation into the circumstances of his father's accident and the proceedings before a pre-trial judge which had confirmed a public prosecutor's decision not to prosecute the alleged perpetrator had been ineffective and excessively lengthy, in breach of the guarantees set out by Article 2 of the Convention. The applicant also complained that the proceedings before a pre-trial judge had been unfair and had breached his rights guaranteed by Article 6 of the Convention because they had taken place in chambers, without the parties being summoned, and the judge had determined that the victim had been responsible for the accident, even though that judge had not acted as a trial court. Lastly, the applicant complained that he had not had access to an effective remedy for his complaints as required by Article 13 of the Convention, because the procedure for an appeal against a public prosecutor's decision not to prosecute, as provided for by the relevant procedural rules, could not have ended in the case being sent for trial.

THE FACTS

2. The applicant was born in 1968 and lives in Bucharest. He was represented by Mr M.A. Tănăsescu, a lawyer practising in Bucharest.

3. The Government were represented successively by their Agents, Mr V. Mocanu and Ms S.M. Teodoroiu of the Ministry of Foreign Affairs.

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

I. INVESTIGATION INTO THE APPLICANT'S FATHER'S DEATH

A. The investigation

5. On 11 March 2011 the Bucharest police department ("the police department") was notified that the applicant's father had been involved in a traffic accident. The applicant's father, who was the victim of the accident, was taken to hospital immediately after the accident, but died.

6. On the same date the police department carried out an on-site investigation, and the Bucharest prosecutor's office ("the prosecutor's office") started a criminal investigation in the case, for involuntary manslaughter.

7. According to the report drawn up in respect of the on-site investigation, the police department took photographs of the scene of the accident and made notes about it, identified the driver and an eyewitness, took a statement from the driver and collected blood samples from him to determine his blood alcohol level. They also noted that the road had been dry at the time of the accident, visibility had been normal, and the speed limit in the area had been 60 km/h. The victim had caused the dangerous situation because he had crossed the road in an unauthorised location. The speed of the vehicle had been between 58 and 63 km/h, and the driver had applied the brakes and slowed down once he had seen the victim.

8. On 16 March 2011 the National Institute of Forensic Services ("the Forensic Service") produced a toxicology report concerning the alcohol level in the driver's blood. It concluded that the driver had not had alcohol in his blood at the time of the accident.

9. On 14 April 2011 the police department commissioned a technical expert report in the case and took a statement from the applicant. He stated that he was aware that his father had crossed the road in an unauthorised location and that the brake marks found at the scene of the accident had been 21 metres long. Also, he had been notified of his right to choose his own expert to take part in the preparation of the technical report.

10. On 15 April 2011 the police department took a second statement from the driver involved in the accident. He stated that he had seen the victim walking on the road, had started braking, and had veered the car away from him. However, he had been unable to avoid impact.

11. On 26 April 2011 the police department took a statement from an eyewitness to the accident. She stated that she had not seen the impact between the car and the victim.

12. On 20 September 2011 the applicant joined the criminal proceedings as a civil party. He also agreed to pay for both a forensic report that was to be produced in the case and the fee of the expert who was commissioned to produce the technical expert report (see paragraph 9 above).

13. On 27 September 2011 the Forensic Service produced a forensic report concerning the victim. It concluded that the victim's injuries had been caused most probably in the context of a traffic accident, and that there was a direct link between the injuries and the victim's death. No traces of alcohol had been found in the victim's blood.

14. On 29 February 2012 a lawyer chosen by the applicant studied the on-site investigation report and the photographs taken at the scene of the accident.

15. On an unspecified date an expert attached to the Central Agency for Technical Expert Reports ("the Agency") produced the technical expert report (see paragraph 9 above). It concluded that the accident had been caused by the victim crossing the road in an unauthorised location without taking the necessary precautions. The driver had manoeuvred the car to avoid impact. Such impact could have been avoided if the car had been travelling at less than 50 km/h. However, the driver had not been obliged to drive at that speed, because there were no such speed restrictions in the area.

16. The applicant objected to the technical expert report and asked for a new one to be produced in the case.

17. On an unspecified date the police department commissioned a second technical expert report. The applicant chose his own expert to take part in the preparation of the report.

18. On 14 November 2012 an expert attached to the Agency produced the second technical expert report. It concluded that the driver could have avoided the accident only if the car's speed had been below 56 km/h, which had not been required on that section of road. Also, the victim could have prevented the accident if he had not been walking on the road and had not jumped in front of the vehicle.

19. The applicant and his chosen expert objected to the second technical report. That expert also submitted a separate opinion. He concluded that the accident could have been avoided if the victim had not been walking in an area which was not authorised for pedestrians and if the driver had not been driving 7 km/h above the 60 km/h speed limit.

20. On 5 April 2013 the expert attached to the Agency who had produced the second technical report in the case submitted explanations in reply to the objections raised. However, the applicant submitted further objections to the explanations provided by the expert.

21. On 20 May 2013 the police department proposed that the investigation concerning the driver be discontinued on the grounds that, according to the available evidence, the victim had been responsible for the accident. The victim had crossed the road in an unauthorised location without taking the

necessary precautions. The driver had been driving lawfully and had not been responsible for the accident, and according to the technical reports he could not have avoided it.

22. On 12 July 2013 the applicant reiterated his objections to the second technical expert report and expressed his dissatisfaction with the evaluation system used by the expert, because he found it inaccessible. In addition, he asked for a new expert report to be produced in the case.

23. On 22 November 2013 the prosecutor's office dismissed the applicant's objections concerning the second technical expert report and his request for a new report as ill-founded. It held that both the expert report and the separate opinion had considered that the victim had been responsible for the accident. Regardless of whether they had been appropriate or not, the driver's conduct and reactions had been made necessary by the victim's conduct.

24. On 11 December 2013 a prosecutor attached to the prosecutor's office discontinued the criminal prosecution of the case on the grounds that the elements of the offence under investigation had not been made out in the driver's case. She held that according to the technical expert report produced in the case, only the victim had been responsible for the accident.

25. The applicant challenged the decision on the grounds that it was unlawful and ill-founded. He also stated that at the request of the police officer in charge of investigating the case, in an attempt to expedite the proceedings, he had agreed to pay for the forensic report and the first technical expert report produced in the case himself (see paragraph 12 above), even though the State had had a lawful duty to cover those costs. He had agreed to pay only because he had been convinced that the officer's argument – that the police lacked the resources to cover the costs of expert reports – had been an attempt to delay the proceedings.

26. On 27 January 2014 a more senior prosecutor attached to the prosecutor's office dismissed the applicant's challenge. She held that according to the technical expert report, the victim had created the dangerous situation by walking on the road and stepping in front of the vehicle without taking the necessary precautions. The driver could have avoided the accident only by driving at a speed lower than 56 km/h, which had not been required on that section of road.

B. Proceedings before pre-trial judge

27. On 14 February 2014 the applicant appealed against the prosecutor's office's decisions to the Bucharest District Court ("the District Court") and asked the court to reopen the criminal proceedings in the case. He reiterated his statement about paying for the costs of the forensic expert and the first technical expert report produced in the case (see paragraph 25 above). In addition, he argued that the prosecutor's office: had discontinued the

prosecution of the case by relying on the wrong legal basis; had wrongly assessed the evidence, in particular the speed limit on the section of road where the accident had happened; had not considered all possible forms of the offence of involuntary manslaughter, given that the driver had not taken the necessary steps to avoid the victim; had not tried to reconcile the results of the technical expert reports produced in the case; had not provided reasons for its decisions; and had failed to notify him of its decisions before he had expressly asked it to do so.

28. The applicant also argued that the authorities: had not examined whether it would have been possible for the driver to avoid the accident; had not touched on the question of the driver's blood alcohol level; had not considered the position of the traffic sign displaying the speed limit on that section of road; and had ignored his arguments and failed to take any measures even though those arguments had suggested that his father had been murdered. Lastly, he argued that the technical expert reports produced in the case had been plagued by errors, had not responded to his objections, and had not considered that the driver could have shared responsibility for the accident.

29. The applicant asked the court to order the prosecutor's office to produce a new technical expert report in the case and consider all possible aspects of the offence of involuntary manslaughter. He also asked to be granted access to the case file.

30. On an unspecified date the District Court, sitting as a pre-trial judge, notified the applicant of the date, time and place of the examination of the appeal against the prosecutor's office's decisions. In addition, it informed the applicant that in accordance with the relevant provisions of the Code of Criminal Procedure ("the CCP"), the case would be examined in chambers and without the parties being present. The applicant was given the opportunity to submit written observations on the admissibility and merits of the appeal.

31. Between 13 March and 22 May 2014 the District Court, sitting as a pre-trial judge, repeatedly adjourned the examination of the appeal on procedural grounds. On two occasions it did so because notifications sent to the driver could not be delivered.

32. There is no information in the case file that the applicant made other submissions before the District Court apart from the ones of 14 February 2014 (see paragraphs 27-29 above).

33. By an interlocutory judgment of 22 May 2014 which was not amenable to appeal, the District Court, sitting as a pre-trial judge, dismissed the applicant's appeal against the prosecutor's office's decisions on the grounds that not all the elements of the various forms of the offence of involuntary manslaughter had been made out.

34. The pre-trial judge held that according to the available evidence, the driver could not have avoided the accident. The victim had been the only

person responsible for the accident, because he had attempted to cross a busy road in an unauthorised location. The driver could not have foreseen such an event, because he could not have predicted that a pedestrian would be walking on the line separating two lanes of traffic. The driver's inability to foresee such a situation excluded the criminal nature of his actions, given that one of the elements of the offence, namely his guilt, was missing.

35. As regards the prosecutor's office's discontinuance of the prosecution by allegedly relying on the wrong legal basis and not investigating all possible forms of the offence of involuntary manslaughter, the pre-trial judge held that this had most likely been an immaterial error on the part of the investigating authorities, and had in no way affected the applicant's legitimate interests. In addition, given the conclusions of the experts on the circumstances of the accident, the dangerousness and causes of the accident would have remained the same, regardless of the maximum speed limit for the section of road where the accident had happened.

36. The applicant had had the opportunity to submit objections to the technical expert reports and ask for new reports to be produced in the case. He had been assisted by an expert chosen by him (see paragraph 17 above), and the investigating authorities had provided pertinent reasons for dismissing his objections concerning the second expert report produced in the case. The fact that the applicant was dissatisfied with the conclusions of the experts who had been asked to examine certain aspects which were relevant for solving the case did not mean that new expert reports had to be produced in the case until the results he desired were achieved.

37. Given that both experts who had been assigned to the case had reached similar conclusions concerning who had been responsible for the accident, the investigating authorities had correctly established that a third technical expert report had not been necessary. The discrepancies concerning the vehicle's speed as established by the experts had been minor, and any doubt in this regard had benefitted the accused.

38. The driver could not have been held responsible for not reacting when he had noticed the victim, given that, by creating the dangerous situation, the victim had accepted the risk of an inadequate reaction by the driver. The latter could not have been held responsible for not reacting to the situation with the highest level of skill.

39. Lastly, the pre-trial judge held that the investigating authorities had not had a duty to inform the applicant about the alcohol level in the driver's blood. In any event, the results of the toxicology report concerning the driver were available in the case file.

C. Appeal and extraordinary appeal proceedings brought by the applicant

40. On 29 July 2014 the applicant lodged an appeal and an extraordinary appeal for annulment against the interlocutory judgment of 22 May 2014 (see

paragraphs 33-39 above) which was not amenable to appeal. In addition, he raised an unconstitutionality objection in relation to Article 3 §§ 1 (c) and 6, Article 54, Article 340 § 1 and Article 341 of the CCP (see paragraph 53 below). He argued that by drawing conclusions about the guilt of the parties involved in the accident, the pre-trial judge had breached the relevant procedural rules applicable to proceedings before a pre-trial judge, and had prejudged the merits of the case. The judge's reasoning had amounted to pleadings in favour of the driver, and not to an objective assessment of the aspects which he had been called upon to review, namely the manner in which the evidence had been added to the case file and the lawfulness of the investigating authorities' decision in the case.

41. Moreover, the pre-trial judge: had assessed the evidence wrongly and had misinterpreted the applicable legal provisions; had failed to reconcile the discrepancies in the technical expert reports, which had resulted in decisions being taken on an incorrect factual basis; and had failed to comply with the relevant provisions concerning the administration of evidence.

42. The errors made by the pre-trial judge might have been caused by deficiencies in the new procedural rules which had entered into force in February 2014. In accordance with those rules, a pre-trial judge had to review the lawfulness of decisions delivered by the investigating authorities by carrying out only an administrative review of their acts and the measures which they had implemented. The legislation had not provided for a specific procedure to be followed by a pre-trial judge for resolving cases in circumstances where a decision not to prosecute had been taken, and had not granted the judge the freedom to ask for new evidence to be added to the case file pending his or her decision in the case. Therefore, the new rules had created an administrative obstacle to a case being examined by a trial court.

43. Unlike the old procedural rules, the new rules breached the Constitution, because in circumstances such as the ones at hand justice was served by a pre-trial judge and not a trial court. The former could prevent a trial court from examining a criminal case.

44. Relying on his above-mentioned arguments and the relevant Constitutional provisions, the applicant also argued that the pre-trial judge in his case had not been competent to examine his appeal against the decisions of the prosecutor's office. He contended that he had not been able to raise that argument directly before the pre-trial judge, because Article 341 § 2 of the CCP allowed only defendants to lodge applications and raise objections before a pre-trial judge (see paragraph 53 below).

45. The applicant also argued that his right of access to court had been breached, because in the absence of regulations concerning a specific procedure to be followed by a pre-trial judge for resolving cases in circumstances where a decision not to prosecute had been taken, the pre-trial judge could not be held accountable for any possible deficiencies or procedural faults in the proceedings. The new procedural rules had given a

pre-trial judge the power to restrict a person's access to court, in the absence of clear guidelines and without the judge being able to take procedural steps such as the administration of new evidence capable of guaranteeing the uncovering of the truth. Also, the interlocutory judgment delivered by the pre-trial judge in his case had not been amenable to an appeal that would have given a trial court the opportunity to review that judge's decision. Therefore, the applicant's constitutional rights had been breached, as his case could not be examined by a trial court competent to examine all aspects of the case.

46. On 26 September 2014, following instructions from the court which had been called upon to examine his extraordinary appeal, the applicant submitted written comments concerning the unconstitutionality objection which he had raised. He argued, amongst other things, that the fact that a pre-trial judge examined a case in chambers and in the absence of the parties was more proof that the nature of a pre-trial judge's activity was not that of an act of justice.

47. On the same date, by a judgment amenable to appeal, the District Court, sitting as a pre-trial judge, dismissed as inadmissible both the applicant's extraordinary appeal and his unconstitutionality objection (see paragraph 40 above). There is no evidence in the case file that the applicant appealed against the judgment.

48. On 28 October 2014, by a judgment not amenable to appeal, the Bucharest Court of Appeal dismissed as inadmissible the appeal lodged by the applicant against the interlocutory judgment of 22 May 2014 (see paragraph 40 above).

II. CIVIL PROCEEDINGS BROUGHT AGAINST THE APPLICANT

49. On 5 March 2014 the Bucharest public transport company brought civil proceedings against the applicant, seeking damages for losses suffered following an alleged disturbance to public transport caused by his father's actions.

50. By a judgment of 4 September 2014 which was amenable to appeal, the District Court allowed the civil proceedings and ordered the applicant to pay the damages claimed by the public transport company. It held, amongst other things, that on 11 December 2013 the prosecutor's office had established that the victim had been responsible for causing the accident because he had stepped onto the road without taking the necessary precautions (see paragraph 24 above). Subsequently the investigating authorities had discontinued the prosecution of the case, and their decision remained final.

51. There is no evidence in the case file that the applicant appealed against the judgment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

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

Article 20
International human rights treaties

"(1) The provisions of the Constitution concerning citizens' rights and freedoms shall be interpreted and applied in line with the Universal Declaration of Human Rights [and] the covenants and other treaties to which Romania is a party.

(2) Where ... there are inconsistencies between the covenants and treaties on fundamental human rights to which Romania is a party and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions."

Article 21
Free access to court

"(1) All persons may bring cases before the courts for the defence of their legitimate rights, liberties and interests.

(2) The exercise of this right shall not be restricted by any law.

(3) Parties have the right to a fair trial and [the right to have] their cases examined within a reasonable time.

...."

Article 24
Right of defence

"(1) The right of defence is guaranteed.

(2) Throughout a trial parties have a right to be assisted by a lawyer [who is] either chosen or appointed."

Article 129
Use of appeals

"Interested parties and the [prosecutor's office attached to the High Court of Cassation and Justice] may lodge appeals against judgments under the conditions set out by law."

Article 147
Constitutional Court decisions

"(1) Provisions of the laws ... in force ... [which are] declared unconstitutional shall cease to have any legal effect 45 days after the [relevant] decision of the Constitutional Court is published if, during this time, Parliament or the Government, as the case may be, does not bring the unconstitutional provisions in line with the Constitution. During this time, the provisions which have been declared unconstitutional are suspended by law.

..."

(4) Decisions of the Constitutional Court shall be published in the Official Gazette ... From the moment they are published the decisions are ... mandatory and apply only *ex nunc*."

II. THE CODE OF CRIMINAL PROCEDURE

53. The relevant provisions of the CCP, as in force at the relevant time, read as follows:

Article 3
Separation of judicial functions

"(1) The following judicial functions are exercised during criminal proceedings:

(a) the criminal investigation function;

...

(c) the function of reviewing the lawfulness of an indictment or decision not to indict;

(d) the trial function.

....

(3) Except for the function mentioned in section (1) (c), which is compatible with the exercise of the trial function, the exercise of one judicial function is incompatible with the exercise of another judicial function during the same set of criminal proceedings.

(4) In exercising the criminal investigation function, the prosecutor and the criminal investigation bodies gather the necessary evidence to determine whether there are grounds to send a case for trial.

....

(6) Under the conditions set out by law, the pre-trial judge examines the lawfulness of an act of indictment and the evidence on which it is based, as well as the lawfulness of a decision not to send a case for trial.

(7) A case is tried by a court ..."

Article 28
The force of a criminal judgment in a civil trial, and the effects of a civil judgment in a criminal trial

"(1) The final judgment of a criminal court is *res judicata* for a civil court, which examines a civil action as regards the existence of an act and [the existence of evidence that] a person has committed it. The civil court is not bound by a final judgment acquitting [a person] or discontinuing a criminal trial, as regards the existence of damage and the guilt of the person who has committed the unlawful act.

..."

Article 54
The competence of a pre-trial judge

"(1) A pre-trial judge is a judge who is attached to a court and who, in accordance with the court's competence

(a) reviews the lawfulness of an act of indictment produced by the prosecutor;

(b) reviews the lawfulness of [both] the manner in which evidence has been gathered and the actions of the criminal investigation authorities;

(c) examines complaints against decisions not to prosecute or not to indict; [and]

(d) examines other situations expressly provided for by law."

Article 341
Examination of complaints by a pre-trial judge

"(1) After a complaint [against a prosecutor's office's decision to close or discontinue a prosecution] has been registered with the competent court, it is referred to the pre-trial judge [attached to that court] on the same date ...

(2) The pre-trial judge has to set a date for the examination of the case, of which the prosecutor and the parties have to be given notice, in addition to a copy of the complaint, and they can submit written observations on the admissibility and merits of the complaint. The complainant has to be given notice of the date for the examination of the case. The person who was a defendant in the case can lodge applications and raise objections which also concern the lawfulness of the manner in which evidence has been gathered or the criminal investigation has been conducted.

...

(5) The pre-trial judge has to examine a complaint by way of a reasoned interlocutory judgment, in chambers, in the absence of the complainant, the prosecutor, and the respondents.

(6) In cases where no formal charge has been brought, the pre-trial judge can decide to

(a) dismiss the complaint as out of time, inadmissible or ill-founded, as the case may be;

(b) allow the complaint, quash the contested decision and refer the case back to the prosecutor, giving reasons, so that the prosecution of the case may be started or supplemented or a formal charge may be brought ..., as the case may be; [or]

(c) allow the complaint and change the legal grounds on which the contested decision to close the investigation is based, if this [change] does not place the person who has lodged the complaint in a more difficult situation.

(7) In cases where a formal charge has been brought, the pre-trial judge

1. dismisses the complaint as out of time or inadmissible;

2. reviews the lawfulness of the manner in which evidence has been gathered and the criminal investigation has been conducted, excludes unlawfully gathered evidence, or penalises ... unlawful acts in the criminal investigation, as the case may be, and

(a) dismisses the complaint as ill-founded;

(b) allows the complaint, quashes the contested decision and refers the case back to the prosecutor, giving reasons why the prosecution of the case should be supplemented;

(c) allows the complaint, quashes the contested decision and, when the evidence which has been lawfully gathered is sufficient, sends the case for trial in respect of ... the persons who have been formally charged during the criminal investigation ...; [or]

(d) allows the complaint and changes the legal grounds on which the contested decision to close the investigation is based, if this [change] does not place the person who has lodged the complaint in a more difficult situation.

(8) An interlocutory judgment based on one of the solutions provided for in section 6 and [section] 7 (1) and (2) (a), (b), and (d) is [not amenable to appeal].

...

(11) Evidence excluded [from the case file] cannot be taken into account when the case is examined on the merits."

Article 342
The scope of the procedure before a pre-trial judge

"The scope of the procedure before a pre-trial judge consists in reviewing, after a case has been sent for trial, a court's competence and [reviewing] whether the case has been referred to it lawfully, as well as [reviewing] the lawfulness of [both] the manner in which evidence has been gathered and the criminal investigation authorities' actions."

Article 344
Preliminary steps

"...

(4) ..., the pre-trial judge notifies the prosecutor's office of applications made and objections raised by the defendant, or objections raised [by the pre-trial judge] of [his or her] own motion, and the [prosecutor's office] can submit a written response ..."

Article 345
The procedure before a pre-trial judge

"(1) Where applications have been made and objections have been raised, or [the pre-trial judge] has raised objections of [his or her] own motion, the pre-trial judge has to examine them by way of a reasoned interlocutory judgment, in chambers, in the absence of the prosecutor and the defendant ...

(2) When the pre-trial judge considers that an act of indictment is deficient, [or] when [he or she] sets aside... steps in a criminal investigation which have been carried out unlawfully, or excludes one or more pieces of evidence from the case file, the prosecutor's office which has issued the act of indictment is notified of the interlocutory judgment.

(3) ... the prosecutor corrects the deficiencies in the act of indictment and informs the pre-trial judge whether he or she is maintaining the decision to send the case for trial or asking for the case to be referred back [to the prosecutor's office]."

Article 346
Decisions

"(1) The pre-trial judge makes a decision by way of an interlocutory judgment, in chambers, in the absence of the prosecutor and the defendant. The prosecutor and the defendant must immediately be notified of the interlocutory judgment.

(2) If no applications have been made and no objections have been raised, and [the pre-trial judge] has not raised any objections of [his or her] own motion, ... the pre-trial judge has to decide whether the referral of the case to the [trial] court, the manner in

which the evidence has been gathered and the criminal investigation authorities' actions have been lawful, and order the beginning of the trial.

(3) The pre-trial judge has to refer the case back to the prosecutor's office if

(a) the act of indictment is deficient and the deficiency has not been remedied by the prosecutor ..., in circumstances where the deficiency makes it impossible to determine the scope or limits of the trial;

(b) [he or she] has excluded all the evidence gathered during the criminal investigation stage of the proceedings; [or]

(c) the prosecutor asks for the case to be returned ..., or does not respond ....

(4) In all other circumstances, where [he or she] has found deficiencies in the act of indictment, has excluded one or more pieces of evidence ..., or has set aside... the criminal investigation authorities' actions which have been carried out unlawfully, the pre-trial judge has to order the beginning of the trial.

(5) Excluded evidence cannot be taken into account during the trial.

...

(7) The pre-trial judge who has ordered the beginning of the trial has to be the trial judge in the case."

Article 347
Challenge[s]

"(1) The prosecutor and the defendant can contest decisions concerning applications which have been made and objections which have been raised, as well as decisions which are set out in Article 346 §§ 3-5, within 3 days of notice of the interlocutory judgment mentioned in Article 346 § 1 being given.

(2) A challenge has to be examined by a pre-trial judge who is attached to a higher court ...

(3) The rules set out in Articles 343-346 apply accordingly."

54. The relevant provisions of the former CCP and of the Civil Code on civil parties joined to criminal proceedings and separate civil proceedings are set out in *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, §§ 66-70, 25 June 2019).

III. DECISIONS BY THE CONSTITUTIONAL COURT

A. Decision no. 599 of 21 October 2014

55. By decision no. 599 of 21 October 2014, published in Official Gazette no. 886 of 5 December 2014, the Constitutional Court examined two unconstitutionality objections concerning Article 341 §§ 5-8 of the CPP. It held that Article 341 § 5 was unconstitutional in so far as it provided that a pre-trial judge examined a complaint against the decision of a prosecutor's office in the absence of the complainant, the prosecutor and the respondent, and that Article 341 §§ 6-8 was constitutional.

56. The Constitutional Court took the view that the fact that the decisions of a pre-trial judge which were set out in Article 341 §§ 6 and 7 (a), (b) and (d) of the CCP were not amenable to appeal was constitutional, because the rules concerning appeals fell within the exclusive competence of the legislature. A person's right of defence, right of access to court or right to a fair hearing could not be breached by Article 341 § 8 of the CCP, because that person could still have the benefit of the procedural rights and guarantees provided for by law during a trial examined expeditiously by an independent and impartial tribunal.

57. The relevant provisions of the Constitution or international norms did not require a second level of jurisdiction in every case, and the special nature of the proceedings covered by Articles 340 and 341 of the CCP – namely proceedings examining prosecutor's offices' decisions not to prosecute or not to indict rather than the merits of the offence being investigated – justified the absence of an appeal and rendered Article 2 of Protocol No. 7 to the Convention inapplicable. Likewise, Article 13 of the Convention was inapplicable in such instances, since the right to an effective remedy was different from the right to appeal. The legislature had sought to ensure that such proceedings were examined expeditiously, and that a final judgment on the decisions of a prosecutor's office was delivered without delay.

58. However, as regards Article 341 § 5, the Constitutional Court held that the legislature had an obligation to ensure that every individual had fair access to court for the protection of his rights and freedoms. This could be accomplished by setting up a procedure which complied with the requirements of fairness set out in Article 21 § 3 of the Constitution, failing which a person's right to bring proceedings before a court, and any review of the decision of a prosecutor's office to close or discontinue criminal proceedings, became devoid of substance. A pre-trial judge's review of those decisions had to be effective, since the decision of the prosecutor's office ended the criminal-law dispute and therefore fell within the category of acts by which justice was served.

59. The Constitutional Court took the view that elements of the right to fair proceedings had to be examined by taking into account proceedings as a whole and the specific principles defining the organisation of each procedure within the proceedings. However, even in the case of ongoing proceedings, a specific examination of certain important aspects of the proceedings could not be excluded.

60. The level of protection conferred by proceedings before a pre-trial judge – where the judge was called upon to examine a case in the absence of the complainant, the prosecutor and the respondent, and without the proceedings being oral and adversarial – was lower than the level conferred by the type of proceedings which had been in force before February 2014. This fact could not be considered a breach of the principles set out in the Constitution or in international human rights treaties *ab initio*, as long as no

adverse effects could be identified. Therefore, in order to determine whether Article 341 § 5 of the CPP had breached the right to a fair trial, it had to be examined both in isolation and within the overall framework of the procedure concerning the examination of appeals against prosecutor's offices' decisions not to prosecute.

61. The preliminary stages of proceedings constituted only a part of the overall proceedings. However, a breach of certain conditions set out in Article 21 § 3 of the Constitution, such as the right to defend oneself, during the early stages of proceedings could affect the fairness of the proceedings. Also, the manner in which the guarantees of the right to fair proceedings were enforced during the preliminary stages of criminal proceedings was intrinsically linked to the circumstances of the case, the characteristics of the specific procedure, and the possibility that the outcome of proceedings concerning the admissibility of a complaint was decisive for determining whether the criminal charge was well founded.

62. The procedure under examination did not concern *ab initio* a criminal charge or criminal proceedings touching on the merits of the case. However, a pre-trial judge's judgment had the character of a possible act of indictment and therefore a criminal charge, since in accordance with Article 341 § 7 (2) (c) of the CCP, a pre-trial judge could quash a prosecutor's decision and order that a case be sent for trial. Therefore, the right to a fair trial had to be respected, since there was a possibility that the outcome of proceedings concerning the admissibility of a complaint against a prosecutor's decision was decisive for the determination of a criminal charge.

63. In accordance with the principle of adversarial proceedings, parties were placed on an equal footing as regards presenting and pleading a case, rebutting the submissions made, and expressing opinions on the court's initiatives aimed at establishing the truth in the case. The complainant and the defence challenged each other, so that the court could assess the evidence correctly. Therefore, adversarial proceedings implied equality of arms as regards both the civil and criminal limb of proceedings.

64. A purely written procedure was not sufficient; it also had to be adversarial and oral, in order for a victim or civil party to be able to fully exercise his or her rights. In accordance with Article 341 § 2 of the CCP, the prosecutor and the parties could submit written observations on the admissibility and merits of a complaint, but none of the parties had the opportunity to read the other parties' submissions and submit rebuttals. A court was under a duty to effectively examine reasons invoked by the complainant, the parties and the prosecutor, including arguments that were decisive for solving the case. However, as a court could examine only the complaint and the written observations of the parties and the prosecutor, it was not in a position to examine a decisive argument, simply because such an argument could not be raised.

65. The Constitutional Court further held that the fairness of proceedings also implied that participants had a right to be informed of any document or observation submitted to a court, and a right to rebut such submissions. This was essential for their trust in the justice system. The fact that a complainant was informed of the date when a complaint was going to be examined could not be a substitute for the absence of a fair procedure involving a summons, especially since the fairness of proceedings concerned both the proceedings overall and the interests of the public and the victim.

66. In accordance with Article 341 § 2 of the CCP, only the prosecutor and the parties to the proceedings were given a copy of the complaint. Also, in accordance with the procedural rules, only a defendant and a civil party were parties to criminal proceedings. Hence, an injured party and a suspect, as principal participants in the proceedings, were not given a copy of the complainant's complaint and could not defend themselves or protect their legitimate interests. These procedural shortcomings could be overcome as long as the proceedings before a pre-trial judge were adversarial and oral.

67. The Constitutional Court considered that a fundamental aspect of the right to a fair trial in criminal proceedings was that each party had to have a reasonable opportunity to present his or her case in circumstances which did not place him or her at a disadvantage *vis-à-vis* his or her opponent. However, unlike a defendant, in the absence of adversarial argument, a complainant, a civil party, a suspect or an injured party was prevented from lodging applications and raising objections concerning the lawfulness of either the manner in which evidence had been gathered or acts carried out by the authorities in the criminal investigation, and also prevented from contesting applications which had been made and objections which had been raised. This was important, because the evidence gathered during a criminal investigation which was not contested by the parties could no longer be reviewed during the trial. If summoned, interested persons would have the opportunity to be present during the arguments, and the right to express their opinions and answer possible questions addressed by the other participants and the pre-trial judge.

68. Since a pre-trial judge could order that a case be sent for trial, a defendant clearly had an interest in being summoned and presenting, in an adversarial manner, arguments about the complaint which had been lodged before the court. Thus, for reasons concerning the fairness of proceedings, whenever a court such as a court sitting as a pre-trial judge examined a complaint by analysing all the available evidence that justified the closing of an investigation, it could not reach a verdict without directly hearing from the person who claimed not to have committed the act which was considered to be an offence.

69. Lastly, the Constitutional Court held that in cases where formal charges had been brought, the scope of proceedings concerning complaints against the decisions of a prosecutor's office not to prosecute or not to indict

concerned both the admissibility of the complaint and whether it was well founded, as well as the lawfulness of both the manner in which evidence had been gathered and the criminal investigation activities. Evidence excluded from the case file at the stage when proceedings were before a pre-trial judge could no longer be taken into account at the trial stage of the proceedings, in instances where the case had been sent for trial by the pre-trial judge. As long as the essence of any criminal trial was evidence, and as long as the investigating authorities gathered evidence both for and against the defendant or the suspect, it was clear that proceedings before a pre-trial judge had a direct impact on the fairness of the proceedings at a later stage. This meant that both the prosecutor and the defendant had to be present when the pre-trial judge examined the case.

B. Decision no. 641 of 11 November 2014

70. By decision no. 641 of 11 November 2014, published in Official Gazette no. 887 of 5 December 2014, the Constitutional Court examined unconstitutionality objections raised by private parties concerning Article 344 § 4, Article 345 §§ 1, 2 and 3, Article 346 § 1 and Article 347 §§ 1, 2, and 3. It held that Article 344 § 4, Article 345 § 1, Article 346 § 1 and Article 347 § 3 of the CPP were unconstitutional, whereas the remaining paragraphs of the above-mentioned Articles which had been challenged were constitutional.

71. The Constitutional Court held, amongst other things, that proceedings before a pre-trial judge were the equivalent of a new stage of criminal proceedings, and were not part of the criminal investigation stage or the trial stage. The pre-trial judge was called upon to examine the lawfulness of the act of indictment or the decision not to indict. The judge's activities did not concern the merits of the case, and his or her procedural acts did not touch on or determine the essential elements of the dispute, namely the act, the person who had committed it, and that person's guilt.

72. The Constitutional Court also held that in accordance with Article 344 § 4 of the CCP, the prosecutor had access to applications made and objections raised by the defendant, and access to objections raised by the pre-trial judge of his or her own motion. However, the defendant was not given notice of objections raised by the pre-trial judge or written responses of the prosecutor's office. Likewise, objections raised by the defendant or the pre-trial judge, and the prosecutor's office's written responses, were not communicated to a civil party, and he or she was unable to challenge them. Consequently, a civil party was excluded from the proceedings before a pre-trial judge *ab initio*. Thus, the legislature had placed the parties in a disadvantaged position *vis-à-vis* the prosecutor, because it had seriously hampered their right to be informed of objections raised in the case and to present arguments in that regard.

73. As a matter of fair trial, the relevant procedural rule had to provide that all parties to a trial, including a civil party, had to be notified of all documents which were capable of influencing the pre-trial judge's decisions, and the rule had to grant all parties the opportunity to effectively present arguments about the observations submitted to the court.

74. As regards the right to oral proceedings, the Constitutional Court noted that the level of protection provided by the Convention and the European Court of Human Rights was minimal, and that the Constitution and the Constitutional Court could provide a heightened level of protection. In addition, it had already held that the guarantees set out in Article 6 § 1 of the Convention and Article 21 § 3 of the Constitution were applicable in criminal matters, not only to the procedure on the merits of a dispute, but also to the procedure before a pre-trial judge, and they therefore granted a heightened level of protection compared with that of the Convention.

75. The Constitutional Court held that the right to oral proceedings included a defendant's and a civil party's right to stand before a court. This ensured direct contact between the judge and the parties, enabling the latter to present their case in a certain order and therefore facilitate the correct establishment of the facts of the case.

76. Also, in the absence of proceedings that were oral and adversarial, a pre-trial judge could carry out only a formal assessment of whether evidence was lawful. The judge could not ask for evidence to be added to the case file which could help him or her determine the lawfulness of evidence gathered by the investigating authorities. However, in certain instances, the factual circumstances behind the collection of certain evidence were directly relevant when determining the lawfulness of that evidence. Therefore, if a pre-trial judge was unable to ask for new evidence to be added to the case file and for new documents to be submitted by the parties, in the absence of oral argument, that judge was in a position where he or she was not able to clarify the facts of the case, which could have an indirect effect on the legal examination of the case.

COMPARATIVE LAW MATERIAL

77. The Court conducted a comparative study of the legislation of twenty-five member States of the Council of Europe (Albania, Germany, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Spain, France, the Republic of North Macedonia, Greece, Ireland, Italy, Lithuania, Norway, Poland, Portugal, the United Kingdom, Serbia, Slovenia, Sweden, Turkey and Ukraine). The study concluded that the institution of a pre-trial or investigating judge with various roles existed only in fifteen member states (Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Spain, the Republic of North Macedonia, France, Greece, Italy, Lithuania, Portugal, Serbia, Slovenia and Ukraine). Depending on the jurisdiction, a

judge had different roles. In some jurisdictions a judge played a decisive role in the indictment process (Belgium and France), and in others he or she merely reviewed an act of indictment (Albania) or decided on all the measures concerning a suspect's rights and freedoms (Austria, Serbia and Croatia).

78. In all twenty-five member States review of an indictment was amenable to a mandatory or optional appeal. In eleven of the member States the power to examine such an appeal was granted to a specific authority (a judge or chamber), whereas in fourteen member States it was granted to the trial judge who was competent to examine the case. The legislation of seventeen of the member States provided for the possibility to hold a mandatory or optional hearing, either public or in chambers, whereas the legislation of five of the member States did not provide for such a possibility.

79. According to the information available, in fourteen of the member States the prosecutor and the accused had a right to attend or appear in person before the relevant court. In eleven member States the accused was notified of objections raised by the prosecutor or, where applicable, by the judge of his or her own motion. In all fourteen of the member States the victim, his or her heirs, civil parties, and the person who initiated the criminal proceedings had a right to attend the hearing and take part in the proceedings. It seemed to be implied that in all twenty-five member States all parties were notified of important decisions taken in a case.

80. In eighteen of the twenty-five member States decisions not to prosecute or to close proceedings were amenable to an appeal before a court, whereas in seven of the member States they were not (Spain, the Republic of North Macedonia, Norway, Serbia, the United Kingdom, Slovenia and Sweden), but there were other ways in which a victim could complain or ask for an investigation to be continued.

81. In the majority of the twenty-five member States the judge who was called upon to examine the merits of a case at the trial stage of the proceedings was free to deal with the evidence once again and decide on its lawfulness.

THE LAW

I. PRELIMINARY REMARKS

82. The Government argued that the application was inadmissible. They considered that where the conditions set out in Article 44C § 1 of the Rules of Court were met, the Court could declare the application inadmissible as manifestly ill-founded. According to the Court's case-law, such a possibility existed in circumstances where an applicant had merely cited one or several Articles of the Convention without explaining how they had been breached, and without this being evident from the facts of the case.

83. The applicant had not specified how his presence before the pre-trial judge would have changed the judgment delivered by that judge. Also, he had

not asked for the kind of evidence to be added to the case file that would have required the parties to be present before the judge.

84. The applicant disagreed.

85. The Court notes that in the instant case the applicant raised several complaints concerning alleged breaches of his Convention rights. Also, in his application to the Court and in his subsequent written submissions, he explained why he was of the view that his rights and interests had been affected, and what those effects were. In addition, he submitted evidence aimed at supporting his allegations.

86. The Court further notes that the Government have not argued or presented any evidence indicating that the applicant took special precautions to prevent information about matters concerning the very core of the issues underlying his complaints under the Convention from being disclosed to the Court, in order to stop the Court from discontinuing the proceedings in his case (contrast *Gross v. Switzerland* [GC], no. 67810/10, §§ 34-35, ECHR 2014).

87. As to the Government's argument that the breaches alleged by the applicant were not evident from the facts of the case, the Court notes that it is closely linked to the substance of the applicant's allegations, and that it does not disclose a failure by the applicant to participate effectively in the proceedings before the Court.

88. It follows that the Government's objection concerning the inadmissibility of the application must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

89. The applicant complained that both the criminal investigation into the circumstances of the accident and the proceedings before the pre-trial judge which had confirmed the public prosecutor's decision not to prosecute the alleged perpetrator had been ineffective and excessively lengthy, in breach of the guarantees set out by Article 2 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> ..."

A. Admissibility

90. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

91. The applicant argued that even though the Government had listed a range of steps taken by the authorities investigating the death of his father, they had failed to explain to the Court that these steps had been taken exclusively by administrative bodies and not by a court, that they had been deficient, and that most of the procedural rules governing proceedings before a pre-trial judge in May 2014 had subsequently been declared unconstitutional.

92. The Government's submissions that the applicant's rights had been protected by the authorities had been contradicted by the Constitutional Court. The applicant had attempted to challenge some of the relevant procedural rules regulating proceedings before a pre-trial judge before the Constitutional Court (see paragraph 40 above). However, his application to that court had been examined and dismissed unlawfully, and he had been prevented from challenging that judge's decisions effectively.

93. The procedural rules which entered into force in February 2014 regulating proceedings before a pre-trial judge had been a real obstacle to uncovering the truth in the applicant's case. This was because the pre-trial judge had examined applications addressed to him in the absence of the parties, in breach of their right of defence, without them being able to propose evidence to be added to the case file and appeal against the judge's decision, and without the judge being able to order the opening of criminal proceedings.

94. The applicant was of the opinion that, to date, proceedings before a pre-trial judge seemed to be an unnecessary and confusing stage of criminal proceedings, given that pre-trial judges continued to breach the relevant criminal procedure rules by examining the merits of cases and unconstitutionality objections raised by applicants.

(b) The Government

95. The Government submitted that in the applicant's case the authorities had complied with all their procedural obligations under Article 2 of the Convention. On the date of the accident the domestic authorities had instituted criminal proceedings in the case. They had therefore considered that the circumstances of the applicant's father's death had met the relevant domestic law conditions for opening a criminal investigation.

96. The authorities had reacted immediately and diligently to the news of the accident. They had carried out an immediate on-site investigation, had gathered relevant evidence, and had identified the driver and an eyewitness. Subsequently, they had remained active, had continued to gather relevant

evidence, including technical expert reports, and had addressed all the applicant's objections concerning those reports.

97. The investigation had been prompt, independent and effective, and the applicant had been actively involved in it. The existence of some possible errors made by the investigators could not call into question its effectiveness. The authorities had examined all the applicant's arguments and requests for additional evidence and had allowed or dismissed them by providing relevant reasons. Also, they had determined the circumstances of the accident by relying on a significant amount of evidence and providing relevant reasons for their decisions.

2. The Court's assessment

98. The Court reiterates the principles set out in its case-law concerning the authorities' procedural obligation in circumstances concerning death caused as a result of road traffic accidents (see *Nicolae Virgiliu Tănase*, cited above, §§ 157-72).

99. In the instant case, the Court notes at the outset that the applicant's father died as a result of a traffic accident. While the national authorities took the view that the accident had been caused involuntarily, the applicant's arguments before the national authorities suggest that he had at least some suspicion that his father's death might have been caused intentionally (see paragraph 28 above).

100. The Court notes, however, that apart from the applicant's own allegation, there is no evidence in the case file that his father's death was caused intentionally, or that the authorities ever had a suspicion in this regard. In these circumstances, the Court is of the opinion that it was clearly established that the death in question had been the result of an accident or other unintentional act, and that the hypothesis of an intentional killing was not arguable on the facts. Therefore, the domestic authorities were required to have in place an effective judicial system affording the applicant a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility to be established and any appropriate civil redress to be obtained (see *Nicolae Virgiliu Tănase*, cited above, § 159). The Court will therefore consider whether the remedies available to the applicant, taken together as provided for in law and applied in practice, could be said to have constituted legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (ibid, § 169).

101. In this regard, the Court observes that immediately after the accident the police started an investigation, took photographs of the scene of the accident and made notes about it, identified the driver and an eyewitness, and collected evidence (including a statement and blood samples from the driver, and information about the speed limit in the area and the speed of the vehicle) which was capable of clarifying the circumstances in which the accident had

occurred (see paragraphs 6-7 above). In addition, they commissioned a toxicology report concerning the alcohol in the driver's blood, and two technical expert reports (see paragraphs 8, 9, and 17 above).

102. The applicant was actively involved in the proceedings and was able to challenge the conclusions of the technical reports and ask for additional evidence to be included in the case file (see paragraphs 9, 14, 16, 19, 20, and 29 above). The fact that some of his requests for the collection of evidence or for additional evidence to be adduced were dismissed does not indicate that the authorities were unwilling to establish the circumstances of the accident. The authorities provided adequate reasons for dismissing the applicant's demands and acted within the limits of the discretion allowed to them in respect of deciding what evidence was relevant to the case (see *Nicolae Virgiliu Tănase*, cited above, § 183).

103. Given the evidence in the case, notwithstanding the irregularities alleged by the applicant in respect of the collection of evidence, the Court does not find sufficient grounds to conclude that the domestic proceedings or the collection of evidence were ultimately insufficiently thorough. The authorities' decisions in the case were not taken hastily or arbitrarily, but rather following years of investigative work. The evidence gathered addressed questions raised within the framework of the criminal proceedings that related to civil claims, including matters regarding the conduct of the parties involved in the accident and the causes of the latter.

104. The investigative proceedings in respect of the circumstances of the accident started on 11 March 2011 (see paragraph 6 above) and ended on 22 May 2014 (see paragraph 33 above), when the pre-trial judge delivered his judgment in the case. They thus lasted three years, two months and eleven days, over one level of jurisdiction. It is true that there were some delays in the proceedings. However, given the repeated technical reports produced in the case at the applicant's request, and his objections to the conclusions of those technical reports (see paragraphs 15, 16, 18, 19, 20, and 22 above), it cannot be said that the delays were caused by a lack of diligence on the part of the authorities, or that they affected the effectiveness of the investigation.

105. While the applicant cannot be held responsible for taking full advantage of certain remedies available to him under domestic law, the national authorities cannot be held accountable either for the resulting increase in the length of the proceedings (see, *mutatis mutandis*, *Sürmeli v. Germany* [GC], no. 75529/01, § 131, ECHR 2006-VII, and *Nicolae Virgiliu Tănase*, cited above, § 211).

106. The Court also notes that the domestic authorities did not remain inactive during the proceedings, and that they constantly took steps, collected evidence and made efforts to clarify the circumstances of the case. Consequently, the Court considers that it cannot be said that they failed in their duty to examine the case expeditiously, especially considering the fact that the proceedings and the applicant's claim for compensation were related

to damage that he had sustained as a result of a road accident. The relevant proceedings therefore did not belong to any category of proceedings that, by their nature, called for special diligence (see *Sürmeli*, § 133, and *Nicolae Virgiliu Tănase*, § 213, both cited above).

107. The Court observes that Article 2 does not guarantee a right to obtain a criminal conviction against a third party. Therefore, it considers that, in the absence of any apparent lack of thoroughness in the authorities' examination of the circumstances surrounding the accident, their decision to discontinue the investigation against the driver does not suffice for it to find the respondent State liable in respect of its procedural obligation arising from Article 2 of the Convention (see, *mutatis mutandis*, *Nicolae Virgiliu Tănase*, cited above, § 185).

108. As regards the applicant's allegations concerning the serious shortcomings in both the investigation and the proceedings before the pre-trial judge generated by the entry into force of the new criminal procedure rules in February 2014 (see paragraph 93 above), the Court will examine them in the context of the applicant's complaint under Article 6 (see paragraph 150 below).

109. The Court notes, however, that there is no indication in the case file that the applicant brought separate civil proceedings against the driver before the civil courts. Therefore, as indicated also in paragraph 144 below, the Court is not prepared to speculate as to what the outcome of those proceedings would have been in the applicant's case.

110. Having regard to the overall assessment of the legal means available to the applicant, the Court concludes that it cannot be said that the legal system, as applied in respect of the present case, failed to adequately deal with the applicant's case.

111. It follows that there has been no violation of Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

112. The applicant complained that the relevant proceedings before the pre-trial judge had been unfair, because they had taken place in chambers, without the parties being summoned, and the judge had determined that the victim had been responsible for the accident even though that judge had not acted as a trial court; those proceedings had therefore breached his rights guaranteed by Article 6 of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent

strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

..."

A. Admissibility

113. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

114. The applicant submitted that the case concerning his father's death had not been examined at a public hearing by a judicial body in the presence of the parties. The parties' absence from the proceedings had been a requirement imposed by the relevant procedural rules in force at that time. The fact that the Constitutional Court had declared those rules unconstitutional, and that the rules had been changed after the proceedings concerning his father's death had ended, had not remedied the injustice in his case, but had showed that those rules had been unlawful.

115. The applicant was of the opinion that in spite of his best efforts, he had been unable to have his case – including his civil claims, which had been joined to the criminal proceedings – reviewed by an independent and impartial tribunal established by law. In accordance with the relevant procedural rules, a pre-trial judge was merely a specialised body of the State which performed judicial activities and therefore lacked the competence and functions of a proper court. However, under the relevant domestic and European legislation, justice had to be done by a court, and not a specialised body.

116. The applicant contested the Government's submissions that the pre-trial judge in his case had never made a determination about the driver's guilt and had not examined questions concerning the merits of the case (see paragraph 128 below). In his opinion, the pre-trial judge had clearly examined the liability of the parties involved in the accident and the merits of the case, in a judgment which had acquired the force of *res judicata*. This could not be contested, given that a civil court had relied on the findings of the investigating authorities concerning the liability of the parties involved in the accident, in allowing the civil action brought against him by the Bucharest public transport company (see paragraph 50 above).

117. The proceedings concerning the applicant's father's death had not been fair for the following reasons: the authorities had refused to add any of the new evidence requested by the applicant to the case file or clarify the

contradictions between the available technical expert reports; he had been forced to pay for the technical expert reports, even though the costs should have been borne by the State (see paragraphs 12 and 25 above); he had not had access to the case file during the investigation stage of the proceedings; and the principle *in dubio pro reo* had been misused, with or without bias, for the driver's benefit.

(b) The Government

118. The Government argued that the proceedings concerning the applicant's father's death had been fair.

119. The Government explained that on 1 February 2014 a new CCP had entered into force in Romania and had changed the manner in which a criminal trial was conducted by introducing a new procedural step, namely a procedure before a pre-trial judge. That procedure was an innovation aimed at shortening the length of the trial stage of proceedings. Its purpose was to examine issues concerning the lawfulness of both an indictment and the evidence adduced, therefore ensuring that the merits of a case would be examined expeditiously. The rules concerning proceedings before a pre-trial judge eliminated the possibility of a case file being sent back to a prosecutor's office by a trial court on grounds relating to the lawfulness of the evidence and the indictment.

120. A pre-trial judge had clear objectives, namely to examine the lawfulness of the evidence adduced, the indictment and the acts carried out by the investigating authorities, and to prepare the case for examination at the trial stage of the proceedings. In accordance with domestic doctrine, the CCP also granted a pre-trial judge other powers, including the power to review a prosecutor's office's decisions not to prosecute, on the basis of specific procedural rules adopted by the legislature.

121. As established by the Constitutional Court in decision no. 641 of 11 November 2014 (see paragraphs 70-76 above), the institution of a pre-trial judge was not part of the investigation stage or trial stage of proceedings, given the procedural tasks given to such a judge. The activity of a pre-trial judge did not concern the merits of a case, and his or her procedural acts did not touch on and did not determine the essential elements of a dispute, in particular, the act in question, the person who had committed it, and his or her guilt.

122. Proceedings before a pre-trial judge could end, amongst other things, in the case being referred back to the prosecutor's office or being sent for trial.

123. The Government also explained that after the Constitutional Court had declared Article 341§ 5 of the CCP unconstitutional, the authorities had changed the text of the Article by Government Emergency Ordinance no. 18/2016, which had entered into force on 23 May 2016.

124. The Government contended that the Constitutional Court had declared the above-mentioned CCP Article unconstitutional by taking into account the conditions imposed by the right to a fair hearing in circumstances involving the determination of a criminal charge. Also, the Constitutional Court had taken the view that the principles of adversarial and oral proceedings had been breached by the impugned CCP provision, mainly because: (i) the principal participants in criminal proceedings, namely the victim and the suspect – who, under domestic law, did not have the status of parties to the proceedings – could not lodge applications and raise objections concerning the lawfulness of evidence added to the case file, and could not contest any such applications or objections; (ii) at the trial stage of the proceedings there was no new administration of the evidence in the case file which had not been contested before the pre-trial judge; and (iii) the pre-trial judge, when examining a case and the evidence added to the case file, could not hear directly from the person who denied having committed an unlawful act or offence as required by the principle of immediacy.

125. The Government submitted that the applicant, however, had not found himself in any of the above-mentioned situations. He had joined the criminal proceedings as a civil party (see paragraph 12 above) and had contested all the available evidence before the pre-trial judge. Also, the pre-trial judge had examined the case by relying on the documents and technical expert reports available in the case file, which the applicant had also been able to contest before the prosecutor's office. In addition, the judge and the other authorities had examined and dismissed all the arguments raised by the applicant concerning the inconsistencies between the available pieces of evidence, the authorities' incorrect assessment of this evidence and their refusal to add additional evidence to the case file, and adequate reasons for those decisions had been provided.

126. The Government argued that the exceptional circumstances which might justify dispensing with an oral hearing essentially came down to the nature of the issues to be dealt with by the competent court – in particular, whether these raised any question of fact or law which could not be adequately resolved on the basis of the case file. An oral hearing might not be required where there were no issues of credibility or contested facts which necessitated the oral presentation of evidence or the cross-examination of witnesses, and where the accused was given an adequate opportunity to put forward his case in writing and challenge the evidence against him. In this connection, it was legitimate for the national authorities to have regard to the demands of efficiency and economy.

127. The applicant's case had not concerned a hearing or witness confrontation. Also, he had been fully aware of when (the date and time) and where the pre-trial judge had examined his complaint against the prosecutor's office's decisions, he had been able to make written submissions before the judge, and he had never asked to be allowed to appear in court.

128. The Government acknowledged that the pre-trial judge had not been acting as a trial court. However, the judge had never made any determination about the driver's guilt and had not examined questions concerning the merits of the case. The judge had only examined the need for a new technical expert report to be produced in the case and the lawfulness of the prosecutor's office's decision to dismiss the applicant's request for a new expert report, given the conclusions of the previous reports about the person responsible for causing the accident.

2. The Court's assessment

(a) Scope of the Court's assessment

129. The Court notes at the outset that the instant case is about the applicant's civil claims, and that in his application to the Court he complained of the unfairness of the criminal proceedings comprising these civil claims; in particular, he complained that the pre-trial judge proceedings – which had played an important part in the overall context of the proceedings – had taken place in chambers, without the parties being summoned, and that the pre-trial judge had unlawfully extended the scope of the review that he was allowed to carry out when examining appeals against a prosecutor's office's decision not to prosecute (see paragraph 112 above).

130. The Court also notes that in his further submissions to the Court the applicant also alleged, *inter alia*, that he had not had access to the case-file during the investigation stage of the proceedings (see paragraph 117 above). In the Court's view the right of a party to the proceedings to familiarise itself with the evidence before the courts as well the possibility to comment on its existence, contents and authenticity in an appropriate form, builds part of the right to adversarial proceedings (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 42, 3 March 2000).

(b) General principles

131. The Court has accepted that the requirements inherent in the concept of a "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations as in cases concerning the determination of a criminal charge, and it has previously stated that "the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases" (see *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 32, Series A no. 274, and *Levages Prestations Services v. France*, 23 October 1996, § 46, *Reports of Judgments and Decisions* 1996-V). There are significant differences between civil and criminal proceedings (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 66, 11 July 2017). The requirements of Article 6 § 1 as regards cases concerning civil rights are less onerous than they are for criminal charges (see *König v. Germany*, 28

June 1978, § 96, Series A no. 27). In particular, the rights of persons accused of or charged with a criminal offence require greater protection than the rights of parties to civil proceedings. The principles and standards applicable to criminal proceedings must therefore be laid down with particular clarity and precision. Whereas in civil proceedings the rights of one party may conflict with the rights of the other party, no such considerations stand in the way of measures taken in favour of persons who have been accused, charged or convicted, notwithstanding the rights which the victims of offences might seek to uphold before the domestic courts (see *Moreira Ferreira*, cited above, § 67).

132. The Court reiterates that when it examines proceedings falling under the civil head of Article 6, it may find it necessary to draw inspiration from its approach to criminal-law matters (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 80, 4 March 2014, and *Carmel Saliba v. Malta*, no. 24221/13, § 67, 29 November 2016).

133. Furthermore, the Court also reiterates that the concept of a fair hearing implies the right to adversarial proceedings, according to which the parties must have the opportunity not only to be made aware of any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision. However, the rights deriving from these principles are not absolute and their scope may vary depending on the specific features of the case in question (see *Hudáková and Others v. Slovakia*, no. 23083/05, § 26, 27 April 2010, and the case-law cited therein). In the last instance it is for the Court to determine whether the requirements of the Convention have been complied with (see *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 146-147, 19 September 2017, with further references).

134. Lastly, the Court refers to the principles set out in its case-law concerning the requirement that an oral and public hearing be held in circumstances concerning the determination of civil rights and obligations (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 187-192, 6 November 2018).

(c) Application of these principles to the instant case

135. The Court notes at the outset that the High Contracting Parties have adopted, as part of their legal framework, varied approaches to questions concerning the procedures, competences and role of investigating or pre-trial judges (see paragraphs 77-81 above). The Court acknowledges that these issues may involve important and sensitive questions about fairness and how to strike an appropriate balance between the parties to proceedings, and that the solutions adopted are linked with complex procedural matters specific to each constitutional order. This being so, it is not for the Court to seek to impose any particular model on the Contracting Parties. Its task is to conduct

a review of the specific circumstances of the case, on the basis of the complaints brought before it (see, *mutatis mutandis*, *Haarde v. Iceland*, no. 66847/12, § 84, 23 November 2017).

136. In the instant case the Court notes that proceedings before a pre-trial judge concerned the preliminary stage of criminal proceedings, taken alone or jointly with claims by a civil party. As established by the Constitutional Court, the main purpose of those proceedings was to decide whether to commence a criminal trial in a case (see paragraph 71 above) or whether to end a criminal-law dispute (see paragraph 58 above). Amongst other things, the pre-trial judge was called upon to examine the lawfulness of an act of indictment or a decision not to indict, or decisions by the prosecutor's office to discontinue or close the criminal proceedings in a case. The judge's activities did not concern the merits of the case, and his or her decisions were neither aimed at determining the essential elements of the alleged criminal offence, namely the act in question, the person who had committed it, and that person's guilt, nor any civil claim lodged by a civil party within criminal proceedings (see paragraph 71 above). These aforementioned points could have been determined by the criminal court only at the trial stage of the proceedings.

137. Nevertheless, whereas the primary purpose of Article 6 § 1, as far as civil proceedings are concerned, is to ensure a fair trial by a "tribunal" competent to determine "civil rights and obligations", Article 6 § 1 under its civil head is applicable from the moment that the victim, or his or her next of kin, joins the criminal proceedings as a civil party, even during the preliminary criminal investigation stage taken on its own (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 207, 25 June 2019). This preliminary investigation stage or pre-trial stage of criminal proceedings may be of importance for civil proceedings, both because of the decisive impact the outcome of criminal proceedings might have, in certain circumstances, on civil proceedings (see, amongst other authorities, *Perez v. France* [GC], no. 47287/99, § 66, ECHR 2004-I) and because of the fact that the evidence collected by the authorities could be used by the applicant in the civil proceedings and could prove to be essential for the determination of his claim (see, *mutatis mutandis*, *Nicolae Virgiliu Tănase*, cited above, § 176). The manner in which Article 6 is to be applied during the investigation stage or pre-trial stage of proceedings, however, depends on the special features of the proceedings involved and the circumstances of the case (see *Haarde*, cited above, § 78, and *Hudáková and Others*, cited above, § 26, with further references).

138. Given that under the national legal framework it appears that the applicant could have had the merits of his civil rights and obligations determined either within the context of a criminal trial or within the context of separate civil trial (see paragraphs 12, 53, and 54 above), the Court will have regard to all the proceedings open to the applicant, including the

handling of the case by the pre-trial judge, when determining whether the rights of the applicant were prejudiced. As part of that determination, it will assess whether the measures taken during the proceedings before the pre-trial judge weakened the applicant's position concerning his civil claim to such an extent that all subsequent stages of these proceedings or separate civil proceedings would have been rendered unfair from the outset (see, *mutatis mutandis*, *Haarde*, cited above, § 79).

139. In this connection, the Court notes that – in line with the relevant legal framework in place at the time when the case concerning the applicant's father's death was examined – the proceedings before the pre-trial judge were conducted in chambers and in the absence of the parties. Also, the parties could make only written submissions before the pre-trial judge concerning the admissibility and merits of the complaint against the prosecutor's office's decision not to prosecute, could not rely on any legal provision expressly giving them the opportunity to ask for a public and oral hearing to be held by the pre-trial judge, and could not ask the pre-trial judge to administer again the available evidence or add new evidence to the case file. In addition, the pre-trial judge's decisions were not amenable to appeal (see paragraph 53 above).

140. The Court further notes that the above-mentioned legal framework was eventually declared partly unconstitutional by the Constitutional Court and was subsequently changed. However, the Constitutional Court's decision and the subsequent legislative changes had no impact on the proceedings in the applicant's case, because they came after those proceedings had ended and did not have a retroactive effect (see paragraphs 52 and 123 above).

141. As already indicated above, the purpose of proceedings before a pre-trial judge was to review the decisions of the prosecutor's office and decide on procedural questions concerning the criminal limb of proceedings (see paragraph 136 above). These proceeding were not concerned as such under any circumstances with determining the merits of an applicant's civil claim. Admittedly, depending on the circumstances, such decisions could have a more or less extensive effect on the examination of the civil limb of proceedings, regardless whether the civil proceedings were joined to or separate from criminal proceedings. However, the decision of a pre-trial judge seemed to affect rather the manner in which a criminal trial court that was called upon to determine the merits of both criminal and civil limbs of proceedings following an indictment could examine a case and review evidence which had been deemed lawful or unlawful by the pre-trial judge (see paragraphs 67 and 69 above). It does not seem that such a decision similarly affected the manner in which a civil court could examine a case and the necessary evidence, in circumstances where it was called upon to determine civil proceedings separately, especially in cases where the criminal proceedings had been discontinued at the pre-trial judge stage of the proceedings.

142. In this connection, the Court notes the disagreement between the parties as to whether or not the pre-trial judge did in fact also examine the liability of the parties involved in the accident and the merits of the case (see paragraphs 116 and 128 above). In addition, it notes the applicant's apparent suggestion that once the above-mentioned points were determined by the pre-trial judge they acquired the force of *res judicata* for a civil court, and rendered futile any attempt to have the merits of his civil claim determined by such a court (see paragraph 116 above).

143. The Court notes that, in examining the lawfulness of the prosecutor's office's decision, the pre-trial judge relied on the available evidence and drew conclusions about the responsibility of those involved in the accident. However, his assessment and conclusions seemed to concern and determine only whether the prosecutor's office's decision to exclude the driver's actions from the criminal sphere had been lawful, given the particular circumstances of the accident and the applicant's submissions. The judge confirmed the prosecutor's office's view that the elements of the offence under investigation had not been made out in the driver's case, and provided reasons supporting that decision (see paragraphs 33-39 above).

144. The Court also notes that the applicant did not bring separate civil proceedings against the driver involved in the accident. Therefore, it cannot speculate as to what the precise outcome of those proceedings might have been. It notes, however, that in accordance with the relevant procedural rules, a final judgment of a criminal court was *res judicata* for civil courts, which were called upon to examine a civil action, only with regard to the existence or lack of an act and the existence of evidence that a person had committed it (see Article 28 of the CPP, quoted in paragraph 53 above). These conditions did not seem to be met with respect to the pre-trial judge's decision. Even assuming that his decision could be viewed as the final judgment of a criminal court within the context of the domestic legal framework – a fact that the applicant himself seems to contest (see paragraph 115 above) –, the Court notes that at no stage of the proceedings concerning the applicant's father's death was the investigation in the case discontinued or closed on the substantive grounds that the driver's act in question had not taken place or that the driver under investigation was not the person who had committed that act.

145. In these circumstances, the Court is not convinced that a separate civil action was rendered obviously futile by any *res judicata* effect of the pre-trial judge's decision. The Court notes that the civil court judgment of 4 September 2014, which was unfavourable to the applicant, relied on the finding of the investigating authorities concerning responsibility for the accident (see paragraph 50 above). Nevertheless, there is no evidence in the case file indicating that the applicant appealed against that judgment (see paragraph 51 above). In addition, the applicant has not presented any other argument suggesting that a separate civil action against the driver would have

been unfair *ab initio*, or would not have been compliant with the guarantees set out in Article 6 § 1 of the Convention.

146. That said, the Court reiterates that its power to review compliance with domestic law is limited. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018). That is why in any legal system in which fundamental rights are protected by the Constitution and the law, it is incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to apply those rights and, where appropriate, develop them in exercising their power of interpretation (see *Gherghina v. Romania* [GC] (dec.), no. 42219/07, § 101, 9 July 2015).

147. As to the applicant's argument that he was unable to have his case, including his civil claims, reviewed by an independent and impartial tribunal established by law because the pre-trial judge lacked the competences and functions of a proper court (see paragraph 115 above), the Court firstly notes that the guarantees set out in Article 6 under its criminal limb were not applicable in the circumstances of the applicant's case. Moreover, the Court has already established that the applicant could have brought separate civil proceedings against the driver which in turn could have led to the merits of his civil action being determined in circumstances that complied with the requirements of fairness set out under the civil limb of Article 6 (see paragraph 145 above).

148. Even assuming that the concept of a "tribunal" covered a pre-trial judge (see, in this regard, *De Lorenzo v. Italy* (dec.), no. 69264/01, 12 February 2004; *Previti v. Italy* (dec.), no. 45291/06, §§ 194-95, 8 December 2009; and *Vera Fernández-Huidobro v. Spain*, no. 74181/01, § 110, 6 January 2010), the Court notes that nothing in its case-law indicates that the proceedings in question breached the requirements of lawfulness, independence and impartiality set out in the Convention merely because the judge was called upon to perform certain tasks without having the same powers as a court called upon to examine the merits of the case. The general competences and role of the pre-trial judge were prescribed by the national legal framework in place at the time when the applicant's case was examined. None of the available information suggests that the relevant judge did not comply with the requirements of independence and impartiality. In this connection, the Court also notes that the applicant has not contested the fact that the pre-trial judge was a professional judge who had to follow the same training programme and appointment procedure as any other judge in the country, and who was subject to the same rules concerning the independence and impartiality of judges and had to observe those rules.

149. As to the applicant's arguments that the national authorities assessed and collected the relevant evidence wrongly (see paragraph 117 above), the Court reiterates that it is for the national courts to assess the evidence they have obtained and the relevance of any evidence that a party wishes to have produced (see, amongst other authorities, *LB Interfinanz A.G. v. Croatia*, no. 29549/04, § 26, 27 March 2008). Also, the Court notes that the pre-trial judge in the case considered all the arguments raised by the applicant in this regard and dismissed them by providing reasons which do not appear arbitrary or manifestly unreasonable (see paragraphs 33-39 above).

150. Having regard to the above, the measures and decisions taken during the proceedings before the pre-trial judge in the circumstances of the applicant's case did not weaken his position to such an extent that subsequent proceedings aimed at determining the merits of his civil claims would have been rendered unfair from the outset.

151. The Court's findings are without prejudice to the domestic authorities' actions to set up a domestic legal framework in order to ensure a heightened level of protection compared with the Convention, as regards proceedings before a pre-trial judge (see the remarks made in this respect by the Constitutional Court, resumed in paragraph 74 above; see also, *mutatis mutandis*, *Nicolae Virgiliu Tănase*, cited above, § 172).

152. Therefore, there has been no violation of Article 6 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

153. The applicant complained that he had not had access to an effective remedy for his complaints, because the appeal procedure for appeals against a public prosecutor's decisions not to prosecute provided for by the relevant procedural rules could not have resulted in the case being sent for trial.

He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

154. The Court notes at the outset that it must examine whether the applicant has an arguable complaint for the purposes of Article 13 of the Convention.

155. The Court reiterates the principles set out in its case-law concerning the requirements and guarantees set out in Article 13 of the Convention (see *Driza v. Albania*, no. 33771/02, § 116, ECHR 2007-V (extracts), and *Nicolae Virgiliu Tănase*, cited above, § 217-18, with further references).

156. The Court firstly notes that it declared the applicant's complaints under Articles 2 and 6 of the Convention admissible (see paragraphs 90 and

113 above). Even though it did not find a violation of these provisions, it nevertheless considered that the complaints raised under those provisions required an examination on the merits. The Court therefore considers that for the purposes of Article 13 of the Convention, the applicant had an arguable complaint concerning those Articles (see *Nicolae Virgiliu Tănase*, cited above, § 219).

157. It follows that the applicant's complaint falls within the Court's competence *ratione materiae*.

158. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

159. The applicant argued that he had been deprived of his right to have his case and claims examined by a court, and to have the court's decision reviewed by way of an appeal. He reiterated his arguments that the investigation into his father's death and the examination of his related claims had not been carried out by a court at any stage of the proceedings. This was due to shortcomings in the CCP, which had entered into force in February 2014, and which had not provided for any means of bringing a case before a court in circumstances similar to his own.

(b) The Government

160. The Government argued that the applicant's rights guaranteed by Article 13 of the Convention had not been breached. In accordance with the relevant procedural rules, depending on the circumstances, a pre-trial judge could decide to either refer a case back to the prosecutor's office or send it for trial. In both circumstances, the pre-trial judge's decision constituted an effective remedy, because it opened up the opportunity for applicants to ask for new evidence to be added to the case file.

161. The Government also reiterated the Constitutional Court's findings that the absence of two levels of jurisdiction at the stage of proceedings before a pre-trial judge did not breach the Constitution or an applicant's right of defence, right of access to court or right to a fair hearing (see paragraph 56-57 above).

2. The Court's assessment

162. The Court notes that the question that arises in this case is whether the applicant had an effective remedy under domestic law by which to complain of the breach of his rights under Articles 2 and 6 of the Convention.

163. The Court notes, however, that the applicant's complaint under Article 13 does not in effect concern any issues other than the ineffectiveness, length and unfairness of the proceedings in which he was involved following his father's death, issues which the Court has already examined under Articles 2 and 6 of the Convention. In addition, the Court notes that in accordance with the relevant procedural rules in force at the time, the pre-trial judge who was called upon to examine the applicant's appeal against the prosecutor's office's decision not to prosecute had the power to refer the case back to the prosecutor's office and order that formal charges be brought against the alleged offender. Subsequently, there would have been no formal obstacles to the prosecutor's office or the pre-trial judge sending the case for trial in those circumstances, where such an approach would have been rendered necessary by the evidence in the case (see Article 341 of the CPP, quoted in paragraph 53 above).

164. The Court also notes that it has already established that in any event it does not seem that the applicant would have been prevented from bringing separate civil proceedings against the driver (see paragraph 145 above). This would have given him the opportunity to have the merits of his case examined by a civil court, and would have enabled him to appeal against that court's judgment.

165. In the light of the above, the Court does not discern any element suggesting that the guarantees set out by Article 13 have been breached in the applicant's case.

166. It follows that there has been no violation of Article 13 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

4. *Holds* that there has been no violation of Article 13 of the Convention.

Done in English, and notified in writing on 12 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President