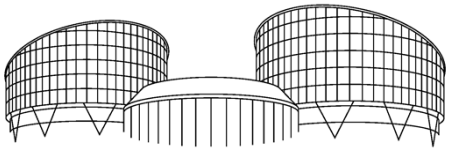

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MIHAIL MIHĂILESCU v. ROMANIA

(Application no. 3795/15)

JUDGMENT

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

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 Mihail Mihăilescu 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. 3795/15) 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 Mihail Mihăilescu ("the applicant"), on 8 February 2015;

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 proceedings before a pre-trial judge which had confirmed a public prosecutor's decision not to prosecute an alleged perpetrator had been unfair and had breached his rights guaranteed by Article 6 § 1 of the Convention, because they had taken place in chambers, without the parties being present or aware of each other's submissions, and without him being able to rebut the arguments submitted by the alleged perpetrator.

THE FACTS

2. The applicant was born in 1971 and lives in Bucharest. He was represented by Ms I.M. Peter, 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. BACKGROUND TO THE CASE

5. On 19 March 2009 the Bucharest District Court ("the District Court") allowed the applicant's wife's application for divorce. The court held that the applicant was the only person responsible for the divorce, and ordered him to pay financial maintenance for his child, who was a minor.

II. CRIMINAL PROCEEDINGS COMPRISING CIVIL CLAIMS BROUGHT BY THE APPLICANT

6. On 1 March 2013 the applicant made a criminal complaint against his former mother-in-law for perjury. He argued that she had lied in a statement of 19 February 2009 that she had given before the courts during the divorce proceedings – a statement about his inappropriate behaviour towards his wife. Moreover, he had never attended the hearings held during the divorce proceedings because he had thought that his wife had merely been antagonising him with her application for divorce. The applicant joined the criminal proceedings as a civil party and claimed 20,000 Romanian Lei (RON) (approximately 4,600 Euros (EUR)) in respect of non-pecuniary damage because his mother-in-law's above-mentioned statement had affected his image, honour and dignity.

7. On 24 October 2013 the Bucharest police department proposed that the criminal prosecution against the applicant's former mother-in-law be discontinued and an administrative penalty be imposed on her, on the grounds that her actions had not met the level of seriousness of an offence. It held that three witnesses had been heard in order to clarify the circumstances of the case, namely the applicant's neighbour L.O.N., his acquaintance C.S. and the applicant's daughter T.C.M. L.O.N. and C.S. had stated that they had not heard or seen the applicant to be violent towards his former wife or to force her to leave their home. Likewise, the applicant's daughter had stated that he had never hit his former wife and that her mother had left their home several times without a reason.

8. On 27 January 2014 a prosecutor attached to the Bucharest prosecutor's office ("the prosecutor's office") discontinued the criminal prosecution in the case and fined the applicant's former mother-in-law, on the grounds that her actions had not met the level of seriousness of an offence. He held on the basis of the available evidence that imposing an administrative fine on her was sufficient, given the context in which the act was committed, namely that she did not have a criminal record, the social impact of her actions of February 2009 was largely diminished, and the injured party had not attended any court hearings to defend himself. The applicant's former mother-in-law challenged the decision before a more senior prosecutor.

9. On 25 August 2014 the more senior prosecutor attached to the prosecutor's office allowed the applicant's former mother-in-law's challenge,

overruled the lower prosecutor's decision and closed the criminal proceedings in the case. She held that the investigation had not been sufficient to establish with any certainty whether the applicant's former mother-in-law had been guilty. The testimony of the three witnesses heard by the investigating authorities could not be taken into account in the case. The applicant's acquaintance C.S. had not been questioned on essential aspects of the applicant's family life, such as whether he had been aware of any older family problems the applicant might have had, and the neighbour L.O.N. had known the applicant only since his divorce. In addition, the applicant's daughter had been living with the applicant, had been underage, and had not been informed of her right not to testify against her grandmother. Moreover, the statutory limitation in respect of the applicant's former mother-in-law's criminal liability had expired.

10. On 13 October 2014 the applicant appealed against the prosecutor's office's decision of 25 August 2014 to the District Court. He argued that the decision had been unlawful and that the more senior prosecutor's conclusion that the evidence had been insufficient to establish with certainty his former mother-in-law's guilt had been wrong. The senior prosecutor had ignored L.O.N.'s statement that she had been the applicant's neighbour since before his divorce and that therefore L.O.N. could have been aware of details about his family life even before he and L.O.N. were formally acquainted. Also, the senior prosecutor's conclusion that his daughter's testimony could not be taken into account in the case had been unreasonable as long as the investigation authorities had considered on their own motion that it had been necessary for his daughter to be heard in the case. Moreover, some of the procedural deficiencies indicated by the more senior prosecutor, such as the investigating authorities' failure to notify the applicant's daughter of her right not to testify against her grandmother, could have been remedied very easily by referring the case back to the police department. The applicant stated that establishing that his former mother-in-law had lied in her statement had been very important to him. At the relevant time he had been working as a police officer, and his employer had been notified of the judgment containing her detailed statement about his inappropriate behaviour towards his family. Afterwards, his employer had subjected him to intense psychological and professional scrutiny before it had allowed him to resume work.

11. On 22 October 2014 the District Court, sitting as a pre-trial judge, notified the applicant of the date and place of the examination of his appeal against the prosecutor's office's decision. In addition, it informed him that he could submit written observations on the admissibility and merits of the appeal.

12. There is no information in the case file that the applicant made other submissions before the District Court apart from the ones of 13 October 2014 (see paragraph 10 above).

13. By an interlocutory judgment of 3 November 2014 which was not amenable to appeal the District Court – sitting as a pre-trial judge, in chambers and without the parties being present – dismissed the applicant's appeal and upheld the prosecutor's office's decision of 25 August 2014 (see paragraph 9 above).

14. The pre-trial judge held that there was no evidence that the applicant's former mother-in-law had lied in her statement given before the court and committed perjury. The prosecutor had relied on the testimony of two witnesses to conclude that she had lied in court. One of the witnesses was an acquaintance of the applicant, and the other had been a neighbour of the former spouses. Neither of the two witnesses had seen or heard an argument between the applicant and his former wife, and therefore they had contradicted the mother-in-law's statement that the applicant and his former wife had had arguments.

15. However, the pre-trial judge considered that the applicant's former mother-in-law had been in a better position to see or find out about possible arguments or threats between the former spouses, given the close relationship that she had had with them. It could therefore not be excluded that such arguments had existed, even if the witnesses C.S. and L.O.N. had not heard or seen them.

16. As regards the statement of the applicant's daughter, the pre-trial judge held that her statement could have been influenced by the relationship that she had with her parents, and by the fact that she had been living with her father.

17. The pre-trial judge further held that the court which had delivered the judgment of 19 March 2009 (see paragraph 5 above) had not relied on only the applicant's former mother-in-law's statements, but also the fact that it had been impossible to carry out a social inquiry at the applicant's home, he had failed to cooperate with the court, and he had refused to appear in court in order to be questioned by his former wife.

18. According to medical documents submitted by the applicant's former mother-in-law, in January 2008 the applicant had been taken to hospital by the police at the request of his former wife and treated for erratic behaviour. Even though these documents had not been examined by the prosecutor, in the pre-trial judge's opinion they corroborated the applicant's former mother-in-law's allegations that the applicant had sometimes behaved inappropriately towards his family because of health problems which he had been facing at that time.

III. SEPARATE CIVIL PROCEEDINGS BROUGHT BY THE APPLICANT

19. On 9 May 2014 the applicant brought general tort law proceedings against his former mother-in-law, seeking compensation for pecuniary and

non-pecuniary damage – the psychological and material damage which he had suffered both at work and in his private life following her statement of February 2009. He argued, amongst other things, that on 27 January 2014 the prosecutor's office had established that his former mother-in-law was guilty of perjury (see paragraph 8 above).

20. There is no evidence in the file concerning the outcome of the general tort law proceedings brought by the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

21. 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

22. The relevant provisions of the Code of Criminal Procedure ("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
The challenge

"(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."

23. 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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 § (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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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

46. 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).

47. 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 before the appeal instance 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.

48. 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 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. 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. It seemed to be implied that in all twenty-five member States all parties were notified of important decisions taken in a case.

49. 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.

50. 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

51. 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.

52. 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.

53. The applicant did not submit observations on this point.

54. The Court notes that in the instant case, in his application to the Court and in his subsequent written submissions, the applicant 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.

55. 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).

56. 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.

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

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

58. The applicant complained that the proceedings before the pre-trial judge which had confirmed the public prosecutor's decision not to prosecute the alleged perpetrator had been unfair, because they had taken place in chambers, without the parties being present or aware of each other's submissions, and without him being able to rebut the arguments submitted by the alleged perpetrator; those proceedings had therefore breached his rights

guaranteed by Article 6 § 1 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

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

B. Merits

1. Submissions by the parties

(a) The applicant

60. The applicant argued that the Government's submissions – that the proceedings brought by him had been fair, that he could have asked to be present at the proceedings before the pre-trial judge, and that the proceedings had been adversarial and public because he had had the opportunity to submit written observations – had been contradicted by the Constitutional Court's decisions (see paragraphs 24-45 above) and the relevant procedural rules.

61. The amendments made to the relevant procedural rules after the Constitutional Court's decisions had not remedied the breach of his right to fair proceedings.

(b) The Government

62. The Government argued that the criminal proceedings brought by the applicant against his former mother-in-law had been fair.

63. 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.

64. 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.

65. As established by the Constitutional Court in decision no. 641 of 11 November 2014 (see paragraphs 39-45 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.

66. 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. In the latter scenario, the trial court could no longer refer the case back to the prosecutor's office.

67. 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.

68. 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.

69. 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 6 above) and had contested all the

available evidence before the pre-trial judge. Also, in his appeal against the prosecutor's office's decision to close the criminal proceedings in the case (see paragraph 10 above), the applicant had not asked the pre-trial judge to add new evidence to the case file or referred to evidence that would have to have been adduced directly before the judge. Therefore, it could be inferred that the applicant had considered that the facts of the case had been established correctly and that the evidence in the case file had been sufficient.

70. 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.

71. 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.

2. The Court's assessment

(a) Scope of the Court's assessment

72. 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 proceedings before the pre-trial judge – which had played an important part in the overall context of the proceedings – had taken place in chambers, without the parties being present or aware of each other's submissions, and without him being able to rebut the arguments submitted by the alleged perpetrator (see paragraph 58 above).

73. The Court further notes that the applicant's complaint included express claims that the above-mentioned proceedings had been unfair because the parties had been unaware of each other's submissions during the proceedings, and because he had been unable to contest the arguments submitted by the alleged perpetrator during those proceedings.

(b) General principles

74. 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).

75. 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).

76. The Court further reiterates the principles set out in its case-law concerning the right to adversarial proceedings and equality of arms (see *Kress v. France* [GC], no. 39594/98, § 74, ECHR 2001-VI). The adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention. They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent or opponents. In addition, 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).

77. 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

78. 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 46-50 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).

79. 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 40 above) or whether to end a criminal-law dispute (see paragraph 27 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 40 above). These aforementioned points could have been determined by the criminal court only at the trial stage of the proceedings.

80. 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 § 1 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 *mutatis mutandis Haarde*, cited above, § 78, and *Hudáková and Others*, cited above, § 26, with further references).

81. 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 proceedings (see paragraphs 6, 19, and 23 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).

82. In this connection, the Court reiterates that – in line with the relevant legal framework in place at the time when the applicant's case 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 other participants were not notified of all the submissions made by one of the participants to the proceedings, and the pre-trial judge's decisions were not amenable to appeal (see paragraphs 22 and 41 above).

83. 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 21 and 67 above).

84. 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 79 above). These proceedings 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 paragraph 36 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.

85. In this connection, the Court observes that the applicant brought separate civil proceedings against his former mother-in-law (see paragraph 19 above). However, there is no evidence in the case file as to the outcome of those proceedings (see paragraph 20 above), and the Court cannot speculate as to what the outcome 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 22 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, the Court notes that at no stage of the proceedings brought by the applicant was the investigation in the case discontinued or closed on the substantive grounds that the applicant's former mother-in-law's act had not taken place or that she was not the person who had committed that act.

86. 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 the alleged perpetrator. However, his assessment and conclusions concerned only whether the prosecutor's office's decision to exclude the applicant's former mother-in-law's actions from the criminal sphere and close the investigation had been lawful, given the particular

circumstances of the case and the applicant's submissions. The pre-trial judge in a reasoned decision confirmed the prosecutor's office's view that the investigation had not been sufficient to establish with any certainty whether the applicant's former mother-in-law had been guilty (see paragraphs 13-18 above) and upheld the finding that the statutory limitation in respect of her criminal liability had expired (see paragraphs 9 and 13 above).

87. The Court notes further that the applicant has not argued in his submissions to the Court that the pre-trial judge's decision in his case acquired the force of *res judicata* for the purpose of the assessment of a civil claim by a civil court in separate proceedings and that it rendered obviously futile any attempts to have the merits of his civil claim determined by that court. In addition, the applicant has not presented any other argument suggesting that a separate civil action against his former mother-in-law would have been unfair *ab initio*, or would not have been compliant with all the guarantees set out in Article 6 § 1 of the Convention. Therefore, the Court sees no reason to believe otherwise.

88. 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).

89. 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.

90. 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 43 above – see also, *mutatis mutandis*, *Nicolae Virgiliu Tănase*, cited above, § 172).

91. Therefore, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 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