



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

FOURTH SECTION

CASE OF STĂVILĂ v. ROMANIA

(Application no. 23126/16)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Reopening of criminal proceedings and subsequent conviction for road traffic offence, based on same case file without new evidence, differing interpretation of the relevant legislation and reassessments of the case circumstances

STRASBOURG

1 March 2022

FINAL

01/06/2022

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

In the case of Stăvilă v. Romania,

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

Yonko Grozev, *President*,

Faris Vehabović,

Iulia Antoanella Motoc,

Gabriele Kucsko-Stadlmayer,

Pere Pastor Vilanova,

Jolien Schukking,

Ana Maria Guerra Martins, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 23126/16) 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 Iosif-Amadeus Stăvilă (“the applicant”), on 18 April 2016;

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

the parties’ observations;

Having deliberated in private on 25 January 2022,

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

INTRODUCTION

1. The applicant complained that the reopening of criminal proceedings against him, and his subsequent conviction, had breached his rights to defence, equality of arms, not to be tried and punished twice for the same offence, and to an effective remedy, as well as the principle of legal certainty. He relied on Articles 6 and 13 of the Convention and Article 4 of Protocol No. 7 to the Convention.

THE FACTS

2. The applicant was born in 1994 and lives in Arăneag. He was represented by Mr C. Berar, a lawyer practising in Ineu.

3. The Government were represented by their Agent, Ms O. Ezer, of the Ministry of Foreign Affairs.

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

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. On 3 April 2013 the applicant was driving a car on a public road and was stopped by the police for a routine check. When the officers asked to see

his driving documents the applicant confessed that he did not possess a driving licence.

6. On 26 April 2013 the Târnova Police Department instituted criminal proceedings against the applicant under Article 86 § 1 of Government Ordinance no. 195/2002 on traffic on public roads (“the Ordinance” – see paragraph 39 below) for driving a vehicle without possessing a driving licence.

7. On 4 November 2013 a prosecutor attached to the Ineu Prosecutor’s Office (“the prosecutor’s office”) discontinued the proceedings instituted against the applicant on the ground that his acts were not serious enough to constitute an offence, given their minimal impact on the social values protected by criminal law and the fact that the applicant had admitted his actions and regretted them, and had cooperated with the investigators. The prosecutor considered that it was necessary to impose an administrative fine of 500 Romanian lei (113 euros (EUR)) on the applicant which was sufficient to re-educate him.

8. The applicant did not contest that decision before a superior prosecutor or a court and it became final and enforceable within the autonomous Convention meaning of the term (see paragraph 58 below and the reference therein).

II. REOPENING OF THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

9. On 13 August 2014, a superior prosecutor attached to the Timișoara Prosecutor’s Office (“the superior prosecutor’s office”) set aside the decision of 4 November 2013 (see paragraph 7 above) on the ground that it had been unlawful, and reopened the criminal proceedings against the applicant. He relied on Article 335 § 1 of the Criminal Code, which had entered into force on 1 February 2014 and had repealed Article 86 § 1 of the Ordinance (see paragraph 39 below). In addition, the superior prosecutor’s office referred the case to a pre-trial judge to examine whether the decision reopening the proceedings had been lawful and well-founded, as required by Article 335 § 4 of the Code of Criminal Procedure (“the CCP” – see paragraph 41 below).

10. Relying on the evidence in the case file, the superior prosecutor’s office held that the applicant’s actions had been serious enough to constitute an offence, given that they had been potentially dangerous for road traffic safety. Imposing only an administrative penalty on the applicant could not have achieved the repressive and preventive-educational aim of a criminal sanction. It had been unlawful to hold that the applicant’s acts had not been serious enough to constitute an offence, because the law did not require a person’s actions to have actual consequences in order for the offence in question to exist, and because such an analysis would have given the impression that the act, that was classified as an offence by the law, was less

dangerous. It could not be argued that driving a vehicle without possessing a driving licence had had a minimal impact on the social values protected by criminal law or that it had been obviously unimportant. The applicant's honesty could not be viewed as a factor working in his favour as long as his honesty was the result of his being caught in the act, and of the clear evidence against him.

11. By an interlocutory judgment of 24 September 2014, not amenable to appeal, the Ineu District Court – sitting as a pre-trial judge, in chambers and without the parties being present – held that the decision of 13 August 2014 (see paragraphs 9 and 10 above) had been lawful and well-founded, and confirmed the reopening of the proceedings against the applicant. The pre-trial judge also held that it had been correctly established that the circumstances warranting the closure of the investigation had not existed in the case.

12. Relying on the facts established by the prosecutor's office, the pre-trial judge held further that the real social danger caused by the offence could not be cancelled out by the fact that the applicant had admitted his actions and regretted them, and had cooperated with the investigators. He had ignored the possible consequences for pedestrian and vehicle traffic in the area and had not hesitated to drive the vehicle without possessing a driving licence.

13. Given the applicant's actions, it had been lawful for the superior prosecutor's office to conclude that driving a vehicle without possessing a driving licence could not have had a minimal impact on the social values protected by criminal law and could not have been unimportant.

14. On 3 and 4 December 2014 respectively, the superior prosecutor's office set the criminal action against the applicant in motion and summoned the applicant to appear as a defendant. The applicant received the summons on 5 December 2014.

15. On 11 December 2014 the superior prosecutor's office took the applicant's statement. He confessed to having driven a car without possessing a licence.

16. On 13 January 2015 the superior prosecutor's office indicted the applicant and sent his case for trial to the District Court.

17. On the same date the District Court sent the applicant a copy of the act of indictment and informed him that his case was soon to be examined by a pre-trial judge, who was to decide on whether the court had been lawfully seised of the case and had had jurisdiction to examine it. In addition, the pre-trial judge was to check whether the actions of the investigating authorities, their collecting of evidence, and the evidence adduced to the case file had been lawful. The applicant was invited to submit written applications and objections within twenty days contesting the lawfulness of the evidence adduced to the case file, and the investigating authorities' actions, and collecting of evidence.

18. On 28 January 2015 the superior prosecutor's office asked the Ineu Tax Office to return to the applicant the fine imposed on him on 4 November 2013 (see paragraph 7 above), if he had paid it.

19. On 18 February 2015 the Ineu Tax Office informed the superior prosecutor's office that they could not return the fine to the applicant because he had never paid it.

20. By an interlocutory judgment of 2 April 2015, not amenable to appeal, the District Court – sitting as a pre-trial judge, in chambers and with the parties, including the applicant, present – held that the court had been lawfully seised of the case, that the actions of the investigating authorities and their collecting of evidence had likewise been lawful, and that the applicant's trial could start. The court noted that the applicant had not submitted any oral or written applications or objections and there had not been any reasons for the court to raise any such objections of its own motion.

III. TRIAL PROCEEDINGS BEFORE THE FIRST-INSTANCE COURT

21. At the hearing of 7 May 2015 the District Court took the applicant's statement and allowed his request to be tried under a summary procedure because he had admitted to having committed the acts he had been charged in connection with. The court noted that the parties had not submitted any applications or objections in the case, and that the applicant had requested to be tried only on the basis of the evidence adduced to the case file at the criminal investigation stage of the proceedings and the documents submitted before the court, in order to receive a reduced sentence. In addition, the court held that the evidence collected at the criminal investigation stage was sufficient to give a decision in the case and adjourned the proceedings to allow the applicant's legal representative to submit additional documents to the file.

22. On 23 July 2015 the applicant applied to the District Court to either discontinue the trial because the decision of the superior prosecutor's office of 13 August 2014 (see paragraph 9 above) had been unlawful, or to acquit him. He argued that the superior prosecutor's office had set aside the final decision of 4 November 2013 (see paragraph 7 above) unlawfully by merely reassessing the available evidence, and in the absence of any emergent new or newly discovered facts or evidence, or the discovery of a fundamental procedural defect concerning the proceedings. The approach of the superior prosecutor's office had breached the principles of legal certainty and *ne bis in idem* and had kept the applicant in a prolonged state of uncertainty. In addition, the superior prosecutor's office's power of setting aside a final decision more than nine months after it had been adopted had placed the applicant at a substantial disadvantage and had constituted a breach of the principle of equality of arms.

23. The applicant argued further that the decision of 13 August 2014 had been confirmed by a pre-trial judge adjudicating in chambers and without his being summoned to state his position on the matter even in writing (see paragraphs 11-13 above). The rules concerning the conduct of the above-mentioned proceedings had been declared unconstitutional by the Constitutional Court (“the CC”) on 23 June 2015 (see paragraph 42-44 below). Denying him the opportunity to contest the lawfulness of the decision in question of the superior prosecutor’s office at this stage of the proceedings would breach his rights of defence and to an effective remedy because it would ignore a binding decision of the CC.

24. On 6 August 2015 the District Court convicted the applicant of driving a vehicle without possessing a driving licence and sentenced him to one year and two months’ imprisonment. It held that the legal classification of the charge against him had to be changed because Article 86 § 1 of the Ordinance (see paragraph 39 below) was the more lenient criminal law in his case. In addition, his acts were serious enough to constitute the offence in question. The impact of his actions on the values protected by the criminal law were not minimal because he had committed the offence during the probation period of a two months’ suspended prison sentence, which had been imposed on him for a previous offence. The applicant’s formal acknowledgement of guilt had not diminished the seriousness of the offence as he had been caught in the act and his guilt was proven.

25. The court held further that the interlocutory judgment of 24 September 2014 (see paragraph 11 above) was lawful and valid because the CC decision of June 2015 (see paragraph 42-44 below) had only *ex nunc* effects, and the pre-trial judge had delivered the interlocutory judgment in question prior to the CC decision and in compliance with the procedural rules in force at that time. Moreover, the decision of the prosecutor’s office had not been a final decision which prevented the reopening of the criminal proceedings, as long as the applicant had not proved that he had paid the fine imposed on him, and Article 335 of the CCP (see paragraph 41 below) allowed for the reopening of the criminal investigation.

IV. TRIAL PROCEEDINGS BEFORE THE COURT OF APPEAL

26. The applicant appealed against the judgment and reiterated the arguments raised before the first-instance court (see paragraphs 22-23 above). In addition, he contended that the lower court had misinterpreted the applicable legal provisions, had assessed the circumstances of the case superficially and had ignored some of his arguments.

27. By a judgment of 22 October 2015 not amenable to ordinary appeal, the Timișoara Court of Appeal (“the Court of Appeal”) dismissed the applicant’s appeal. It held that unlike the old criminal procedure rules, the new rules which had entered into force in February 2014 complied with the

requirements set out in the Court's case-law and provided for a judicial review of decisions of the public prosecutor's office to reopen criminal proceedings, to ensure that the proceedings were reopened fairly and within a reasonably short time. The applicant could not therefore argue that his rights guaranteed by Article 6 of the Convention and Article 4 of Protocol No. 7 to the Convention had been breached.

28. In addition, the proceedings of 24 September 2014 (see paragraph 11 above) could not be in breach of the CC decision of June 2015 (see paragraphs 42-44 below) because that decision had had only *ex nunc* effects. Furthermore, the fact that the applicant had not been summoned during those proceedings had not affected his rights, as long as he had been able to raise any arguments and objections concerning the criminal investigation stage of the proceedings during the proceedings of 2 April 2015 (see paragraph 20 above). He had failed to do so and the pre-trial judge had confirmed that the court was lawfully seised of the case and that the actions of the investigating authorities and their collecting of evidence were lawful.

29. The applicant's arguments concerning the alleged unlawfulness of the decision of the superior prosecutor's office could no longer be examined by the court because the interlocutory judgments of 24 September 2014 and 2 April 2015 (see paragraphs 11 and 20 above) were final and had been delivered by independent pre-trial judges in compliance with the guarantees set out in the case-law of the European Court of Human Rights. The applicant had also asked to be tried under a summary procedure and only on the basis of the evidence adduced to the case file at the criminal investigation stage of the proceedings (see paragraph 21 above).

30. The court held further that the *ne bis in idem* principle was not applicable in the case as long as the procedural guarantees set out in the case-law of the European Court of Human Rights and in the national law had been observed, and the reopening of the discontinued criminal investigation was possible under domestic law.

31. Lastly, the court held that the applicant could not be acquitted by relying on arguments similar to those relied on by the first-instance court (see paragraph 24 above).

V. EXTRAORDINARY APPEAL TO REVIEW PROCEEDINGS

32. The applicant lodged an extraordinary appeal to review the interlocutory judgment of 24 September 2014 (see paragraph 11 above) and the judgments of 6 August and 22 October 2015 (see paragraphs 24 and 27 above), seeking to have the decision of the superior prosecutor's office set aside, the criminal trial against him discontinued, and the judgments of 6 August and 22 October 2015 quashed. He reiterated the arguments raised previously before the first-instance court (see paragraphs 22-23 above).

33. By a judgment of 26 January 2016 which was amenable to appeal, the District Court rejected the applicant's extraordinary appeal as inadmissible. It held that the decision of the superior prosecutor's office had been reviewed by a court on 24 September 2014. The applicant's rights were not affected by his not having been summoned during those proceedings, because he could have raised any objections concerning the criminal investigation stage of the proceedings and the act of indictment during the proceedings of 2 April 2015 (see paragraph 20 above).

34. The applicant appealed against the judgment by relying on similar arguments to those raised before the lower court (see paragraph 32 above).

35. By a final judgment of 21 April 2016 the Court of Appeal dismissed the applicant's appeal as ill-founded. It held that the applicant's extraordinary appeal was inadmissible because it had not concerned a judgment on the merits. The CCP article declared unconstitutional by the CC (see paragraphs 42-44 below) was a norm of procedural law and not of substantive law. In addition, the applicant could have contested the lawfulness of the criminal investigation at the pre-trial judge stage of the proceedings.

VI. OTHER RELEVANT INFORMATION

36. On 6 August 2020 the Prosecutor General informed the Government that, in so far as the domestic courts' practice was concerned, only pre-trial judge proceedings which reviewed prosecutorial decisions to reopen criminal proceedings, which were still pending on the date when the CC decision of 23 June 2015 was published (22 September 2015), had been affected by that decision. Pre-trial judge proceedings which had ended by the time the CC decision was published were not affected by it, nor did it have any impact on them. The latter proceedings were final and could no longer be reviewed.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

37. The relevant constitutional provisions concerning the application of international human rights treaties on a national level, the right of access to court and the right of defence, use of appeals, and the effects of CC decisions declaring domestic legal provisions to be unconstitutional are set out in *Mihail Mihăilescu v. Romania* (no. 3795/15, § 21, 12 January 2021).

II. THE CRIMINAL CODE AND THE GOVERNMENT ORDINANCE

38. The relevant provisions of the former Criminal Code, which was in force until 1 February 2014, concerning the rules applicable to acts

considered not serious enough to constitute a criminal offence are set out in *Mihalache v. Romania* [GC], no. 54012/10, § 33, 8 July 2019.

39. Article 86 § 1 of the Ordinance, which was in force until 1 February 2014, and Article 335 § 1 of the Criminal Code, which has been in force since 1 February 2014, provide that driving a motor vehicle on a public road without possessing a driving licence is punishable by imprisonment for a period of between one to five years.

III. CODE OF CRIMINAL PROCEDURE

40. The relevant provisions of the former CCP, which was in force until 1 February 2014, concerning prosecutorial decisions discontinuing proceedings on the ground that the investigated act had lacked sufficient seriousness to constitute an offence and imposing administrative penalties are set out in *Mihalache*, cited above, § 34).

41. Article 335 of the CCP, as in force at the relevant time, reads as follows:

Resumption in the situation of reopening the criminal investigation

“(1) The prosecutor who is hierarchically superior to the one who took the decision [to close the investigation] shall set aside that decision and order that the criminal investigation be reopened if he or she later notes that the circumstances warranting the closure [of the investigation] did not exist ...

(2) The prosecutor shall set aside the decision and order that the criminal investigation be reopened when new facts or circumstances have emerged which show that the circumstances warranting the closure [of the investigation] no longer exist.

(3) The prosecutor shall set aside the decision and order that the criminal investigation be reopened when he or she notes that the suspect or the defendant has in bad faith not complied with the obligations imposed on him under Article 318 § 3.

(4) The reopening of the criminal investigation shall be null and void if it is not submitted for confirmation by a pre-trial judge within a maximum of three days. The pre-trial judge shall decide whether the decision ordering the reopening of the criminal investigation was lawful and well-founded by way of an interlocutory judgment delivered in chambers without the prosecutor and the suspect or the defendant, as the case may be, being present.

...”

IV. DECISION OF THE CONSTITUTIONAL COURT PUBLISHED IN THE OFFICIAL GAZETTE NO. 708 OF 22 SEPTEMBER 2015

42. On 23 June 2015, following an objection raised by the Ombudsman on 3 March 2015, the CC held by a majority that Article 335 § 4 of the CCP was unconstitutional in so far as the pre-trial judge could decide on the reopening of the criminal proceedings in a case without the prosecutor, and the suspect or the defendant, participating in the proceedings. The court held

that unlike the old CCP in force before February 2014, the new CCP required a public prosecutor's decision reopening the proceedings in a criminal case to be reviewed by a court. Thus, the provisions of the CCP were reconciled with the case-law of the European Court of Human Rights, which required a judicial review on whether the reopening of the proceedings was fair and carried out within a reasonable time period after the proceedings had been discontinued.

43. In reviewing the decision reopening the proceedings, a pre-trial judge had to decide whether that decision was lawful and well-founded. Whereas confirming the lawfulness of the decision involved an examination of whether one of the conditions for reopening the proceedings set out in Article 335 of the CCP had been met in the case, checking whether the decision was well-founded, however, involved a review of the facts attracting the applicability of the above conditions. In addition, the pre-trial judge's confirmation of the decision reopening the proceedings amounted in effect to the formulation of a criminal charge within the meaning of the Convention against the person concerned by it. The fact that, like the prosecutor, the suspect or the defendant were therefore not summoned to participate in such proceeding and raise their arguments directly before the pre-trial judge, breached their constitutional rights to a fair trial and defence.

44. The CC held further that the pre-trial judge could not assess the factual circumstances that he or she was called to examine during such proceedings in a formalistic and unilateral manner during non-contentious proceedings, because the assessment in question required an effective and active participation of the parties, and sometimes that their statements were heard by the court.

45. In a dissenting opinion some of the CC judges expressed the view that the relevant part of Article 335 § 4 of the CCP was constitutional. They considered that a pre-trial judge did not touch on the merits of a case or establish a suspect's or defendant's guilt when reviewing the decision of the public prosecutor's office to reopen proceedings. In addition, at that stage of the proceedings the criminal proceedings were not reopened. As a result, according to the case-law of the European Court of Human Rights, the procedural guarantees set out under the criminal limb of Article 6 of the Convention were not applicable. Furthermore, once the criminal investigation in the case was reopened, the suspect or the defendant could enjoy all the guarantees of a fair trial at the subsequent stages of the proceedings. In the case of an indictment and of a trial, the defendant's case was examined first by a pre-trial judge and then by a trial court during proceedings which complied with all the requirements of a fair trial.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

46. The applicant complained that the reopening of the criminal proceedings and his conviction had breached his rights of defence and equality of arms because (i) the lawfulness of the decision reopening the proceedings had been examined by a pre-trial judge in his absence and without his being summoned to participate in the proceedings, and (ii) the trial courts had refused to examine his arguments concerning the unlawfulness of the decision in question even though the CC had acknowledged the unfairness of such pre-trial judge proceedings and had declared them unconstitutional before his trial had ended. The applicant complained further that the decision reopening the proceedings had breached the principle of legal certainty because it had been taken nine months after the proceedings against him had been discontinued, in the absence of any new facts or evidence having emerged in the case.

The applicant relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing ...

...”

A. The parties' submissions

1. *The Government*

47. The Government acknowledged that the proceedings of 24 September 2014 (see paragraph 11 above) had taken place in chambers and without the applicant being present. However, they argued that the applicant had had the opportunity to challenge the lawfulness of his indictment, the evidence adduced to the case file, and the investigating authorities' actions and collecting of evidence during the proceedings of 2 April 2015 (see paragraph 20 above). He had failed to do so even though during these proceedings he had been given the opportunity to raise objections both orally and in writing and had been present before the pre-trial judge.

48. The applicant had willingly, unequivocally, and being fully aware of the consequences, agreed to his case being tried under a summary procedure (see paragraph 21 above) and had therefore implicitly waived some of his

procedural rights. His decision had been accompanied by sufficient procedural safeguards and had involved an acceptance of all the evidence adduced to the case file, including the decision of the superior prosecutor's office and the interlocutory judgment of 24 September 2014. As long as he had not taken advantage of all the above-mentioned safeguards (see paragraph 47 above) he could not argue that the principle of legal certainty had been breached in his case.

49. The Government underlined that the authorities had been allowed to reopen proceedings in circumstances where a fundamental defect had been identified in the previous proceedings which could have affected the outcome of the case. Under the relevant domestic rules, a CC decision applied only *ex nunc* and gained binding force only from the time it was published. Given that the interlocutory judgment of 24 September 2014 was delivered before the publication of the CC decision of 23 June 2015 (see paragraph 42 above), the national courts, including the trial courts, had to apply the law on the effects of CC judgments. The courts had examined the applicant's arguments concerning the alleged unlawfulness of the decision reopening the proceedings following the CC's decision, and had dismissed them by providing reasons.

2. The applicant

50. The applicant contested the Government's submission that he could have challenged the decision reopening the proceedings in his case on 2 April 2015. In his opinion, challenging the fairness of the decision of the superior prosecutor's office had fallen outside the scope of those proceedings. Moreover, the CC decision of 23 June had been delivered after the proceeding of 2 April 2015 had ended. There would therefore have been no reason for a pre-trial judge to re-examine the decision of the superior prosecutor's office at that stage of the proceedings as long as it had been confirmed by the final interlocutory judgment of 24 September 2014 (see paragraph 11 above). The fact that the courts had refused to review the lawfulness of the decision reopening the proceedings even after the CC had delivered its decision had been sufficient proof that they would also have done the same before the CC delivered its decision.

51. The applicant acknowledged that the CC decision gained binding force only from the moment it was published and applied only *ex nunc*. However, the proceedings in his case were still pending before the Court of Appeal when the CC decision was published, on 22 September 2015. The courts were therefore obliged to give effect to this decision.

52. The fact that he had agreed to his case being tried under a summary procedure and had admitted to having committed the offence could not be a valid argument justifying the breach of his right to a fair trial by reopening the proceedings against him. In addition, his above-mentioned decisions could not have prevented the courts from acquitting him.

B. The Court's assessment

53. The Court notes at the outset that the applicant's complaints are twofold. On the one hand, they concern the alleged breach of his rights of defence, equality of arms and legal certainty during the pre-trial judge proceedings which reviewed the lawfulness of the decision of the superior prosecutor's office to reopen the criminal proceedings against him (see paragraph 11 above). On the other hand, they concern the alleged breach of his rights of defence and equality of arms during the trial proceedings (see paragraphs 24 and 27 above). The Court will therefore proceed to examine first the applicant's former complaint and afterwards the latter.

54. The Court notes further that the Government's arguments suggest that the applicant has not exhausted the available domestic remedies in respect of his complaints because he failed to raise them before the pre-trial judge who reviewed the lawfulness of his indictment on 2 April 2015 (see paragraphs 47-48 above). It will not, however, exclusively discuss the Government's arguments concerning the applicant's alleged failure to exhaust the available domestic remedies because, even assuming that those arguments would be dismissed, the applicant's complaints are inadmissible for the following reasons.

1. *Alleged breach of the applicant's rights of defence, equality of arms and legal certainty during the pre-trial judge proceedings which reviewed the decision to reopen the proceedings*

(a) General principles

55. The Court reiterates that the right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case. The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings. The Court reiterates that the guarantees of Article 6 are applicable from the moment that a "criminal charge" exists within the meaning of this Court's case-law and may therefore be relevant during pre-trial proceedings if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with them. The investigation stage may be of particular importance for the preparation of the criminal proceedings. For instance, the evidence obtained during this stage often determines the framework in which the offence charged will be considered at the trial. Nevertheless, the manner in which Article 6 is to be applied during the investigation stage depends on the special features of the proceedings involved and on the circumstances of the case (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, §§ 250-53, 13 September 2016, with further references).

56. As far as Article 6 of the Convention is concerned, the Court reiterates further that the quashing of a final judgment is an instantaneous act which does not create a continuing situation, even if, as in the instant case, it entails the reopening of the proceedings. Furthermore, in accordance with Article 35 § 1 of the Convention, it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within a period of six months from the date of the “final” domestic decision. If there is no adequate remedy against a particular act which is alleged to be in breach of the Convention, the date when that act takes place is taken to be “final” for the purposes of the six-month rule (see, for example, *Topallaj v. Albania*, no. 32913/03, § 103, 21 April 2016, with further references).

(b) Application of those principles in the instant case

57. Turning to the applicant’s case, the Court notes that according to the Government the decision of the prosecutor’s office discontinuing the proceedings against the applicant was not a final decision within the meaning of the Convention because the applicant did not ever pay the fine imposed on him (see paragraph 85 below).

58. The Court observes, however, that it has already established that a decision of a prosecutor’s office discontinuing criminal proceedings against an applicant on the ground that the acts were not serious enough to constitute an offence, while at the same time imposing an enforceable administrative penalty on him for the acts he had committed, after the prosecutor’s office had assessed all the circumstances of the case, became final, within the autonomous Convention meaning of the term, on the expiry of the lawfully allowed time-limit for the applicant to avail himself of the remedy provided for him to challenge that decision (see *Mihalache*, cited above, §§ 13, 100-01 and 126).

59. The Court notes that it is uncontested by the parties that, having taken cognisance of the decision of 4 November 2013, the applicant did not see fit to avail himself of the remedy provided for him to challenge it (see paragraph 8 above). Also, the Government have not contended, and in any event they have not presented any evidence in that regard, that the mere fact that the applicant failed to pay the fine imposed on him (see paragraph 19 above) reinstated the allowed time-limit for the above-mentioned remedy.

60. The Court therefore sees no reason to doubt that the decision of the prosecutor’s office of 4 November 2013 was final within the meaning of the Convention by the time when, on 13 August 2014, the superior prosecutor’s office exercised its discretion to reopen the criminal proceedings against the applicant (see paragraph 9 above).

61. In these circumstances, the Court considers that it was the very act of the pre-trial judge confirming on 24 September 2014 (see paragraph 11 above) the decision of the superior prosecutor’s office of 13 August 2014 which quashed the decision of 4 November 2013, that triggered the start of

the six-month time-limit in respect of the applicant's complaints concerning the reopening of the proceedings. The applicant has not argued that he had not become fully aware of the content of the pre-trial judge's interlocutory judgment and its consequences by the time the superior prosecutor's office took his statement on 11 December 2014 (see paragraph 15 above). Nonetheless, the applicant lodged his application before the Court on 18 April 2016 – that is to say more than six months after he had become aware of the alleged violation of his rights of defence, equality of arms and the requirement of legal certainty by the pre-trial judge.

62. As to the question whether the applicant had adequate domestic remedies to complain against the particular act which he considered to be in breach of the Convention, the Court notes that he has acknowledged that in the absence of the CC decision of 23 June 2015, the domestic courts, including the pre-trial judge reviewing the lawfulness of his indictment, would have had no valid legal reason to review the fairness of the decision of 13 August 2014 and the final interlocutory judgment of 24 September 2014 delivered in his case (see paragraph 50 above). Therefore, raising his complaint before the domestic courts would have not offered him any reasonable prospect of success.

63. It is true that the Government and the domestic courts seem to disagree with the applicant's opinion that raising his complaint concerning the unfairness of the final interlocutory judgment of 24 September 2014 before the pre-trial judge who reviewed the lawfulness of his indictment would have been devoid of any prospect of success (see paragraphs 28-29, 33, 35, and 47-48 above).

64. Nevertheless, the Court is not persuaded that it can disagree with the applicant's view. It observes in this regard that the Government have not submitted any concrete examples of domestic case-law, especially from before the CC's decision of 23 June 2015, showing that pre-trial judges reviewing the lawfulness of indictments have also examined and allowed possible arguments similar to those raised by the applicant, concerning the fairness of finalised pre-trial judge proceedings which confirm the lawfulness of prosecutorial decisions to reopen criminal proceedings. Likewise, the Prosecutor General's opinion, expressed years after the proceedings in the applicant's case had ended and presumably after the case-law of the national courts had had some time to develop, seems to confirm the fact that pre-trial judge proceedings which review prosecutorial decisions to reopen criminal proceedings which ended before the CC delivered its decision, were final and were no longer subject to review (see paragraph 36 above).

65. In this context, the Court finds it difficult to accept the applicant's approach of remaining inactive and waiting for the end of his trial once he was aware of the interlocutory judgment of 24 September 2014, before bringing an application to the Court.

66. Even assuming that it could ignore the fact that the applicant had no way of knowing in December 2014 that the Ombudsman would bring a constitutional challenge on 3 March 2015 before the CC (see paragraph 42 above), or that that challenge would actually be successful, given the express language of the Constitution about the effects of CC decisions allowing constitutional challenges (see paragraph 37 above), the Court has serious doubts that the applicant could have reasonably expected at any stage of the proceedings that he was involved in, that the CC decision in question could have any effect in the circumstances of his case, or that a trial court would implement it.

67. This is even more so given that the CC decision in question concerned solely the relevant procedural rules regarding pre-trial judge proceedings which reviewed prosecutorial decisions to reopen criminal proceedings, which in the applicant's case had ended with a final interlocutory judgment long before the CC delivered its decision. Indeed, both ordinary trial courts seem to have given consideration to and rejected this argument, reiterating that CC's decisions had only *ex nunc* effects (see paragraphs 25 and 28 above).

68. Having regard to all of the above, the Court is of the opinion that the applicant must, or at least should, have realised on 11 December 2014 that he had not had any adequate domestic remedy offering him a reasonable prospect of success for his complaint concerning the alleged unfairness of the pre-trial proceedings which reviewed the decision of the superior prosecutor's office to reopen the proceedings against him.

69. It follows that this part of the application was lodged out of time and must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Alleged breach of the applicant's rights of defence and equality of arms during the trial proceedings

70. The Court notes that the applicant complained that the trial courts had refused to examine his arguments concerning the unlawfulness of the decision reopening the proceedings against him (see paragraph 46 above). Nevertheless, it notes that the applicant was clearly able to raise all his arguments concerning the unlawfulness of that decision before the trial courts, and that the trial courts examined and dismissed those arguments by providing reasons (see paragraphs 22-35 above).

71. The Court considers therefore that the applicant's dissatisfaction concerned the quality of the reasons provided by the trial courts for dismissing his arguments, in particular their manner of interpreting the relevant legal framework applicable in his case, rather than the absence of such reasons.

72. It transpires from the Court's case-law that a domestic judicial decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons

given are based on a manifest factual or legal error committed by the domestic court, resulting in a “denial of justice” (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 85, 11 July 2017).

73. Given the evidence before it, including the provisions of the relevant domestic law applicable in the case and its findings above (see paragraphs 57-67 above), the Court cannot discern any element in the reasons provided by the trial courts in their judgments that would indicate that they were based on manifest errors that would render the decisions in question arbitrary to the point of prejudicing the fairness of the proceedings in the applicant’s case.

74. It follows that this part of the application is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

75. The applicant complained that the court proceedings, including the extraordinary appeal to review proceedings brought by him against his final conviction, did not provide him with an effective remedy for the alleged breaches of his Convention rights, in breach of 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. The parties’ submissions

1. *The Government*

76. The Government argued that Article 13 was inapplicable in circumstances where the alleged violation of the Convention had taken place in the context of judicial proceedings.

77. In any event, the applicant had had the benefit of effective domestic remedies to put forward his complaints about the alleged unlawfulness of the decision of the superior prosecutor’s office of 13 August 2014 and the effects of the CC decision on the proceedings against him. His arguments had been reviewed at the trial and extraordinary appeal stages of the proceedings. The arguments could also have been reviewed on 2 April 2015, but the applicant had failed to raise them. The fact that the courts had dismissed his arguments by providing pertinent reasons could not render the remedies available to the applicant ineffective.

2. *The applicant*

78. The applicant argued that the courts had failed to provide him with an effective remedy which allowed him to have the lawfulness of the

proceedings reopening his case reviewed in the light of the CC decision. According to the domestic legal framework, a pre-trial judge's interlocutory judgment could not be reviewed by way of extraordinary appeal to review proceedings. In addition, the trial courts had dismissed his arguments concerning the unlawfulness of the decision of the superior prosecutor's office of 13 August 2014 by simply relying on the *res judicata* effect of the interlocutory judgment of 24 September 2014.

B. The Court's assessment

79. The Court reiterates that Article 13 requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). In addition, the role of Article 6 in relation to Article 13 is that of *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (see, for example, *Kuznetsov and Others v. Russia*, no. 184/02, § 87, 11 January 2007, and *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007).

80. Given that the applicant's complaints under Article 6 of the Convention were declared inadmissible and therefore his grievances in this connection cannot be regarded as "arguable" in terms of the Convention and that in any event the applicant could raise objections as to the fairness of the proceedings and the *ne bis in idem* principle before the national courts, the Court considers that the applicant's complaint under Article 13 is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

81. The applicant complained that the decision of the superior prosecutor's office to reopen the proceedings had breached his rights guaranteed by Article 4 of Protocol No. 7 to the Convention, which, in so far as relevant, reads as follows:

"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

..."

A. Admissibility

82. The Court notes that this part of 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. *The parties' submissions*

(a) The applicant

83. The applicant argued that even though he had not actually paid the fine imposed on him in November 2013 (see paragraphs 7 and 19 above), he had been prosecuted twice for the same offence. The circumstances of his case were similar to other cases where Court had found a violation of Article 4 of Protocol No. 7 to the Convention.

84. His failure to pay the fine had not played any role in the decision of the superior prosecutor's office to reopen the proceedings.

(b) The Government

85. The Government acknowledged that the proceedings against the applicant, including the fine imposed on him, had been criminal in nature, had entailed the same facts, and had resulted in convictions. Nevertheless, the decision of 4 November 2013 (see paragraph 7 above) had not been final within the meaning of the Convention because the applicant had not ever paid the fine imposed on him.

86. In any event, the superior prosecutor's office had resumed the criminal proceedings against the applicant because of a fundamental defect in the previous proceedings. In particular, the decision of 4 November 2013 had been unlawful because it had wrongly applied the relevant criminal procedure rules. This was even more so considering that the applicant had reoffended during the probation period for a two months' suspended prison sentence that had been imposed on him for another offence (see paragraph 24 above), and could therefore no longer have benefitted from another act of clemency.

87. The superior prosecutor's office had not relied on the above reason to reopen the proceedings against the applicant. Nevertheless, the courts had taken it into account in their assessment of the case.

2. *The Court's assessment*

88. The Court reiterates the principles set out in its case-law concerning the duplication of criminal proceedings (see *Mihalache*, cited above, §§ 47-49).

89. In the instant case, the Court notes that the Government have not contested that the proceedings leading to the decision of 4 November 2013 (see paragraph 7 above) and those leading to the final judgment of 22 October 2015 (see paragraph 27 above) were criminal in nature for the purpose of Article 4 of Protocol No. 7. Moreover, they have not contested that those two decisions concerned the same facts (see paragraph 85 above). The Court sees no reason to hold otherwise.

90. It therefore remains to be determined whether there was a duplication of proceedings in the applicant's case.

91. The Court notes that the Government have also acknowledged that the decision of the prosecutor's office discontinuing the proceedings against the applicant entailed a "conviction" within the substantive meaning of the term (see paragraph 85 above). The Court does not find any reasons to hold otherwise.

92. Moreover, despite the Government's arguments to the contrary, the Court has already established that the above-mentioned decision was a final one within the meaning of the Convention by the time when, on 13 August 2014, the superior prosecutor's office exercised its discretion to reopen the criminal proceedings against the applicant (see paragraph 58 above).

93. According to the Court's case-law, a decision by a superior prosecutor's office to reopen proceedings concluded by a final conviction which is the result of a mere reassessment of the facts in the light of the applicable law, in the absence of emergent new or newly discovered facts or evidence or the discovery of a fundamental procedural defect concerning those proceedings, is not covered by the exceptional circumstances referred to in Article 4 § 2 of Protocol No. 7 justifying a possible reopening of the proceedings (see *Mihalache*, cited above, §§ 135-37).

94. In the present case, the superior prosecutor's office and the pre-trial judge made their decisions on the basis of the same case file as the prosecutor's office, no new evidence having been adduced and examined. The reopening of the case was therefore not justified by the emergence of new or newly discovered facts.

95. Moreover, it appears from the decision of 13 August 2014 and the interlocutory judgment of 24 September 2014 that the reopening of the proceedings was justified by the superior prosecutor's office's and the pre-trial judge's different interpretation of the relevant legislation and assessments of the circumstances of the case, which in their view should have been examined within the ambit of a criminal trial and could not be considered of "minimal impact" and punishable by a simple "administrative" fine (see paragraphs 9-13 above).

96. The Government pointed out that the trial courts had also taken into account when assessing the case that the applicant had committed the offence in question during the probation period of a two months' suspended prison sentence imposed on him for a previous offence (see paragraph 86 above).

The Court notes, however, that the Government have admitted that this ground was not relied on by the superior prosecutor's office or the pre-trial judge in their decisions to reopen the proceedings against the applicant (see paragraph 87 above). Thus, the Court finds it difficult to accept that this ground was also among the reasons prompting the reopening of the proceedings against the applicant.

97. Even assuming that the Court could agree that the reopening of the proceedings against the applicant was prompted by errors made by the prosecutor's office when assessing the particular circumstances of the applicant's case in the light of the applicable law, it reiterates that the mistakes or errors of the State authorities should serve to the benefit of the defendant. In other words, the risk of any mistake made by the prosecuting authority, or indeed a court, must be borne by the State and errors must not be remedied at the expense of the individual concerned (see *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007).

98. The mere consideration that the investigation in the applicant's case led to an erroneous discontinuation of the proceedings cannot in itself, in the absence of jurisdictional errors or serious breaches of court procedure, abuses of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice, indicate the presence of a fundamental defect in the previous proceedings. Otherwise, the burden of the consequences of the investigative authorities' lack of diligence during the pre-trial investigation would be shifted entirely onto the applicant and, more importantly, the mere allegation of a shortcoming or failure in the investigation, however minor and insignificant it might be, would create an unrestrained possibility for the prosecution to abuse process by requesting the reopening of finalised proceedings (*ibid.*, § 48).

99. The Court therefore cannot agree with the Government's allegation that the reopening of the criminal proceedings against the applicant was justified by a fundamental defect in the previous proceedings (see paragraph 86 above).

100. Having regard to the foregoing, the Court takes the view that the reasons given by the superior prosecutor's office and the pre-trial judge to justify the reopening of the proceedings on the basis of the decision of 13 August 2014 are at variance with the strict conditions imposed by Article 4 § 2 of Protocol No. 7. The reopening of the proceedings in the instant case was therefore not justified by the exception set out in that provision.

101. It follows that the applicant was convicted on the basis of the decision of 4 November 2013, which had become final by the time a further prosecution was triggered by the decisions of 13 August and 24 September 2014. Given that none of the situations permitting the combination (see *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, §§ 112-34, 15 November 2016) or reopening of proceedings arose in the present case,

the Court concludes that the applicant was tried twice for the same offence, in breach of the *ne bis in idem* principle.

102. There has accordingly been a violation of Article 4 of Protocol No. 7 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

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

A. Damage

104. The applicant claimed EUR 50,000 in respect of non-pecuniary damage for the suffering experienced because of his second conviction and imprisonment.

105. The Government argued that the applicant’s claim for non-pecuniary damage was excessive and that the mere finding of a violation would amount to sufficient just satisfaction.

106. The Court considers that a mere finding of a violation is insufficient to compensate the applicant for the sense of injustice and frustration which he must have felt on account of the reopening of the proceedings (see *Mihalache*, cited above, § 148). Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

107. The applicant also claimed EUR 408 for the costs and expenses incurred before the Court. He submitted a receipt attesting to the payment of this amount to his lawyer.

108. The Government argued that the applicant’s claim was not fully substantiated and it was therefore doubtful that this expense was actually, necessarily and reasonably incurred.

109. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the violation found and the above criteria, the Court considers it reasonable to award the applicant the full amount claimed by him covering the costs and expenses incurred before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 4 of Protocol No. 7 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 4 of Protocol No. 7 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 408 (four hundred and eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Yonko Grozev
President

STĂVILĂ v. ROMANIA JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Grozev is annexed to this judgment.

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CONCURRING OPINION OF JUDGE GROZEV

While I am in full agreement with the conclusion that the two complaints under Article 6 in the present case are inadmissible, I have significant reservations as to the grounds on which the first complaint under Article 6 was declared inadmissible by the majority. And as the issue goes to the basic principles of interpreting and applying Article 6 of the Convention, it merits a separate opinion.

This part of the applicant's complaint is about the decision of the pre-trial judge to reopen the criminal proceedings, and the alleged violation of his rights due to a breach of his rights of defence, equality of arms and legal certainty in the proceedings before the pre-trial judge. The majority decided to treat the proceedings for reopening before the pre-trial judge as separate proceedings, triggering the full Article 6 guarantees. And as the application was lodged with the Court more than six months after the decision of the pre-trial judge, it was declared inadmissible by the majority as outside the six-month time-limit.

My disagreement is on the point whether Article 6 could be applied separately to different stages of domestic criminal proceedings, in this case the decision of the pre-trial judge to pursue criminal charges against the applicant before the domestic courts. The Court has persistently held that this is not the case, as the primary purpose of Article 6 of the Convention, as far as criminal proceedings are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge". The final determination of a criminal charge has consistently been interpreted as being the final – in accordance with domestic law – decision declaring an accused guilty or not guilty and the final sentence imposed on him or her. As a result, the Court has refused to apply the Article 6 guarantees to any separate proceedings that might exist under domestic law, carrying out instead an overall analysis of the fairness of the criminal proceedings. To cite one of many authorities, the Court's primary concern is to evaluate the overall fairness of the criminal proceedings. Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole, and not on the basis of an isolated consideration of one particular aspect or one particular incident (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, §§ 250-51, 13 September 2016). The reason for this approach is clearly to allow the domestic courts to address and remedy any shortcomings before the matter comes before the Court.

This does not mean that events in such separate proceedings, and particularly at the pre-trial stage, will have no relevance for the overall fairness of the criminal proceedings. The Court has recognised that Article 6 applies to pre-trial proceedings – especially rights guaranteed under Article 6 § 3 – and that "it may be relevant before a case is sent for trial if and in so far as the fairness of the trial is liable to be seriously prejudiced by an initial

failure to comply with its provisions” (see *Dvorski v. Croatia* [GC], no. 25703/11, § 76, ECHR 2015). It has expressly held that it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings. In this connection, where a procedural defect has been identified, it falls to the domestic courts in the first place to carry out the assessment as to whether that procedural shortcoming has been remedied in the course of the ensuing proceedings, the lack of an assessment to that effect in itself being *prima facie* incompatible with the requirements of a fair trial in accordance with Article 6 of the Convention (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 113, 12 May 2017, and *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 51, 28 January 2020). Still, the Court has consistently refused to review events at the pre-trial stage separately, and has consistently reviewed them taking into account the subsequent trial stage. In doing so, the Court has specifically looked into whether the alleged breaches at the pre-trial stage prejudiced the fairness of the trial and whether the trial and appeal courts took steps to overcome such prejudice.

It might well be that domestic law provides enhanced procedural guarantees at certain steps of the domestic proceedings, including adversarial proceedings and the possibility of an appeal to a higher court, as the Romanian Constitutional Court has held in relation to proceedings before the pre-trial judge (see paragraphs 42-44 of the judgment). This, however, remains a domestic decision on how to best organise criminal proceedings in balancing the numerous rights and interests involved in order to achieve an efficient and fair judicial process. But it is not something required by the Convention or requiring a separate analysis by the Court as to Article 6 compliance.

Turning to the facts of the present case, the applicant complained that “the reopening of the criminal proceedings and his conviction had breached his rights of defence and equality of arms ... because the lawfulness of the decision reopening the proceedings had been examined by a pre-trial judge in his absence and without his being summoned” (see paragraph 46 of the judgment). Taking the standard approach of the Court, the question that should have been answered first is whether this alleged breach seriously prejudiced the applicant’s subsequent trial. The answer to this question for me is clearly no. As under the Convention there is no right to judicial review of a decision to pursue criminal charges before the courts, and the legal arguments raised by the applicant were reviewed by the domestic courts and his ability to mount an effective defence was not hampered (see paragraphs 28-29 of the judgment), I see nothing to disagree with in this analysis by the domestic courts. As a result, this complaint is manifestly ill-founded, and inadmissible on this ground.