



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

GRAND CHAMBER

CASE OF FABBRI AND OTHERS v. SAN MARINO

*(Applications nos. 6319/21 and 2 others –
see appended list)*

JUDGMENT

Art 6 (civil) • Civil rights and obligations • *Ratione materiae* • Complaint by victims of alleged offences participating in criminal proceedings that the investigating judge's inaction led to the time-barring of those offences and thus to the non-adjudication of their civil claims • Clarification of relevant criteria for the applicability of Art 6 where a right to bring civil claims in the ambit of criminal proceedings is provided for • Requirement for an applicant to have a substantive civil right recognised under domestic law • Victims of a crime must have the possibility to pursue that civil right in the ambit of criminal proceedings and at the relevant stage thereof • Victims must clearly demonstrate that they attached importance to the civil right at issue • Civil right to be invoked and/or pursued through the appropriate channel, in accordance with the tenets of the domestic legal framework • Art 6 applied only if the civil right pursued in the criminal proceedings was not actively pursued in parallel before another court • Criminal proceedings must be decisive for the civil right in issue • Requirements met only with regard to third applicant • Failure of remaining applicants to lodge a formal request to obtain "civil party" status in accordance with domestic law

Art 6 (civil) • Access to court • Clarification of approach to be taken in access to court complaints in relation to civil claims brought in the context of criminal proceedings • Discontinuance of criminal proceedings resulting in the non-determination of a civil claim does not result in a violation of the right of access to a court if an applicant has an alternative avenue of redress capable of determining that claim • Exceptionally, if a serious dysfunction of the domestic system was the

sole or decisive reason of the discontinuance and an applicant pursued the civil claim diligently, in the case-circumstances it might not be reasonable to expect that applicant to pursue any other available civil remedy • Decision in third applicant's case to discontinue proceedings lawful and not arbitrary or manifestly unreasonable • Unjustified inaction by the investigative authorities as a result of a serious dysfunction afflicting the domestic investigative judicial authority at the material time • Failure to consider third applicant's civil claims in avenue he chose to pursue not due to circumstances solely or decisively attributable to that dysfunction • Third applicant's failure to pursue his interests diligently • Possibility to lodge separate civil proceedings following the alleged offence or after the discontinuance of the criminal proceedings • Essence of the right to access to a court not impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

24 September 2024

This judgment is final but it may be subject to editorial revision.

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In the case of Fabbri and Others v. San Marino,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Síofra O’Leary, *President*
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Arnfinn Bårdsen,
Georges Ravarani,
Krzysztof Wojtyczek
Egidijus Kūris,
Ivana Jelić,
Gilberto Felici,
Darian Pavli,
Erik Wennerström,
Lorraine Schembri Orland,
Peeter Roosma,
Ana Maria Guerra Martins,
Andreas Zünd,
Davor Derenčinović, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 12 July 2023, 24 January 2024 and 27 June 2024,

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

PROCEDURE

1. The case originated in three applications (nos. 6319/21, 6321/21 and 9227/21) against the Republic of San Marino lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two nationals of San Marino, Mr Stellino Fabbri and Mr Andrea Forcellini (“the first and third applicants”) and one Italian national Ms Angelina Marro (“the second applicant”), on the various dates indicated in the appended table.

2. The applicants were represented by Mr M.F. Fattori and Mr R. Fabbri, lawyers practising in Borgo Maggiore. The San Marinese Government (“the Government”) were initially represented by their former Agent, Mr L. Daniele, and later, before the Grand Chamber, by their Agent, Ms. S. Bernardi and their Co-Agent Ms. M. Bovi.

3. The applicants complained that they did not have access to a court, to determine their civil claims, as a result of the inaction of the authorities, which had led to the discontinuance of the criminal proceedings in which they were injured parties.

4. The applications were allocated to the First Section of the Court, pursuant to Rule 52 § 1 of the Rules of Court, and on 16 April 2021 the Government were given notice of the applications.

5. By a judgment of 18 October 2022, a Chamber of the Second Section, to which the applications had been re-allocated, composed of Jon Fridrik Kjølbro, President, Carlo Ranzoni, Branko Lubarda, Pauliine Koskelo, Jovan Ilievski, Gilberto Felici, and Diana Sârcu, judges, and Hasan Bakırcı, Section Registrar, joined the applications and declared them, by a majority, admissible. It held, by four votes to three, that there had been a violation of Article 6 § 1 of the Convention in respect of the three applicants, on the basis that they had been denied access to a court. The partly dissenting opinion of Judge Koskelo and the joint dissenting opinion of Judges Kjølbro, Ranzoni and Koskelo were appended to the judgment.

6. On 17 January 2023 the Government requested that the three applications be referred to the Grand Chamber in accordance with Article 43 of the Convention and on 6 March 2023 a panel of the Grand Chamber granted that request.

7. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicants and the Government each filed written observations (Rule 59 § 1). As the applicant Ms Marro is of Italian nationality, the Italian Government expressed their intention to exercise their right to take part in the written and oral proceedings as a third party (Article 36 § 1 of the Convention and Rule 44 § 1). They subsequently filed written comments on the case.

9. Following their requests, the President of the Grand Chamber decided, in accordance with Rule 34 §§ 3 and 4 (a), respectively, to grant the applicants and the San Marino Government leave to use the Italian language in the oral proceedings before the Court.

10. A hearing took place in public in the Human Rights Building, Strasbourg, on 12 July 2023.

There appeared before the Court:

(a) *for the respondent Government*

Ms S. BERNARDI, Agent,	<i>Counsel,</i>
Ms M. BOVI, Co-Agent,	
Ms B. REFFI,	
Ms A. BELARDINI,	
Ms S. UGOLINI,	<i>Advisers;</i>

(b) *for the applicants*

MR R. FABBRI,	<i>Counsel,</i>
Ms C. IOLI,	
MR S. BACCI,	<i>Advisers;</i>

(c) *for the Italian Government*

MR L. D'ASCIA, Agent,
MS C. BUFFON,

*Counsel,
Adviser.*

The Court heard addresses by Mr R. Fabbri, Ms S. Bernardi and Mr L. D'Ascia and also the replies of Mr R. Fabbri and Ms S. Bernardi to questions from the judges.

After the hearing, Alena Poláčková was prevented from sitting and was replaced by Egidijus Kūris, substitute judge. At a later stage, Peter Paczolay was prevented from sitting and was replaced by Davor Derenčinović, substitute judge.

Georges Ravarani and Egidijus Kūris, whose term of office had expired in the course of the proceedings, continued to deal with the case (Article 23 § 3 of the Convention and Rule 24 § 4).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

11. The applicants were born in 1955, 1973 and 2003 respectively and live in San Marino. Mr Forcellini, who was a minor at the time of lodging the application, was represented by his mother.

A. Applications nos. 6319/21 and 6321/21

12. On 13 and 14 April 2016 Mr Fabbri and Ms Marro (the first and second applicants, respectively) lodged a complaint with the San Marino courts against N. for bodily harm (under Article 155 of the Criminal Code) suffered on 4 April 2016. Allegedly on that date, while on a stationary bus, N. grabbed Ms Marro by the hair and pushed her off the bus, causing her to fall to the ground. N. then dragged Ms Marro through a carpark with one hand while with the other she pulled on the scarf that Ms Marro was wearing round her neck. Mr Fabbri ran to her rescue and while he was trying to release Ms Marro from N.'s grip the latter threatened him and repeatedly hit him with a spade. A third person eventually intervened and managed to control N.

13. In their complaint they referred to the names of six witnesses and attached the evidence they had collected including relevant medical reports; they also reserved their right to join, as civil parties, any eventual proceedings against the person complained of or any other individual involved in the offence, and asked to be informed if the proceedings were to be discontinued; they also appointed lawyers to legally represent them, indicating the lawyers' office as their address for service (*eletto domicilio*).

14. As a result, a criminal investigation was opened on the following day.

15. On 18 April 2016 the second applicant asked the investigating judge to set a date for the taking of the "oath of calumny" (Article 28 of the Code

of Criminal Procedure – the “CCP”). Her request was reiterated on 24 May 2017, emphasising the lapse of time since the lodging of the complaint and the risk that the proceedings be discontinued because of the expiry of the time-limit indicated in section 6 of Law no. 93/2008.

16. The investigating judge (X) assigned to the case did not take any steps. The first applicant also remained inactive following the lodging of his complaint.

17. On 28 May 2019 the Acting Chief Justice of San Marino invited the parties to make submissions concerning the non-observance of the time-limits for the investigation.

18. On 24 July 2019, having considered that the investigation started on 15 April 2016, that the period prescribed for the investigation into the offence at issue was twelve months (suspended for the summer holidays in July and August 2016), that no investigative acts had ensued such as to extend the time-limit, and that the said time-limit thus expired on 15 June 2017, the public prosecutor (*Procuratore del Fisco*) agreed to discontinue the case given the expiry of the procedural time-limit for the investigation. The copies of the investigation files submitted to the Court by both parties do not contain any submissions made by the applicants.

19. On 4 December 2019 the investigating judge wrote to the office of the Chief Justice of San Marino noting that, while the time-limit for the investigation pursuant to section 6 of Law no. 93/2008 had expired, it might be useful to grant an extension for reasons of *force majeure*, namely a substantial increase in criminal complaints being lodged simultaneously, complex ongoing investigations and limited staff, given that the situation had by then improved. No reply to this request was brought to the attention of the Court by any of the parties.

20. On 16 November 2020 (in accordance with Constitutional Court ruling no. 12/2009, see paragraph 31 below) a newly assigned investigating judge discontinued the case because the charge had become time-barred (within three years – Article 52 et seq. of the Criminal Code, particularly Article 54 on substantive limitation periods in respect of offences). He informed the public prosecutor accordingly, noting that unless the latter had any objection the discontinuance would take effect. He also noted that it appeared from the case file that no investigative measures had been undertaken throughout the entire time. Thus, even assuming that it had not become time-barred, no criminal proceedings could have ensued in the absence of any evidence having been collected (Article 135 of the CCP).

21. On 20 November 2020 the public prosecutor agreed to discontinue the case.

B. Application no. 9227/21

22. Mr Forcellini (the third applicant) was twelve years of age in 2015. Following his parents’ claims that a teacher had failed to protect him from

bullying during a school trip in the summer of 2015, proceedings were lodged by the teacher against the parents. The latter were found guilty of defamation by a judgment of 6 March 2018. As a result of the indications made by the judge in those proceedings, on 28 March 2018 a criminal investigation was opened *ex officio* against two minors, V. and D., for “private violence” (the fact of, by means of violence or threats, coercing others to commit, tolerate or omit a certain action) and threats against the applicant, who was a minor at the time (under Article 179 and 181 *bis* of the Criminal Code, respectively) relating to acts which took place in the period between 2 and 7 July 2015.

23. A request to join the proceedings as a civil party (*dichiarazione di costituzione di parte civile*), by the mother on behalf of the third applicant, was submitted on 26 February 2019 and notified to the defendants and the public prosecutor. The investigating judge (X) assigned to the case did not take any steps.

24. On 25 November 2020 (in line with Constitutional Court ruling no. 12/2009, see paragraph 31 below) a newly assigned investigating judge discontinued the case in accordance with Article 135 of the CCP as the charge had become time-barred (within three years – Articles 52 et seq. of the Criminal Code, particularly Article 54), no procedural acts having interrupted or suspended the limitation period under Articles 56 and 57 of the CCP. Regardless of these considerations, in the absence of any investigative acts having been undertaken within the stipulated time-limits for the investigation, no evidential material had been collected within the relevant time-limit such as to substantiate an indictment. The judge informed the public prosecutor accordingly, noting that, unless the latter had any objection, the discontinuance would take effect. That decision was to be – and was ultimately – notified, through the intermediary of the designated law firm, to both parents of the applicant, both of whom exercised parental authority.

25. On 27 November 2020 the public prosecutor expressed his agreement with the discontinuance.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Criminal Code

26. The relevant Articles of the Criminal Code read as follows:

Article 10

“The age of criminal responsibility shall be set at fourteen years. ...”

Article 52

“An offence is extinguished if, prior to a finding of guilt, one of the following occurs:

- (1) the death of the accused;
- (2) amnesty;
- (3) expiry of the statutory limitation period;
- (4) withdrawal of the criminal complaint.

An offence is also extinguished in the event of judicial pardon, the fulfilment of the conditions of a suspended sentence, the payment of a fine in lieu of prosecution (*oblazione volontaria*), and the special causes mentioned in book II.”

Article 54 [at the relevant time]

“An offence becomes time-barred:

...

- (2) after three years if it is punishable by imprisonment of the second category, ...”

Article 57

“Any procedural act carried out by the judicial bodies interrupts the running of the limitation period, which restarts from the last of such acts.

Acts carried out by the injured party or the accused, which have been served on (*notificati a mezzo di cursore*) the opposing parties and the public prosecutor, also interrupt the running of that period.

In any event, the limitation period cannot be extended by more than one half.”

B. The Code of Criminal Procedure

27. The relevant Articles of the Code of Criminal Procedure, as last amended in 2015, in so far as relevant, read as follows:

Article 1

“Every offence gives rise to a criminal action. A civil action may also arise where the offence causes damage, pecuniary or non-pecuniary, to the victim (*soggetto passivo*) of the offence and such civil action may be pursued by anyone having an interest in obtaining reparation for the harm caused.”

Article 2

“A criminal action is essentially a matter of public law. However, in some cases a complaint by the injured party (*parte offesa*) is necessary to initiate the criminal action. Criminal actions are conducted *ex officio* by the *Commissario della Legge* [in his or her role as investigating judge] through an inquisitorial procedure aimed at seeking the plain truth.”

Article 3

“A civil action can be instituted separately, by bringing civil proceedings, in which case it is governed by the rules of civil procedure, or contemporaneously with the criminal action. In the latter case the claim in respect of damage is registered in the criminal proceedings, and the decision-making judge will decide on the matter as established in Chapter XXI of this Code.”

Article 4

“The party which sustained damage (*danneggiato*) and which chooses to make a claim in respect of damage in criminal proceedings has no right other than to appear during the trial so as to call witnesses and submit evidence which he or she considers could prove the liability of the accused. He or she has no right to have knowledge of the investigative measures taken before the proceedings are made public [i.e. the decision whether or not to commit for trial].”

Article 5

“The fact that an offence has become time-barred does not impede the exercise of the civil action, unless the latter is also time-barred.”

Article 7

“During criminal proceedings, a civil action is exercised by means of a signed declaration to the effect that one wants to join the proceedings as a civil party (*dichiarazione di costituzione di parte civile*). It must be signed by the person referred to in Article 1 personally as well as his or her legal representative, or by means of a specially instructed representative (*per mezzo di procuratore speciale*).

The declaration must be notified to the accused (*prevenuto*) and the public prosecutor, and must be filed, together with the documents related to notification of the other parties, in the court registry, not later than the date on which the proceedings are made public.

In summary proceedings the declaration may be submitted even on the date established under Article 175 § 1 for the initial hearing (*trattazione della procedura*) but before the indictment is read out to the accused in court (*contestazione del reato al prevenuto*).”

Article 8

“Once the *Commissario della Legge* [investigating or first-instance trial judge] receives the declaration referred to in the preceding article, he or she admits the civil party to join the proceedings by means of a decision.

Such decision gives the civil party the right to receive communication of the documents in the file after the proceedings have become public, together with the right to appoint a lawyer who can make written submissions on his or her behalf. The decision also confers on him or her the right under Article 199.”

Article 9

“After the injured party has decided to bring the action to which he/she is entitled before the civil court, he/she can no longer join the criminal proceedings as a civil party. Neither a prior reservation to later join the criminal proceedings as a civil party, nor a withdrawal from the civil proceedings to pursue criminal proceedings, can affect this rule.”

Article 10

“Wherever the criminal offence is one for which society has the right to proceed without a complaint, the court may conduct criminal proceedings of its own motion (*intraprendere l'inquisizione*), notwithstanding any pending civil proceedings brought by the injured party, who cannot then join the criminal proceedings as a civil party.”

Article 11

“In such cases, the criminal proceedings (*l'inquisizione penale*) suspend the civil proceedings, as long as the determination of the latter necessarily depends on the sole establishment of the offence.”

Article 12

“Once the criminal proceedings are completed, the civil proceedings can be resumed as long as the accused has been found guilty or has been acquitted because the facts of the case do not amount to an offence.”

Article 28

“Anyone who appears before a judge to complain of a criminal offence, which has caused him or her pecuniary or non-pecuniary damage, or who reports in court any criminal offence, shall, before the matter is examined, take an ‘oath of calumny’^[1] (*giuramento di calunnia*) ... that his/her complaint or report is not intended to slander the person against whom the complaint or report is lodged.”

Article 135

“Having heard all relevant witnesses and undertaken all the acts necessary for establishing the truth concerning the case, the investigating judge shall, if he or she considers that the evidence collected does not offer sufficient legal grounds to prosecute the accused, order that the case be discontinued, subject to the public prosecutor’s agreement, and without prejudice to the latter’s rights if new evidence comes to light against the accused ...”.

Article 163

“The judgment of conviction also determines the award of compensation, if it had been requested by the injured person (*persona offesa*) or the person who sustained damage as a result of the offence (*persona danneggiata*). If the convicted person is responsible for the damage sustained, the judgment shall make a finding in favour of the injured party or party who sustained damage as a result of the offence and shall determine the amount of the award.

Where this is not possible due to a lack of suitable elements for evaluating the whole damage, the judge can make a provisional award, deferring any further assessment to the competent civil judge.

The same judgment shall determine the legal and judicial costs to be paid by the accused.”

Article 175

“Within thirty days from the lodging of the criminal complaint, the judge (*Commissario della Legge*) must set down an initial hearing for summary proceedings, with the possibility of carrying out summary investigations in the meantime.

¹ An oath taken that attests to the person’s good faith and to his or her conviction that there exists a legitimate ground of action.

If urgent objective investigations are necessary, the judge shall act accordingly, and the above-mentioned term shall start to run on the completion of such investigations. The witnesses shall be summoned to appear for questioning on specified dates.

The accused shall also be summoned by means of a committal order setting out the facts imputed to him or her ...

The committal order is to be notified to the public prosecutor to enable his or her intervention at the trial.

Once the committal order is issued, the proceedings are deemed to be made public ...”

Article 199

“Where, in a judgment of conviction against the accused, the trial judge omitted to determine the damage caused to the injured person or the person who sustained damage, such person, if duly joined to the proceedings as a civil party as provided by law, may request the same trial judge to complete the judgment by including a determination on the civil claim for compensation.”

C. Law no. 93/2008

28. The sections of Law no. 93/2008, concerning rules of criminal procedure, in so far as relevant and as applicable at the material time (prior to amendments introduced by Law no. 24/2022) read as follows:

Section 3

“1. Except in the cases envisaged in section 5 hereof [investigations under urgency or secrecy regimes], the investigating judge shall conduct all investigating activities, in general, and in particular those relating to the collection and drawing up of evidence, with full regard for the defendant’s right of defence, the prerogatives of the public prosecutor and the rights of private parties protected by criminal law.

2. The defendant, assisted by counsel, and the public prosecutor are fully entitled to explain their arguments and produce their submissions, besides having the right to examine and take copies of all documents contained in the file, including the registration of the *notitia criminis*. The investigating judge shall ensure their participation, or that of their representatives, in preliminary investigations.

3. Except for any documents before the judicial authorities containing data and information covered by bank secrecy under section 36 of Law no. 165 of 17 November 2005, the injured party having been joined as a civil party to the proceedings in accordance with domestic law (*parte lesa ritualmente costituita in giudizio*), shall have the right to receive, upon his/her request, a copy of the documents before the court and to produce submissions, petitions or documents at any stage of the proceedings. He or she may request to take part, if only through his or her defence counsel or expert (*perito*), in any on-site examination (*accessi*), searches and/or other expert assessments (*perizie*), including during preliminary investigations. The investigating judge to whom the request is made must give reasons for the decision. The investigating judge shall refuse to grant the authorisation where the request made by the injured party, having been joined as a civil party to the proceedings in accordance with domestic law, seriously prejudices the defendant’s right of defence, or is incompatible with fundamental confidentiality needs concerning the investigations conducted, with bank secrecy or in the cases envisaged in section 5 hereof.

4. The injured party shall be obliged to participate in the interviews with the defendant ordered by the investigating judge.

5. This section is without prejudice to the powers of the ‘judicial police’, which is entrusted with the task of collecting, on its own initiative and with regard for the statutory safeguards, any element which might be useful for the investigations, save any contrary indication by the judge, who must be informed, at the earliest convenience, of the *notitia criminis* and any other useful element for the ongoing investigations.”

Section 4

“1. Within the mandatory time-limit of thirty days following the date of registration of the *notitia criminis* or subsequent integration thereof, except in the cases referred to in section 5 hereof, the investigating judge shall personally inform the defendant and the public prosecutor of the factual and legal circumstances concerning the relevant offence, as entered in the register of *notitiae criminis* referred to in section 2 above, unless the file has been closed (*archiviato*) because it is manifestly unfounded or for other reasons.

...”

Section 6²

“1. With regard for the principle of promptness of proceedings under Article 15, third paragraph of the Declaration on the Citizens’ Rights and Fundamental Principles of the San Marino Constitutional Order, the investigating judge shall rapidly conclude preliminary investigations, render the proceedings public and issue the decision fixing the date of the hearing, or discontinue the case in conformity with Article 135 of the Code of Criminal Procedure, as soon as possible.

2. In any event, the investigating judge shall render the proceedings public and then issue the decision fixing the date of the hearing, or discontinue the case, within the mandatory time-limit of one third of the limitation period for the most serious offence. The latter time-limit shall be calculated without taking into account any increase or decrease due to any circumstances, nor the causes for suspension or interruption of the limitation period, ...

3. If the above-mentioned time-limits are not met, the case shall be considered public irrespective of any such decision by the investigating judge.

4. The file shall therefore be transmitted by the Registrar to the Chief Justice, who, having verified the status of the proceedings, heard the private parties and received the assent of the public prosecutor, shall dispose of the case and order its discontinuance. However, where he/she deems that the time-limit could not be met due to *force majeure* or accidental occurrence, the Chief Justice shall have the power to extend the period for a maximum of thirty days. No further or different extensions shall be granted. In particular, in this specific case, the Judicial Council in plenary session shall not be in a position to grant any extension.

5. Finally, the Chief Justice shall immediately inform the Parliamentary Commission for Justice and the ordinary Judicial Council of the delay established and of all consequent measures adopted.

² See Constitutional Court judgment no. 12/2019 at paragraph 31 below.

6. The delay may give rise to civil liability of the judge when the additional conditions referred to in section 9 of Constitutional Law no. 144 of 30 October 2003 apply.”

D. Law no. 42/2014

29. Section 2 of Law no. 42/2014 as amended by subsequent updates reforming the criminal order, reads as follows:

“1. The investigating judge may issue a criminal conviction decision and charge the costs of the proceedings to the defendant when, after the examination of the documents and the investigations carried out, he/she deems it necessary to apply:

(a) a fine, daily fine, judicial reprimand and disqualification, or one or other of these punishments, even if envisaged as an alternative to imprisonment or arrest;

(b) arrest or first-category imprisonment, alone or in combination with the punishments referred to under point (a), if the requirements for the granting of a suspended sentence are met;

(c) arrest and imprisonment for a term not exceeding three months, alone or in combination with the punishments referred to under point (a).

...

5. If a party brings a civil action, the judge shall not decide on the relevant request. The defendant shall, however, be ordered to pay the costs incurred by the party bringing the civil action, unless there are justified reasons for a total or partial set-off.”

E. Law no. 102/2015

30. Section 11 of Law no. 102/2015 concerning statutory limitation reads as follows:

“1. With the exception of cases in which the special provisions of ‘common law’ (*diritto comune*) provide for shorter time-limits, rights *in rem* are time-barred after twenty years, and debt claims (*diritti di credito*) after ten years. ...

2. The period runs from the date on which the fact or deed creating the right took place.

3. The statute of limitations is interrupted through an out-of-court notice [made to the other party] issued in writing. A new limitation period starts running as a result of the interruption.

4. The running of the limitation period remains suspended when the party is unable to enforce the right. The duration of the suspension is not taken into account for the purpose of calculating the limitation period.”

F. Constitutional Court judgment no. 12/2019

31. By judgment no. 12/2019 the Constitutional Court of San Marino (*Collegio Garante della Costituzionalità delle Norme*) declared unconstitutional section 6(4) of Law no. 93/2008 (see paragraph 28 above).

32. Before this judgment the mere expiry of the time-limit for the completion of the investigation led to the closure of the proceedings by means of a decision not to prosecute. However, the Constitutional Court by means of this judgment introduced a different principle according to which the investigating judge must always assess the existence of the prerequisites for committing the defendant to trial or for discontinuing the criminal proceedings. This is so even after the expiry of the time-limit for the completion of the investigation. Indeed, following that judgment, the expiry of the time-limit referred to in section 6(4) of Law no. 93/2008 only entails the impossibility of using the evidence gathered after its expiry. The assessment as to whether to commit to trial or discontinue the criminal proceedings must, nevertheless, be carried out by a new investigating judge appointed by the Chief Justice.

II. INTERNATIONAL MATERIAL

A. Council of Europe

33. Recommendation Rec(2006)8 of the Committee of Ministers to member States on assistance to crime victims (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies), in so far as relevant, reads as follows:

“7. Right to effective access to other remedies

7.1. Victims may need to seek civil remedies to protect their rights following a crime. States should therefore take the necessary steps to ensure that victims have effective access to all civil remedies, and within a reasonable time, through:

- the right of access to competent courts; and
- legal aid in appropriate cases.

7.2. States should institute procedures for victims to claim compensation from the offender in the context of criminal proceedings. Advice and support should also be provided to victims in making these claims and in enforcing any payments awarded.”

34. Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (Adopted by the Committee of Ministers on 15 March 2023 at the 1460th meeting of the Ministers' Deputies), replacing Recommendation Rec(2006)8, referred to above, in so far as relevant, reads as follows:

“CHAPTER II - Legal Proceedings

A. Criminal proceedings

Article 7 – Rights of victims to make a formal complaint and to notify authorities

1. Member States should ensure that victims have the right to make a formal complaint^[3] to the competent authority. This right does not affect any applicable discretionary powers of the authorities to pursue the case and/or dismiss cases at a later stage.

...

B. Criminal and other proceedings

Article 13 – Right to compensation from the offender

1. Member States should ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time. When claiming compensation from the offender in the course of criminal proceedings is irreconcilable with the national legal system, member States should provide for alternative ways through other legal proceedings to structurally safeguard the victims’ right to obtain such a decision.

2. Member States should ensure that advice, support and, where appropriate, legal aid are available to victims in securing and enforcing such a decision.

3. Member States should encourage offenders to provide compensation to victims. Where appropriate and where national law so allows, the following could be envisaged:

- a. the payment of compensation in prosecution and sentencing decisions;
- b. the payment of compensation in relation to financial penalties;
- c. other non-monetary forms of reparation.

4. If victims prefer civil proceedings over claiming compensation in the course of criminal proceedings, they should have the choice to obtain a decision on compensation from the offender in civil proceedings.

...

Article 16 – Right to remedy

1. Victims may need to seek appropriate civil remedies to protect their rights following a crime. Member States should ensure that victims have effective access to relevant and appropriate civil remedies, and within a reasonable time, through:

- the right of access to competent courts or other authorities; and
- legal aid in appropriate cases.

The conditions and procedural rules under which access to civil remedies is ensured should be determined by national law.”

35. In so far as relevant, in relation to Article 13 of Recommendation CM/Rec(2023)2 the explanatory memorandum to Recommendation CM/Rec(2023)2 reads as follows:

³ According to the explanatory memorandum to Recommendation CM/Rec(2023)2 “For the purpose of this Recommendation, a formal complaint is a(n) (implicit) request to instigate investigations and prosecution”.

“97. From the victim’s perspective, claiming compensation within the context of criminal proceedings often has significant advantages over instigating a civil procedure (e.g., lack of court fees; possibility to pursue multiple interests in only one legal procedure; lower evidentiary standard; State enforcement). For this reason, the recommendation to allow victims to claim for offender compensation in the context of criminal proceedings is maintained and it is strengthened by adding that the decision on offender compensation needs to be made ‘within reasonable time’. Preferably, the decision regarding compensation should cover all damages suffered by the victim, but member States can work with maximum amounts or they can allow the criminal court to declare (complex parts of) the claim inadmissible, in case substantive decision-making would pose an undue burden of the criminal proceedings (e.g., violation of due process/reasonable time requirement).

98. Despite the 2006 Recommendation’s adamantness that victims ought to be able to claim offender compensation in the context of criminal proceedings, some national (common law) systems do not support adhesion procedures. In order to cater for these national differences, States could opt for alternative ways to provide for full compensation in criminal proceedings (e.g., compensation orders), albeit that these alternatives then ought to be considered on a structural basis.

...

101. Article 13(4). Although offender compensation through criminal proceedings is often much more advantageous for victims than civil proceedings (see above), effective access to civil remedies remains important, for instance, in cases where the victim does not want to report to the police, where criminal prosecution is dismissed, or where the suspect is acquitted.”

B. European Union

36. Article 16 § 1 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, of 14 November 2012, pp. 57–73) concerning the right to a decision on compensation by the offender in the course of criminal proceedings, reads as follows:

“Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.”

III. COMPARATIVE LAW MATERIAL

37. The Court carried out a comparative study of the legal regimes governing the introduction by injured parties of civil claims in the context of criminal proceedings.

38. An overview of the legislation and case-law of thirty-five member States of the Council of Europe shows that thirty of those States (Albania, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Liechtenstein, Luxembourg, the Republic of Moldova, Montenegro,

North Macedonia, Norway, Poland, Romania, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland and Ukraine) provide for the possibility of bringing civil claims in criminal proceedings. In the remaining five surveyed States (Georgia, Greece, Ireland, Türkiye and the United Kingdom) it is not possible for victims of a criminal offence to bring a civil action in criminal proceedings, Greece having removed this possibility in 2019.

39. In twenty-eight of the surveyed States it is possible to join criminal proceedings before the trial phase. This is possible either during the pre-trial phase alone (Albania, Azerbaijan, Estonia, Hungary, Iceland, Liechtenstein, the Republic of Moldova, Norway, the Slovak Republic, Spain, and Sweden) or during both the pre-trial and the trial phase (Belgium, Bosnia and Herzegovina, Croatia, the Czech Republic, France, Finland, Germany, Latvia, Luxembourg, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovenia, Switzerland, and Ukraine). In Bulgaria and Italy it is not possible to join criminal proceedings before the trial phase of the proceedings.

40. In principle, the possibility of bringing civil claims in the context of criminal proceedings does not depend on the nature of the offence.

41. It is also common among the member States which provide for this possibility to require the establishment of a causal link between the criminal offence and the damage sustained by the injured party.

42. Once a civil claim has initially been brought in criminal proceedings, it can, in principle, be severed from those proceedings and referred to a civil court in twenty-six of the member States surveyed (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Iceland, Latvia, Luxembourg, the Republic of Moldova, Montenegro, North Macedonia, Norway, Poland, Romania, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland and Ukraine) and, on an exceptional basis also in two others (Belgium and Italy). In two others (Azerbaijan and Liechtenstein) no such possibility exists.

43. In all the member States surveyed where it is possible for an injured party to join the criminal proceedings as a civil claimant, the criminal court is empowered to award compensation for both pecuniary and non-pecuniary damage on the basis of the same rules and principles as those applying in the civil proceedings.

44. In all the member States surveyed, an ongoing criminal action would not prevent the injured party from lodging separate civil proceedings, even if some limitations may apply.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

45. The applicants complained that they did not have access to a court, to determine their civil claims, as a result of the inaction of the authorities, which had led to the discontinuance of the criminal proceedings in which they were injured parties. They relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. The Chamber judgment

46. In a judgment of 18 October 2022, the Chamber found, by a majority (see paragraph 5 above), that Article 6 § 1 in its civil limb applied to the applicants’ circumstances. It relied on *Arnoldi v. Italy* (no. 35637/04, 7 December 2017), considering that there was no reason to question the applicants’ will to pursue their civil claims and that the outcome of the criminal investigation would have been decisive for the determination of their civil rights. The Government’s objection as to the applicability of Article 6 was therefore dismissed.

47. The Chamber also considered that the possibility of an appeal (against the decisions ordering the discontinuance of the cases), which was open to the applicants, had no prospects of success in their cases given that there was no dispute about the fact that the legal time-limit for the investigation had come to an end and that the offences complained of had become time-barred, over and above the fact that no evidence had been collected in the meantime. It thus rejected the Government’s objection of non-exhaustion of domestic remedies, to that effect, and declared the three applications admissible.

48. On the merits, the Chamber found that the failure to consider the civil-party claims of the three applicants had been due to circumstances solely attributable to the judicial authorities, causing the prosecution to become time-barred. In consequence, they had been denied the possibility of having their civil claims determined through the avenue which they had chosen to pursue, and which had been at their disposal in the domestic legal order. In such extreme circumstances, which were entirely attributable to the judicial authorities, because of their total inaction, it could not be expected of the applicants to pursue a separate civil action. There had therefore been a violation of Article 6 § 1 (access to a court).

B. The Government's preliminary objections before the Grand Chamber

49. In their written pleadings, besides addressing the merits of the applicants' complaint, the Government raised a preliminary objection concerning the applicability of Article 6 to the proceedings at issue in the present applications.

50. In their oral pleadings at the hearing before the Grand Chamber the Government further raised an objection of non-exhaustion of domestic remedies in so far as the applicants had failed to pursue civil proceedings, available at the domestic level, before lodging their applications with the Court.

51. According to the Court's settled case-law, the "case" referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment. The "case" referred to the Grand Chamber is the application as it has been declared admissible, together with the complaints which have not been declared inadmissible (see *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 268, 25 May 2021; *Savran v. Denmark* [GC], no. 57467/15, § 169, 7 December 2021; and *L.B. v. Hungary* [GC], no. 36345/16, § 66, 9 March 2023).

52. However, this does not mean that the Grand Chamber may not also examine, where appropriate, issues relating to the admissibility of the application, for example by virtue of Article 35 § 4 *in fine* of the Convention, or where such issues have been joined to the merits, or where they are otherwise relevant at the merits stage (see *K. and T. v. Finland* [GC], no. 25702/94, § 141, ECHR 2001-VII; *Blečić v. Croatia* [GC], no. 59532/00, § 65, ECHR 2006-III; and *Grosam v. the Czech Republic* [GC], no. 19750/13, § 64, 1 June 2023). Thus, even at the merits stage the Grand Chamber may reconsider a decision to declare an application admissible if it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see *Grosam*, cited above, § 64; *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 102, 20 March 2018; and *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, §§ 98 and 113, 22 December 2020).

53. Pursuant to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 79, ECHR 2014, and *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 64 and 67, 5 July 2016). This rule relates to a specific plea of, for instance, non-exhaustion, including the reasons given for the plea. It is not, therefore, sufficient for the Government to have pleaded

non-exhaustion on different grounds within the prescribed time-limit (see *Mooren v. Germany* [GC], no. 11364/03, § 58, 9 July 2009).

54. In the present case, the Government's first preliminary objection concerns the applicability of Article 6 § 1. Indeed, the Government had already raised this objection before the Chamber. More importantly, an objection of incompatibility *ratione materiae* is an objection which goes to the Court's jurisdiction and the Court is obliged to examine whether it has jurisdiction at every stage of the proceedings (see *Tănase v. Moldova* [GC], no. 7/08, § 131, ECHR 2010, and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 59, 3 November 2022). As a result, it is necessary to examine the objection at this stage (see, for example in the context of the applicability of Article 6, *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 23, 20 March 2009, and *Micallef v. Malta* [GC], no. 17056/06, §§ 61-89, ECHR 2009).

55. In relation to the second preliminary objection, concerning non-exhaustion of domestic remedies in connection with the failure to bring separate civil proceedings, the Court notes that the Government's non-exhaustion objection before the Chamber solely concerned the applicants' failure to appeal against the decisions ordering the discontinuance of the cases. It follows that the objection raised in their oral pleadings had not been raised prior to the proceedings before the Grand Chamber. In accordance with Rule 55, the Government are therefore estopped from raising this objection, especially as they have not indicated any impediment that might have prevented them from raising it in their initial observations (see, *mutatis mutandis*, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 61, 15 November 2018; *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 83, 17 October 2019; and *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 93, 17 January 2023).

56. In conclusion, having regard to the foregoing, the Court dismisses the Government's second preliminary objection, concerning the alleged failure to exhaust domestic remedies, but will proceed to examine the first preliminary objection concerning the applicability of the provision at issue.

C. Applicability of Article 6 § 1 of the Convention under its civil limb in the context of criminal proceedings

1. The parties' submissions

(a) The respondent Government

57. The Government submitted that Article 6 under its civil limb was not applicable in the present case given that the civil rights of injured parties, even assuming they had joined the criminal proceedings as civil parties, would not be assessed on the merits by the investigating judge, but only by the trial judge if the case made it to trial (see Article 163 of the CCP at paragraph 27 above). At the end of the trial – and only in case of

conviction – the civil claim would be decided by the trial judge on the basis of the “allegations and evidence that the civil party [was] required to submit in order to prove the constituent elements of Aquilian liability⁴, asserted in the criminal proceedings”, and even then, the precise quantification of the damage could be deferred for examination by a civil court.

58. Thus, while the law provided both the injured party and the party which sustained damage (these parties often coinciding, but not always) with a right of action (*legittimazione attiva*) in the criminal proceedings, the offence alone was assessed during the investigation, while the civil claim could only be decided in the final trial judgment⁵. At most, the investigation stage could lead to a decision on whether the injured party could, depending on the circumstances of the case, bring a civil action. However, not even that decision was obligatory in the San Marino domestic system (see, for example, section 2 of Law no. 42/2014 at paragraph 29 above).

59. In the Government’s view, irrespective of any request to join criminal proceedings as a civil party, the exercise of the rights conferred on the injured party (under section 3 of Law no. 93/2008 and Article 135 of the CCP, see paragraphs 28 and 27 above respectively) did not constitute the exercise of a civil action, but rather the cooperation of that party with the investigating judge in the search for evidence. Domestic case-law⁶ had shown that the request to join the proceedings as a civil party (under Article 4 (*recte* 7) of the CCP, see paragraph 27 above) did not need to contain any particular requirements or to detail the claims. Thus, at the pre-trial stage, civil-party status was only a provisional position which was dependent on the outcome of the investigation and the latter had no bearing on any civil claims. In criminal proceedings, therefore, the civil party would acquire a “real role” only from the time of the committal decision, that is once an offence had clearly been identified together with a defendant who could be held liable for the damage ensuing from that offence.

60. Moreover, in the present case, the applicants had not even made full use of their rights as injured parties. In particular, the first applicant (contrary to the second applicant) had failed to ask the judge to set a date for the “oath of calumny”, a prerequisite in the cases of offences that could be prosecuted on the basis of the complaint of an injured party (see Article 28 of the CCP at paragraph 27 above), and the second applicant had only reiterated such request thirteen months after lodging her complaint together with the initial

⁴ In San Marino civil procedure is governed by *jus commune*, based on a mix of Roman and Canon law.

⁵ Reference is made to the judgment of the Judge of Appeal in Criminal Matters no. 1 of 18 January 1993; the decision of the Judge of First Instance (*Commissario della Legge*) of 8 September 2022 in proceedings no. 118/2018 and 584/2019 and the decision of the Judge of First Instance (*Commissario della Legge*) of 26 January 2023 in proceedings no. 245/2017 and 199/2020, and also to section 3 of Law no. 93/2008, see paragraph 28 above.

⁶ Order of the Judge of First Instance (*Commissario della Legge*) of 12 April 2023 in the joint criminal proceedings nos. 500/2017 and 227/2022.

request. In respect of the third applicant, (i) his parents had never lodged a criminal complaint about the harassment suffered, and (ii) the request to join the proceedings as a civil party – which moreover had not complied with domestic law, as it had only been lodged by his mother and not both parents – had also not been followed by any action whatsoever. Their behaviour could therefore not indicate a clear and unequivocal intention to promote the pursuance of the investigation and lodge a civil claim.

61. Furthermore, in respect of the first and second applicants, the investigation was neither necessary nor decisive for determining civil claims. In their case, the alleged damage had been the result of an aggression by a work colleague, where six witnesses had already been identified and referred to in the complaint of the second applicant, together with evidence of previous text-message exchanges showing a prior dispute with N., along with a medical report. Similarly, and in relation to the same circumstances, the first applicant's complaint had also been accompanied by his medical report. It followed that the two applicants had already had all the relevant elements to pursue their civil claims in the civil fora, where they would have had a greater prospect of success given the lower threshold applicable in order to determine liability. In this connection the Government explained that Aquilian liability⁷ covered even slight negligence (as opposed to the gross negligence required for a criminal conviction).

62. Nor could the investigation have had any relevant effect in respect of the third applicant, since the alleged offences had been committed by minors below the age of fourteen who could not therefore be prosecuted (see Article 10 of the Criminal Code at paragraph 26 above). Moreover, the trial judge who had ordered the investigation had already expressed doubts about the criminal nature of the conduct alleged and noted the absence of any complaint by the parents at the relevant time. It would therefore have been more appropriate to pursue civil proceedings against the parents of the two accused minors, as the parents could have been found liable, in terms of Aquilian liability, of *culpa in educando* (fault in educating).

63. Despite these factual circumstances, the Chamber had decided in the abstract that the investigation would have been decisive for any civil claims. However, this was not so, therefore the present case had to be distinguished from *Perez v. France* ([GC], no. 47287/99, ECHR 2004-I) and *Gorou* (cited above).

64. At the oral hearing the Government emphasised that in San Marino it was more appropriate for a victim, acting diligently, to bring civil proceedings when the establishment of civil liability could be made without necessitating a criminal investigation, even more so when the damage was limited, as was the case for the first two applicants. Similar considerations applied to the third applicant, who should have sued the parents of the

⁷ Which requires an unlawful act, wilful intent or negligence, unfair damage, and a causal link between the fact and the damage.

accused. Failure to take this more appropriate avenue could only mean that the applicants were solely seeking the prosecution of the offenders, which was not a right guaranteed by the Convention. In reply to the judges' questions, they considered that while it was for the judge to call on the parties to take the "oath of calumny", it was only the second applicant who had asked for that step to be taken.

(b) The applicants

65. The applicants considered that Article 6 § 1 was applicable in the present case, relying on *Arnoldi* (cited above) and *Petrella v. Italy* (no. 24340/07, 18 March 2021).

66. They submitted that in the San Marino legal system civil-party status could be acquired during the investigation, and at any time until the first hearing of the trial. All three applicants had expressed their wish to bring a civil claim in respect of the damage which they considered they had sustained as a result of the offences at issue. The first and second applicants had indicated their intention of joining the eventual proceedings in the context of their respective complaints and the third applicant's mother had actually lodged a request to join the proceedings as a civil party under Article 7 of the CCP (this was so because, in that case, the criminal proceedings had not originated from the complaint of the injured party but as a result of the directions given by a judge in other proceedings). The applicants had further made use of their rights as injured parties under section 3 of Law no. 93/2008 (see paragraph 28 above).

67. Since the principle of mandatory prosecution was applicable (Article 1 of the CCP, see paragraph 27 above), the applicants argued that they could expect that a decision would be delivered on their civil claims by the criminal judge, who was responsible for giving such a decision. In this connection they noted that the civil claim would be sent to a civil court for determination only for the quantification of the damage. Moreover, any separate civil proceedings would have been suspended pending the outcome of the criminal proceedings.

68. At the oral hearing before the Grand Chamber the applicants emphasised the difference between the San Marino and Italian legal systems, in particular in so far as, contrary to the situation in Italy, in San Marino (i) it was possible to join the criminal proceedings already at the investigation stage, and (ii) given their inquisitorial system, evidence was collected in full at the investigation stage (while in Italy the exercise would be repeated at trial).

69. In reply to questions from the judges, the applicants confirmed that, according to national jurisprudence, a final criminal judgment of conviction had the force of *res judicata*, for the purposes of any civil claims for compensation, as regards the verification of the existence of the act, its criminal illicitness and the affirmation that the accused had committed it. The

judge determining the civil claims would therefore only have to quantify the damage. They also submitted that under Article 28 of the CCP it was for the investigating judge to call on the parties to take the “oath of calumny”, noting in particular that the second applicant had requested to take this oath and had urged the judge to speed up the investigations before they became time-barred.

(c) The third-party Government

70. The Italian Government argued that the Grand Chamber should assess more rigorously the applicability of Article 6, taking into account that before and/or in the absence of a civil action (by joining criminal proceedings as a civil party – which in the Italian system was only possible in the “trial phase”), the criminal proceedings did not determine civil rights. Indeed, before, or in the absence of, a civil action and a judgment establishing criminal liability, any determination made by the criminal courts had no impact on the right of access to civil courts.

71. Referring to *Arnoldi and Petrella* (both cited above), and also *Sottani v. Italy* ((dec.), no. 26775/02, ECHR 2005-III (extracts)), in which the principles relied on by the Chamber in respect of the applicability of Article 6 to circumstances such as those of the present case had been developed, the Government noted that the Italian Constitutional Court, in two subsequent judgments (nos. 249/2020 and 203/2021), had confirmed that it would be impossible to conform to the Court’s judgments in those cases given the difference between the role of the injured party and that of the civil party; the substantive distinction between the injured person and the civil party, between the interest in the punishment of the defendant and the interest in compensation for the damage resulting from the offence; the separation between, and the autonomy of, the criminal and the civil proceedings (unlike the French system); the priority of civil proceedings for the protection of civil interests, despite the contingent and ancillary nature of the criminal protection of a civil right; and the fact that, prior to joining proceedings as a civil party, the events relating to criminal investigations did not concern civil rights and had no effect on the civil judgment.

72. In the Italian Government’s view, recalling the rules pertinent to the Italian system, civil rights could not be anticipated and made relevant to the investigation stage. This was so because at that stage (i) the object of the proceedings was not the entitlement to compensation for damage; (ii) there was no decision on the admissibility of any claims concerning civil rights, nor any adversarial discussion of those claims; (iii) the accused person was provided with the possibility of availing him or herself of special procedures which did not include the participation of the victim; (iv) the relevant time-lines and procedures were aimed at respecting the safeguards for the suspect, providing also for the possibility of avoiding trial by means of certain

alternatives; and (v) there was no suspension of any parallel civil proceedings, any suspension occurring only once the civil claim was lodged.

73. Contrary to what had been stated by the Court in *Arnoldi* (cited above, § 39) the public prosecutor only had a duty to prosecute if the investigation brought to light evidence substantiating the prosecution, thus before that point there was no legitimate expectation to obtain a judicial determination of a civil claim in the criminal proceedings. Nor could it be said that an injured party's rights (under Article 90 of the Italian Code of Criminal Procedure) were equivalent to those of a civil party, so much so that in a juvenile trial the same injured party rights applied, yet no civil claim was possible under Italian law. The two sets of rights, therefore, had no connection, contrary to the view held by the Court in the Chamber judgments listed above.

74. Furthermore, the Court's findings in the above-mentioned series of Italian cases contradicted its own case-law to the effect that the right to a court was subject to restrictions, as long as they were proportionate and did not undermine the substance of the right. Indeed, Italian law set a limit on the right to access criminal proceedings, namely that of joining the proceedings as a civil party, which the Court could not ignore. Nor could the Court impose a choice of system on a Contracting State. The restriction imposed by the Italian State was justified because criminal proceedings, and in particular the preliminary investigation phase, had, as their purpose, the search for evidence in order to assess whether to support the charge and to find criminal liability. Moreover, it did not affect the right to a court since a civil remedy was available.

75. In their oral intervention, the Italian Government emphasised that a distinction was to be made between (i) a criminal complaint, (ii) a civil action or a civil party in criminal proceedings and (iii) a claim of damage (request for monetary compensation), in the light of their substantive meaning, namely the effects they produced, not solely their formal meaning. They noted that according to the Grand Chamber in *Perez* (cited above, § 67), the joining of a person as a civil party was a pre-requisite for the applicability of Article 6 and constituted the moment from when Article 6 became applicable to the proceedings, as it was only at that point that the civil component became (and remained until the end of the proceedings) closely connected with the criminal component. In many jurisdictions this was also the moment when the civil claim was considered "admissible" and where the foreclosure or suspension of separate civil proceedings was triggered, thus creating the connection. Conversely, in *Arnoldi* (cited above) the Chamber had dropped this criterion and made Article 6 applicable to the situation of the injured party, despite the fact that the latter produced no consequences and created no close connection between a civil claim and criminal proceedings. This was even more relevant where, as in Italy, a criminal complaint was lodged with the police or the prosecution services but not with a judge, and therefore a defendant might not even be aware of a civil claim against him or her. Thus, in the Italian Government's view, deviating from the requirement of joining

criminal proceedings as a civil party would create a heterogeneous and uncertain approach, dependent on the different legal systems, with the risk that the Court might misinterpret domestic law, as had happened in the cases against Italy.

2. *The Court's assessment*

(a) **General Principles**

76. The Court reiterates that for Article 6 § 1 in its civil limb to be applicable, there must be a “dispute” (“*contestation*” in French) regarding a “right” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018, and *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022, both with further references; see also *Grosam*, cited above, § 108, and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 595, 9 April 2024). Lastly, the right must be a “civil” right (see *Verein Klimaseniorinnen Schweiz and Others*, cited above, § 595).

(b) **A recapitulation of the Court's findings on applicability of Article 6 in its civil limb in the context of criminal proceedings**

77. In *Perez* (cited above, §§ 63-67), in the context of criminal proceedings where it was possible for an injured party to bring civil claims, the Court considered that, in the French system, by acquiring the status of civil party victims would demonstrate the importance they attached not only to the criminal conviction of the offender but also to securing financial reparation for the damage sustained. In the Court's view, it was conceivable that Article 6 might be applicable even in the absence of a claim for financial reparation: it sufficed if the outcome of the proceedings was decisive for the “civil right” in question. The decisive factor for the applicability of Article 6 § 1 was whether, from the moment that the applicant was joined as a civil party until the conclusion of those criminal proceedings, the civil component remained closely connected with the criminal component, in other words whether the criminal proceedings affected the civil component. Having examined the applicable French law, it concluded that “proceedings whereby someone claim[ed] to be the victim of an offence [were] decisive for his ‘civil rights’ from the moment he [was] joined as a civil party” (*dès l'acte de constitution de partie civile*), even during the preliminary investigation stage taken on its own and even, where appropriate, if there were pending or potential proceedings in the civil courts.

78. The Court confirmed the limitations to the applicability of Article 6 (civil limb) by excluding cases of “private revenge” or *actio popularis* (see *Perez*, cited above, § 70). It considered however that, the waiver of a civil right had to be established, where appropriate, in an unequivocal manner (*ibid.*). In *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, § 218, 14 April 2015), where the applicants were solely injured parties, the Court held that “[p]roceedings brought by one person to challenge a decision not to prosecute another [did] not themselves seek to determine ‘civil rights and obligations’. Nor, in Turkish law, [did] they affect the standing of the party to bring an action for compensation”. Article 6 did not therefore apply under its civil limb (*ibid.*).

79. In subsequent case-law, the Court (at both Grand Chamber and Chamber levels) has repeatedly found Article 6 to be applicable to such proceedings from the moment that an applicant has joined the criminal proceedings as a civil party, or has asked to do so, in accordance with the requirements of national law (see, for example, *Gorou*, cited above, §§ 25-36; more recently, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 207, 25 June 2019, and, by implication, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 361, ECHR 2014 (extracts), all at Grand Chamber level⁸).

80. However, bearing in mind the differences in the legal systems of Council of Europe member States, and in particular the fact that certain States do not provide for an official status of “civil party”, the Court has also accepted in certain cases that Article 6 applied with its relevant guarantees from the moment the claim in respect of damage was made (see *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, §§ 39-41, 5 July 2005; *Bíro v. Slovakia* (no. 2), no. 57678/00, § 44, 27 June 2006; *Boris Stojanovski v. the former Yugoslav Republic of Macedonia*, no. 41916/04, § 39, 6 May 2010; and *Popovski v. the former Yugoslav Republic of Macedonia*, no. 12316/07, §§ 56-61, 31 October 2013).

81. Again in the light of the domestic system, the Court also applied Article 6 to situations where the applicants were only injured parties who had not obtained civil-party status, nor made a claim in respect of damage, where there had been no explicit waiver of their civil right, because domestic

⁸ See also, at Chamber level, *Potier v. France*, no. 42272/98, § 44, 8 November 2005; *Tsalkitzis v. Greece*, no. 11801/04, §§ 29-31, 16 November 2006; *Gousis v. Greece*, no. 8863/03, § 29, 29 March 2007; *Atanasova v. Bulgaria*, no. 72001/01, §§ 10 and 36, 2 October 2008; *Syngelidis v. Greece*, no. 24895/07, §§ 27-30, 11 February 2010; *Ligeres v. Latvia*, no. 17/02, § 58, 28 June 2011; *Korkolis v. Greece*, no. 63300/09, § 17, 15 January 2015; *Rokas v. Greece*, no. 55081/09, § 18, 22 September 2015; *Alexandrescu and Others v. Romania*, nos. 56842/08 and 7 others, § 22, 24 November 2015; *Baka v. Greece*, no. 24891/10, § 21, 18 February 2016; *Victor Laurențiu Marin v. Romania*, no. 75614/14, §§ 12 and 137, 12 January 2021; *Mihail Mihăilescu v. Romania*, no. 3795/15, §§ 6 and 80, 12 January 2021; *Hussein and Others v. Belgium*, no. 45187/12, §§ 36-38, 16 March 2021; *M. v. France* (dec.), no. 42821/18, § 79, 26 April 2022; and *Diémert v. France*, no. 71244/17, § 26, 30 March 2023.

jurisprudence had considered that the status of *assistente*, in the Portuguese legal system, was equivalent to filing a claim for compensation in civil proceedings (see, for example, *Feliciano Bichão v. Portugal*, no. 40225/04, §§ 32-33, 20 November 2007, and *Lacerda Gouveia and Others v. Portugal*, no. 11868/07, §§ 68-70, 1 March 2011, referring to the earlier case of *Moreira de Azevedo v. Portugal*, 23 October 1990, §§ 66-67, Series A no. 189).

82. In relation to Italian cases, Chambers have gone as far as finding Article 6 to be applicable to pre-trial proceedings where applicants were only injured parties who had not obtained civil-party status, nor made a claim in respect of damage, these being actions which, according to domestic law, were not open to the applicants at the investigation stage (see *Arnoldi*, cited above, §§ 25-44; *Bruni v. Italy* (dec.), no. 27969/10, §§ 22-24, 3 March 2020; and *Petrella*, cited above, § 23). This was so, *inter alia*, because, in the Court's view, the applicants had sought ultimately to obtain a determination as to their civil rights and, for the purposes of the applicability of Article 6, the position of the injured party, who exercised at least one of the rights and functions attributed to an injured party did not differ from that of a civil party (see *Arnoldi*, cited above, §§ 34, 40-41; *Bruni*, cited above § 23, and *Petrella*, cited above, § 23).

83. As to whether the criminal proceedings affect the civil aspect in practice (see *Perez*, cited above, § 67), the Court has found that where the civil right at issue was the right to one's reputation, which in the legal system concerned was to be decided in the criminal proceedings, the latter were decisive for that civil right (see, for example, *Kuśmieriek v. Poland*, no. 10675/02, § 45-50, 21 September 2004, and *Perak v. Slovenia*, no. 37903/09, §§ 32-35, 1 March 2016). However, where the civil right at issue concerned a claim for compensation for damage resulting from an alleged criminal action, which could also be decided in civil proceedings, it was necessary to examine whether the criminal proceedings affected the civil component according to the legal regimes in the respondent State (see, for example, *Gracia Gonzalez v. Spain*, no. 65107/16, §§ 53-54, 6 October 2020; a series of cases against Slovakia, cited at paragraph 80 above; as well as the series of cases against Italy cited in the preceding paragraph; and a series of cases against Turkey (now Türkiye), such as *Beyazgül v. Turkey*, no. 27849/03, § 44, 22 September 2009, and *Alp v. Turkey* (dec.), nos. 3757/09, §§ 47-53, 9 July 2013, concerning a period of time when it was still possible to lodge such claims in criminal proceedings at the domestic level).

(c) Relevant considerations

84. The Grand Chamber confirms that neither Article 6, nor any other provision of the Convention, may be interpreted as compelling the Contracting Parties to enable civil claims in respect of damage to be made in criminal proceedings. Nevertheless, while claims in respect of damage

normally fall to be brought in the civil courts, a majority of national systems nowadays provide for the possibility of making such claims in the framework of criminal proceedings (at least at certain stages). The comparative material shows that five of the thirty-five member States surveyed do not provide for that option, and two of the thirty that do provide for that option do not allow it at the investigation stage (see paragraphs 38 and 39 above). That choice falls within the margin of appreciation of the States.

85. The Court takes note of Article 7 of Recommendation Rec(2006)8 of the Committee of Ministers to member States on assistance to crime victims, replaced, subsequent to the circumstances of the present case, by the recent Recommendation (2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime, and in particular its Article 13 (see paragraphs 33 and 34 above). The Court recognises that the possibility of making civil claims in the framework of criminal proceedings entails several advantages for victims of crime given that it avoids pursuing different interests in multiple procedures, is often less expensive and benefits from State resources.

86. As seen from the above recapitulation, the possibility, in certain member States, of making civil claims in the framework of criminal proceedings has generated a substantial amount of case-law under Article 6. The general principles concerning the applicability of that provision in such circumstances, namely, under its civil limb in the context of criminal proceedings, have been adapted to the constructs of the diverse legal systems, including the terminology used in each member State, as well as their formal procedures or lack thereof.

87. It is against this background that the Court considers that the relevant criteria should be clarified to allow for a coherent and calibrated approach to the applicability of Article 6 in those countries that do provide for a right to bring civil claims in the context of criminal proceedings.

(d) The approach to be taken

88. The Grand Chamber considers that, for Article 6 in its civil limb to be applicable to such situations, firstly, an applicant must have a substantive civil right (such as the right to compensation for damage sustained) recognised under domestic law and, secondly, the domestic legislator must have endowed the victim of a crime with a (procedural) right of action to pursue that civil right in, and at the relevant stage of, the criminal proceedings complained of (as was the case, for example, in *Perez and Nicolae Virgiliu Tănase*, both cited above). The latter must be proceedings of a judicial nature (see *Duchoňová v. the Czech Republic* (dec.), no. 29858/03, 2 October 2006).

89. Further, the Grand Chamber confirms that victims must clearly demonstrate the importance they attach to securing the civil right at issue notwithstanding the fact that criminal courts may have jurisdiction and that by acquiring the status of “civil party” (in criminal proceedings, where it is

possible) victims would be demonstrating the importance they attach to that civil right.

90. In this connection, the Court reiterates that the observance of formalised rules of procedure, through which parties secure the determination of a civil dispute, is valuable and important as it is capable of limiting discretion, securing equality of arms, preventing arbitrariness, securing the effective determination of a dispute and adjudication within a reasonable time, and ensuring legal certainty and respect for the court (see *Zubac v. Croatia* [GC], no. 40160/12, § 96, 5 April 2018 in the context of civil proceedings). Bearing in mind the different legal systems, the Grand Chamber therefore considers that, for Article 6 to apply in its civil limb in the context of the criminal proceedings, the civil right has to be invoked and/or pursued via the appropriate channel, in accordance with the tenets of the domestic legal framework. Thus, in particular, where domestic law provides for a formal status of “civil party” Article 6 will apply only if, and from the time when, the applicant has lodged a formal request to obtain such status, even if it has not yet been decided upon (see, *inter alia*, *Krumpel and Krumpelová*, cited above, § 39). In domestic systems having more flexible and less formalistic approaches (i.e. where no official “civil party” status exists, for example, those systems requiring solely that a civil claim was lodged or brought to the attention of the domestic courts) Article 6 will apply if, and from the moment when, the applicant’s pursuance of a civil right was clear, in the light of the tenets of that domestic system.

91. The above is without prejudice to the possibility for the Court to consider that the steps undertaken by an applicant to invoke and/or pursue the civil right at issue, were *prima facie* invalid procedurally or substantively, or that it was inappropriate or even abusive for the individual to attempt to bring such claims through the criminal avenue, such as would be the case, for example, if the matter at issue was merely of a civil nature, or if statutory limitation periods or any relevant time-limits applicable at that stage had already expired. In such circumstances it could not be considered that a civil right has been invoked and/or pursued using the appropriate channel, in accordance with the tenets of the domestic legal framework, thus Article 6 will not apply.

92. Additionally, Article 6 will only apply if the civil right being pursued in the criminal proceedings is not actively (in other words, proceedings are not suspended) being pursued in parallel, before some other court (see, for example, *Garimpo v. Portugal* (dec.), no. 66752/01, 10 June 2004, where Article 6 was held not to apply because, for the Court, once the applicant had chosen to pursue separate civil proceedings, he had unequivocally waived his right to any civil claims being decided in the criminal proceedings), or has already been decided or settled elsewhere (see *Alp*, cited above, §§ 46 and 52).

93. Lastly, but importantly, the criminal proceedings must be decisive for the civil right in issue. In other words, the criminal proceedings must affect

the civil component (see *Perez*, cited above, §§ 65 and 67). This requirement could be considered as having been met, for example, if there is an obligation on the judge, as the competent authority, to determine the civil claim, in whole or in part, or the judge has done so in practice; or where the criminal proceedings prevail over any civil proceedings, either in the sense that the criminal proceedings, in which an applicant is pursuing civil claims, would bring to an end or suspend any already pending civil proceedings (or disallow an applicant from introducing and pursuing any civil proceedings in parallel); or in the sense that the determination of the civil claim is bound by the findings of the criminal proceedings.

(e) Application to the present case

94. In the present case it is not in dispute that as victims of the alleged offences the applicants had a substantive right, recognised under domestic law, to compensation for the damage they had allegedly sustained, this being a civil right, and that domestic law endowed the applicants with a (procedural) right of action to pursue that civil right in the context of the criminal proceedings, including at the investigation stage before the investigating judge (see Articles 3 and 8 of the CCP at paragraph 27 above). It follows that the requirements set out in paragraph 88 above are met in the case of all three applicants.

95. As to whether the civil right at issue (compensation for the damage allegedly sustained) was invoked and/or pursued using the appropriate channel, in accordance with the tenets of the domestic legal framework (see paragraph 90 above), the Court notes that, in San Marino, domestic law provides for a formal status of “civil party”. An injured party must make a request by means of a declaration under Article 7 of the CCP (see paragraph 27 above) to be admitted as a civil party (*dichiarazione di costituzione di parte civile*) during the investigation stage or following the decision to commit an accused for trial, as long as it is lodged before the reading of the indictment (the first hearing of the trial). A decision on the matter may be taken by the investigating judge and, if no such decision is taken, it must be taken by the trial judge at the first hearing (see Articles 7 and 8 of the CCP at paragraph 27 above).

96. The Court further notes that, under Articles 8, 163 and 199 of the CCP (see paragraph 27 above), it is only the civil party which has been duly joined to the proceedings in accordance with the law (and subsequently requested compensation) which has a right to obtain a determination of that civil claim in the case of a judgment of conviction, at the end of the criminal proceedings. Thus, in the absence of a declaration under Article 7 of the CCP, which was necessary to acquire civil-party status (and to subsequently make an actual claim for compensation), it cannot be considered that a civil right was invoked and/or pursued *via* the appropriate channel, in accordance with the tenets of the domestic legal framework.

(i) *Applications nos. 6319/21 and 6321/21*

97. As to the first and second applicants, the Court observes that, when they lodged their criminal complaints on 13 and 14 April 2016, respectively, they merely reserved their right to join, as civil parties, any eventual proceedings. The time limit for the investigation under domestic law came to an end on 15 June 2017 (see paragraph 18 above) and the proceedings were finally discontinued in November 2020 (see paragraph 21 above), more than four years after their initial complaint. During such time, the first and second applicants had not formally signed declarations to the effect that they wanted to join the proceedings as civil parties as required by Article 7 of the CCP (see paragraph 27 above).

98. It follows that the first and second applicants did not demonstrate, in accordance with domestic law, the importance they attached to securing their civil right to financial reparation for any damage sustained. It must therefore be concluded that they solely sought the criminal conviction of the offender, which is not a right guaranteed, as such, by the Convention (see, for example, *Mustafa Tunç and Fecire Tunç*, cited above, § 218).

99. The Court therefore finds that, in respect of the first and second applicants, the proceedings in question did not involve the determination of a “civil right” within the meaning of Article 6 and that this provision did not apply to the proceedings at issue. It follows that the first and second applicants’ complaint is incompatible *ratione materiae* with the provisions of the Convention.

100. The Court thus upholds the Government’s preliminary objection in this respect and holds that the applications of the first and second applicants must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(ii) *Application no. 9227/21*

101. Conversely, the third applicant formally made a request to join the proceedings as a “civil party” through a declaration under Article 7 of the CCP lodged by his mother on his behalf on 26 February 2019 (see paragraph 23 above).

102. Whether it also included a specific or quantified claim for compensation, at that stage, is irrelevant as it was not a requirement of domestic law (see, for example, *Tsalkitzis v. Greece*, no. 11801/04, §§ 29-31, 16 November 2006), as also confirmed by the Government (see paragraph 59 above).

103. In so far as the Government reiterated their argument, which had been made before the Chamber, that the request had not been made in accordance with domestic law as it had only been lodged by the third applicant’s mother and not both parents, the Court observes that the declaration under Article 7 of the CCP was nonetheless notified to the relevant parties, and that the subsequent discontinuance decision was notified

to both parents (see paragraphs 23 and 24 above). In any event, the Court considers that insufficient details and documentary evidence have been brought to its attention for it to consider that the request was *prima facie* invalid procedurally, such as to be removed from the application of Article 6 § 1 (see paragraph 91 above).

104. In so far as the Government argued that the proceedings could never have led to a conviction, as the identified defendants were minors who could not be prosecuted and that there were other more appropriate avenues for the third applicant to pursue (see paragraph 62 above), the Court does not find that it was inappropriate or abusive for him to attempt to bring such claims *via* the criminal avenue (see paragraph 91 above), given that those criminal proceedings had, in any event, been initiated on the instruction of another judge.

105. It follows that the third applicant, having requested civil-party status and therefore invoked and/or pursued a civil right *via* the appropriate channel, in accordance with the tenets of the domestic legal framework, demonstrated the importance he attached not only to obtaining the criminal conviction of the offenders but also to securing his civil right to financial reparation for any damage sustained.

106. At the time of that request those civil claims were not being actively pursued elsewhere, therefore, Article 6 would apply from the date of the lodging of the request (26 February 2019), should the remaining criterion be fulfilled.

107. It remains to be determined whether the proceedings were decisive for the civil right at issue (see paragraph 93 above). It has not been disputed that the criminal proceedings, in which a request to join the proceedings as a civil party under Article 7 of the CCP had been filed, impeded the introduction or pursuance of any civil proceedings in parallel, until the criminal proceedings came to an end (see Articles 11 and 12 of the CCP at paragraph 27 above) and therefore that they prevailed over any civil proceedings. Thus, the criminal proceedings which the third applicant requested to join as a civil party affected the civil component (see paragraph 93 above).

108. It follows that Article 6 is applicable to the impugned proceedings in respect of the third applicant and the Government's objection in this connection is dismissed.

D. Merits

1. The parties' submissions

(a) The third applicant

109. The third applicant submitted that once Article 6 under its civil limb applied to the criminal proceedings it should do so with all its guarantees. In the present case there had been no doubt that the proceedings had become

time-barred because of the inaction of the authorities, so in that light the third applicant considered that he should not be expected to bring further proceedings. He relied on the findings in *Petrella* (cited above), highlighting the importance of the guarantees available to the victims of crime in the criminal justice system. In his view the protection of victims in the context of an investigation was based on two fundamental pillars of the Convention system, namely under the procedural duties of Articles 2, 3, 4, and 8, and under a civil duty pursuant to Article 6.

110. He noted that the reasoning in *Petrella* had been based on some prior examples of case-law, where the Court had found a violation of the right of access to a court because the delays had been attributable to the authorities. Admittedly, however, the Grand Chamber in *Nicolae Virgiliu Tănase* (cited above) had made no mention of the criterion of responsibility or fault of the authorities, in determining that there had been no violation of the right of access to a court in that case. Nevertheless, in *Leuska and Others v. Estonia*, (no. 64734/11, §§ 62 and 65-72, 7 November 2017), the Court had gone even further than in the *Petrella* judgment and had found a violation of the right of access to a court, irrespective of any fault of the authorities, where the domestic courts had failed to decide on the issue of legal costs, in the context of criminal proceedings, following a settlement of the case. The Court had also rejected the Government's non-exhaustion objection concerning the possibility of claiming those legal costs in civil proceedings.

111. The third applicant considered that it was unacceptable to justify total inaction in cases of minor offences, to the detriment of the principle of mandatory prosecution and substantive justice. He alleged that there were around 700 to 800 cases where there had been a denial of justice in the period 2013-2018 and considered that if the State wanted to limit its burden, it could choose instead to decriminalise minor offences and subject them to administrative sanctions.

112. The third applicant submitted, with reference to Article 9 of the CCP (see paragraph 27 above), that he would not have had the opportunity to lodge civil proceedings without renouncing the right to appear as a civil party in the criminal proceedings, and, while it was true that he could have also lodged civil proceedings after the criminal proceedings were discontinued, he considered that he would have had difficulty satisfying the higher burden of proof applied in civil proceedings. He noted that in the San Marino legal system, in criminal proceedings an "oath of calumny" could well have been considered as exclusive proof for the conviction of the offender, while in civil proceedings the claimant's testimony was not even admissible as a source of evidence. Furthermore, during criminal proceedings a confrontation between both parties could be made mandatory by the judge, while in the context of a civil case this was not possible. Indeed, in criminal proceedings there was an obligation to testify, with sanctions being envisaged for default, but this was not so in civil cases. It followed, in the third applicant's view, that in San Marino the criminal avenue was favoured in order to acquire any

compensation deriving from a criminal offence as opposed to civil proceedings. Thus, while he could pursue the civil remedy today, something which he was still considering, there was a risk that he would not fulfil the evidential burden in the absence of an investigation and given the passage of time. He thus called on the Grand Chamber to confirm the Chamber judgment.

(b) The Respondent Government

113. The Government argued that the right of access to a court could not be considered to be violated on the basis of an *ex post* assessment of the authorities' conduct, which was normally relevant to the fairness of proceedings but not access to a court. In relation to a complaint of access to a court, in line with the *Nicolae Virgiliu Tănase* judgment (cited above, § 199), an *ex ante* assessment was required, namely, as to whether other civil remedies were available at the time when the applicant chose to pursue criminal proceedings as a civil party. The Grand Chamber in that case (*ibid.*, § 188) had not even considered it necessary to examine whether Article 6 § 1 applied to the avenue chosen by the applicant (civil party in criminal proceedings), for the purposes of the access to a court complaint. The Government therefore invited the Grand Chamber to reverse the Chamber's approach in the present case – which had followed *Petrella*, the latter having deviated from the approach adopted by the Grand Chamber in *Nicolae Virgiliu Tănase* (both cited above).

114. They explained that the Chamber's approach would have serious repercussions on the functioning of the criminal justice system, especially in terms of efficiency. A mere request to join the criminal proceedings as a civil party would be sufficient to oblige the judge to determine any civil claim, even one that was modest and easily determinable in separate civil proceedings. Moreover, that approach would open the way to indiscriminate complaints about the right of access to a court, despite alternative remedies being available at the domestic level.

115. Turning to the circumstances of the present case, the Government submitted that the third applicant had had the possibility of asserting his civil claims, be it before or after the criminal proceedings. However, a civil action could not be pursued simultaneously before the criminal and civil courts⁹. In such cases, the separate civil action would be suspended, but could, however, be continued once the criminal proceedings came to an end, even in cases of acquittal or discontinuance (see Article 12 of the CCP at paragraph 27 above).

⁹ Except for the case of negligent injury where criminal and civil liability did not coincide, and which was in any event subject to a civil court's assessment of civil negligence (Judgment of the Judge of Appeal in Civil Matters of 12 May 2000 in civil proceedings no. 26/1995, and judgment of the Judge of First Instance (*Commissario della Legge*) of 13 December 2004 in civil proceedings no. 29/2003 both dealing with traffic accidents), see paragraph 61 *in fine* above.

Nevertheless, the third applicant could at any time have withdrawn the request to join the criminal proceedings in order to pursue a separate civil action. Thus, in the present case, the third applicant could have pursued – and still could pursue – civil proceedings, which would become time-barred after ten years (i.e. in July 2025) (see section 11 of Law no. 102/2015 at paragraph 30 above), since, even after having joined the proceedings as a civil party, the bringing of a civil action following a decision to discontinue the criminal proceedings could not be ruled out¹⁰. This was so given that civil liability was based on requirements that were autonomous and different from those applicable to criminal liability¹¹.

116. The Government further relied on a number of domestic judgments¹² indicating that in the San Marino system an action for compensation for damage, arising from the criminal offence, should be brought directly in civil proceedings. That was the privileged avenue, which the applicant had failed to pursue, in favour of a riskier option, which would have provided him with a determination of his civil claim only in case of conviction.

117. In the San Marino system, whether in criminal or civil proceedings, it was the person claiming damage who had to prove the constituent elements of the liability (wilful intent or negligence), the damage and the relevant causal link, as well as to submit clear and precise proof of the damage claimed. The damage that could be claimed was the same under both jurisdictions and both actions were based on the principle of *actio ex lege aquilia de damno*¹³. Thus, the procedures were comparable in respect of the burden placed on individuals to prove their claims. Moreover, often the criminal court would solely make a provisional award while leaving the detailed examination of the civil claim to the civil court. This was done also to avoid protracting criminal proceedings, with the risk that they might become time-barred.

118. At the oral hearing before the Grand Chamber, the Government rebutted the applicant's allegations concerning a witness's status in civil proceedings, noting that the same obligation to testify existed under section 2(3) of Law no. 55/1994. Moreover, it was untrue that an "oath of calumny" could constitute the sole evidence in a criminal trial, domestic jurisprudence having held that it solely constituted a requirement for the bringing of proceedings based on a complaint by the injured party. Moreover,

¹⁰ Judgment of the Judge of Appeal in Civil Matters of 14 February 1974 in civil proceedings no. 168/1970, and the judgment of the Judge of First Instance (*Commissario della Legge*) of 1 September 1962 in civil proceedings no. 40/1962.

¹¹ Judgment of the Judge of Appeal in Civil Matters of 10 August 1931 in civil proceedings no. 115/1929, and judgment of the Judge of First Instance (*Commissario della Legge*) of 24 July 1995 in civil proceedings no. 291/1993.

¹² Judgment of Criminal Appeals no. 139 of 13 December 2001 in criminal proceedings no. 535/1996 and judgment of Criminal Appeals no. 83 of 18 July 1994 in criminal proceedings no. 2273/1989.

¹³ Concerning damage unlawfully caused.

civil proceedings were adversarial and provided for various ways of proving liability. Thus, the third applicant had better prospects of success *via* the civil avenue, which he had not yet pursued, but which was still open to him.

119. In reply to the judges' questions the Government confirmed that, at the relevant time, there were around 800 cases which had been discontinued due to procedural time-barring, as it was a period when San Marino saw a spike in serious crime, which was of international interest. The situation had now improved also as a result of judicial reform.

(c) The third-party Government

120. The Italian Government submitted that the Court should not transpose the case-law relating to the admissibility criterion of exhaustion of domestic remedies (which required that only one effective remedy need be pursued) into an assessment of whether there had been a violation of the right of access to a court. While from the standpoint of exhaustion, the presence of a second effective remedy could be an excessive burden for activating supranational protection by the Court, from the standpoint of the merits, the presence of a second effective remedy denoted a higher level of protection of the right of access to a court – whereas, in the light of the Convention, a State might legitimately exclude civil action in criminal proceedings. Thus, a State should not be found to have committed a violation for having offered to the applicants more than what the Convention required of it. Moreover, a civil remedy was more suitable and effective than a criminal one, since it was aimed specifically at deciding on civil liability, and not criminal liability, which was subject to a higher burden of proof and to an array of guarantees for the accused, and only allowed for a determination of civil claims once they had been lodged and if a criminal offence was really in issue. Confirming the Chamber judgment would therefore privilege a secondary and accessory remedy, which had different objectives, to the detriment of the remedy provided primarily and specifically for civil purposes. The paradox was even more evident in cases where the complaints at issue were solely of civil relevance. The impugned case-law was also contradictory to the rest of the case-law of the Court in so far as it encouraged criminal proceedings where other Articles of the Convention discouraged such action, as was the case of criminal proceedings for defamation, which had been the factual situation in *Petrella* (cited above).

121. An argument could also be made that by not pursuing the most appropriate remedy, not only could a violation not be found, but it was even possible to consider that an applicant had not exhausted domestic remedies. They relied in this context on the separate opinion of Judge Grozev appended to the *Nicolae Virgiliu Tănase* judgment (cited above).

122. In any event they considered that the access to a court complaint could only be examined in the light of a “two-avenue test” [namely, examining the availability of other channels through which applicants could

assert their civil rights], and in this connection they relied on the Grand Chamber judgment in *Nicolae Virgiliu Tănase* (ibid.) and subsequent case-law¹⁴, as well as the dissenting opinion of Judge Sabato appended to the *Petrella* judgment (cited above). They further shared his views that a violation of the right of access to a court and a violation in respect of the length of proceedings could not coexist in relation to the same facts. It had to be one or the other. The concerns set out by the dissenting judges in the Chamber were also expressed by the Italian Government, referring in particular to the risk of abuse when anyone could lodge a criminal complaint without any real basis, but then sit back and be entitled to compensation if proceedings were discontinued. In their view this risk was confirmed by several applications currently pending against the Italian State concerning facts that were exclusively or mainly of civil and non-criminal relevance (such as cost-effectiveness of a contract, reasonableness of a lawyer's fee, administrative legality of a measure, and disputes in neighbourhood relations or between former spouses).

123. The Government accordingly invited the Grand Chamber to comply with the prevailing and well-established case-law confirmed by the Grand Chamber in *Nicolae Virgiliu Tănase* (cited above) and reiterated in subsequent cases. That approach was the only one in conformity with European Union law (see paragraph 36 above). In this connection they noted that in some Contracting States the decision on compensation for damage was to be taken first and foremost by civil courts. In criminal courts, it was only under certain conditions that such a decision could be made and, in any case, only after the exercise of a civil claim. The Convention did not require a different solution to be adopted, even more so given that some other Contracting States did not even allow for this possibility.

2. *The Court's assessment*

(a) **General principles**

124. The right to a fair hearing must be construed in the light of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights. Thus, everyone has the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, Article 6 § 1 embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before courts in civil matters, is one particular aspect (see, among other authorities, *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 126, 21 June 2016; *Nait-Liman v. Switzerland* [GC], no. 51357/07, § 113, 15 March 2018; and *Nicolae Virgiliu Tănase*, cited above, § 192).

¹⁴ The Government referred to *Barsova v. Russia*, Committee judgment no. 20289/10, 22 October 2019.

125. While the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence (see *Perez*, cited above, § 70, and *Gorou*, cited above, § 24), domestic law can provide for a right for the victim of the offence to claim reparation for the damage caused by that offence by means of civil-party proceedings, that is by allowing the victim to join criminal proceedings as a civil party. This is one possible way of providing for a civil action for reparation of the damage (see *Perez*, cited above, § 62, and *Nicolae Virgiliu Tănase*, cited above, § 194).

126. The right of access to a court is not absolute but may be subject to limitations; these are permitted by implication since the right of access, by its very nature, calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *Naït-Liman*, cited above, § 114, and *Nicolae Virgiliu Tănase*, cited above, § 195). Such regulation may vary in time and in place according to the needs and resources of the community and of individuals (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 89, 29 November 2016). Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field (see *Lupeni Greek Catholic Parish and Others*, cited above, § 89, and *Zubac*, cited above, § 78). Nonetheless, limitations of the right of access to court must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. In addition, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Baka v. Hungary* [GC], no. 20261/12, § 120, 23 June 2016; *Lupeni Greek Catholic Parish and Others*, § 89; *Naït-Liman*, § 115; *Zubac*, § 78; *Nicolae Virgiliu Tănase*, § 195; and *Grzęda*, § 343, all five cited above).

127. In addition, Article 6 § 1 requires cases to be heard within a "reasonable time", thus underlining the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 224, ECHR 2006-V). As the Court has often stated, it is for the Contracting States to organise their judicial systems in such a way that their courts are able to guarantee the right of everyone to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time (see, among many other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV, and *Lupeni Greek Catholic Parish and Others*, cited above, § 142). The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see *Lupeni Greek Catholic Parish and Others*, cited

above, § 143, and *Sürmeli v. Germany* [GC], no. 75529/01, § 128, ECHR 2006-VII).

(b) The two lines of case-law developed regarding access to a court in relation to civil claims brought in the ambit of criminal proceedings

128. The Court observes that, with regard to civil claims in the context of criminal proceedings, two lines of case-law have developed.

129. In the first line of cases, where civil-party claims made in the context of criminal proceedings had not been examined by reason of the termination of those proceedings, the Court has had regard to the availability of other channels through which the applicants could have asserted their civil rights. In cases where the applicants had at their disposal other accessible and effective avenues for their civil claims, it has found that their right of access to a court had not been infringed (see, for example, *Assenov and Others v. Bulgaria*, 28 October 1998, § 112, *Reports of Judgments and Decisions* 1998-III; *Ernst and Others v. Belgium*, no. 33400/96, §§ 54-55, 15 July 2003; *Moldovan and Others v. Romania* (no. 2), nos. 41138/98 and 64320/01, §§ 119-22, 12 July 2005; *Forum Maritime S.A. v. Romania*, nos. 63610/00 and 38692/05, § 91, 4 October 2007; *Georgi Georgiev v. Bulgaria* (dec.), no. 34137/03, 11 January 2011; *Borobar and Others v. Romania*, no. 5663/04, § 56, 29 January 2013; *Association of the Victims of S.C. Rompetrol S.A. and S.C. Geomin S.A. and Others v. Romania*, no. 24133/03, § 65, 25 June 2013; *S.O.S. racisme – Touche pas à mon pote v. Belgium* (dec.), no. 26341/11, §§ 30-34, 12 January 2016; *Dimitras v. Greece*, no. 11946/11, § 47, 19 April 2018; *Nicolae Virgiliu Tănase*, cited above, §§ 199-202; and *M. v. France* (dec.), no. 42821/18, § 79, 26 April 2022).

130. This group of cases includes situations where the termination of the proceedings was not due to delays caused by the authorities or other shortcomings on their part (see, for example, *Ernst and Others* and *Georgi Georgiev*, (dec.), both cited above), or where, although there had been some delays, they were not extreme or were counterbalanced (see, for example, *Dimitras*, cited above, §§ 43-44), but also situations where the discontinuance was due to such shortcomings and delays (see *Borobar and Others*, §§ 56, 72 and 84, and *Association of the Victims of S.C. Rompetrol S.A. and S.C. Geomin S.A. and Others*, §§ 65-66 and 80, both cited above).

131. In the second line of cases, where civil-party claims made in the context of criminal proceedings had not been examined on account of the termination of those proceedings, the Court considered that where the domestic legal order provided litigants with an avenue of redress, such as a civil claim in the context of criminal proceedings, the State was under an obligation to ensure that they enjoyed the fundamental guarantees laid down in Article 6 § 1 (see, in particular, *Anagnostopoulos v. Greece*, §§ 30-34, no. 54589/00, 3 April 2003; *Gousis v. Greece*, no. 8863/03, §§ 30-35, 29 March 2007; *Atanasova v. Bulgaria*, no. 72001/01, §§ 40-47,

2 October 2008; *Dinchev v. Bulgaria*, no. 23057/03, §§ 50-52, 22 January 2009; *Tonchev v. Bulgaria*, no. 18527/02, §§ 50-53, 19 November 2009; *Boris Stojanovski*, cited above, §§ 56-57; *Korkolis v. Greece*, no. 63300/09, §§ 22-25, 15 January 2015; *Rokas v. Greece*, no. 55081/09, §§ 23-24, 22 September 2015; and *Petrella*, cited above, §§ 53-54). In nearly all of these cases, there had been a delay mainly imputable to the authorities, thus on the facts before it, the Court considered that it could not be expected of the applicants to pursue civil remedies, several years after they had lodged their civil claims in the ambit of criminal proceedings, and even longer after the impugned events, even if it had still been possible to do so. In those circumstances, and despite any possibility of bringing separate civil claims at the outset or in parallel, the Court found a violation of the right of access to a court.

(c) Relevant considerations

132. The Grand Chamber recalls that the right of access to a court is a stand-alone right, which is in principle distinct from the right to have cases heard within a reasonable time.

133. The Grand Chamber observes that, in its earlier case-law, the Court considered that the fact that proceedings took a long time did not concern access to a court (see *Matos e Silva, Lda., and Others v. Portugal*, 16 September 1996, § 64, *Reports* 1996-IV). Subsequently, the Court has nevertheless held that it cannot be ruled out that, in exceptional cases, the fact that proceedings remain pending for an excessive period may affect even the right of access to a court (see *Vassilios Athanasiou and Others v. Greece*, no. 50973/08, § 52, 21 December 2010; *Frezadou v. Greece*, no. 2683/12, §§ 44 and 48, 8 November 2018; and, as another example in practice, *Kristiansen and Tyvik As v. Norway*, no. 25498/08, § 57, 2 May 2013, where, due to the considerable lapse of time and the applicable limitation period in that case, the applicants' exercise of their right of access to a court had become illusory and the very essence of that right had been impaired).

134. The Grand Chamber considers that, while a timely decision by the authorities remains necessary and is protected by the right to have proceedings heard within a reasonable time, the absence of a decision on a civil claim within the context of criminal proceedings, whether at pre-trial or trial stage, as a result of some shortcoming on the part of the authorities, cannot of itself, and regardless of any other considerations, amount to a violation of the right of access to a court. In this context it is relevant to reiterate that, in the civil sphere, where a person claims a right of access to a court, that Convention right may be in conflict with another person's right to legal certainty, which constitutes one of the fundamental aspects of the rule of law and is likewise guaranteed under the Convention. Such a situation requires a balancing exercise between conflicting interests, and the Court accords the State a wide margin of appreciation in this field (see *Sanofi*

Pasteur v. France, no. 25137/16, §§ 52 and 55-58, 13 February 2020, and *Fischer v. the Czech Republic*, no. 24314/13, § 40, 24 February 2022). Similar considerations apply in proceedings such as those in the present case in the light of the rights of the accused, which are also guaranteed under the Convention. Thus, while an individual may opt for the introduction of a civil claim in the criminal proceedings because it is less expensive and less burdensome, it also carries a risk that authorities entrusted with the criminal complaint will be unable to decide on the civil claim (see *Association of the Victims of S.C. Rompetrol S.A. and S.C. Geomin S.A. and Others*, cited above § 66) for a variety of reasons (such as, limitation periods, plea bargaining, a decision that the facts do not constitute a criminal offence, or acquittal, amongst others).

135. It is also significant that the Court has previously held, in the context of access to court complaints, that it is of relevance whether an applicant pursuing civil claims acted with the required diligence in pursuing his or her interests (see, for examples in practice, *Zubac*, cited above, § 121, and *Kamenova v. Bulgaria*, no. 62784/09, §§ 50-54, 12 July 2018) or whether he or she contributed to the delays or the reasons leading to the discontinuance (see, for example, *Korkolis*, cited above, § 24).

136. Lastly, it cannot be ignored that in respect of access to court complaints, in the wider context (that is beyond those limited to civil claims brought during criminal proceedings), the Court has regularly taken into account other remedies available to the applicants (see, for example, *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 124, 1 June 2023; *Ndayegamiye-Mporamazina v. Switzerland*, no. 16874/12, § 64, 5 February 2019; *Klausecker v. Germany* (dec.), no. 415/07, §§ 69-77, 6 January 2015; *C.G.I.L. and Cofferati v. Italy* (no. 2), no. 2/08, § 50, 6 April 2010; *Cordova v. Italy* (no. 1), no. 40877/98, § 64, ECHR 2003-I; and *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 67-68, ECHR 1999-I; see also *Victor Laurențiu Marin v. Romania*, no. 75614/14, § 138, 12 January 2021, and *Mihail Mihăilescu v. Romania*, no. 3795/15, § 87, 12 January 2021, which followed the same *ratio* in the context of a fairness complaint). The same holds true in respect of Article 13 of the Convention, where even if a single remedy does not by itself entirely satisfy the requirements of that Article, the aggregate of remedies provided for under domestic law may do so (see, *inter alia*, *Kudla v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI, and *Mugemangango v. Belgium* [GC], no. 310/15, § 131, 10 July 2020), or in respect of certain other Convention obligations, in specific contexts (see, for example, *Nicolae Virgiliu Tănase*, cited above, § 169, and *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 216 and 225, 19 December 2017).

(d) The approach to be taken

137. The discontinuance of criminal proceedings, with the result that a civil claim cannot be determined within the ambit of those criminal proceedings, does not – as a rule – result in a violation of the right of access to a court if it is based on lawful grounds which are not applied arbitrarily or unreasonably, and if the applicant had *ab initio* an alternative avenue of redress capable of determining the civil claim at issue.

138. However, in the exceptional circumstance that the lawful discontinuance of the criminal proceedings is the result of a serious dysfunction of the domestic system (such as, for example, total inaction on the part of the authorities), the Court, after having assessed the applicant's behaviour, may be called on to examine the availability of any other avenue open to the applicant, so as to determine whether the very essence of the applicant's right has been impaired.

139. Where the discontinuance of the criminal proceedings, with the result that a civil claim cannot be determined within the ambit of those criminal proceedings, is only partly the result of a serious dysfunction of the domestic system – the applicant having contributed to that outcome (for example, by means of inaction, negligence, or bad faith) – it would suffice that the applicant had another avenue of redress, either *ab initio* or after the discontinuance, to find that the essence of the applicant's right has not been impaired. It would follow, in such a case, that the State has satisfied its obligation to provide the applicant with effective access to a court. This is without prejudice to any complaint concerning the length of proceedings, should this be invoked, which would be subject to a separate examination based on the criteria laid down by the Court in its case law relating to this aspect of Article 6 (see paragraph 127 *in fine* above).

140. Exceptionally, when the serious dysfunction of the domestic system is the sole or decisive reason leading to the discontinuance – the applicant having pursued the civil claims diligently *via* the criminal avenue – it would be open to the Court to find that the applicant had a legitimate expectation to have those claims determined in that avenue irrespective of any other available remedy *ab initio*, and that, on the specific facts before it, it would not be reasonable to expect the applicant to pursue any available civil remedy after the discontinuance. It would follow, in such a case, that the State has failed to satisfy its obligation to provide the applicant with effective access to a court, it being demonstrated that the very essence of that right has been impaired. Should there be no such failure on the part of the State, it remains clear that a complaint for unreasonable delay would be open to such an applicant, as highlighted above (see paragraph 139).

(e) Application of the principles to the present case

141. In the instant case, the Court notes that the third applicant intended to pursue civil-party claims in the context of the criminal proceedings

instituted on the initiative of a judge against identified individuals and lodged a request to that effect. However, the authorities discontinued the criminal proceedings, at the investigation stage, on the ground that the limitation period for criminal liability had expired, and that in any event no evidence had been collected allowing for prosecution since no investigative measures had been undertaken within the required time-limit. As a result, the third applicant's civil claims could not be examined by a criminal court.

142. The Court observes that when the criminal proceedings were discontinued, the investigative authorities were under no obligation to examine any civil claims. In this sense, there was therefore no procedural irregularity in the way the authorities proceeded. Moreover, the calculation of the substantive limitation period in respect of the offences at issue, together with the expiry of the legal time-limit for the investigation, has not been disputed. Nor has the applicant challenged the applicable limitation period and time-limits or argued that they were applied restrictively (contrast *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 47, *Reports* 1996-IV; *Reisner v. Turkey*, no. 46815/09, § 60, 21 July 2015; *Loste v. France*, no. 59227/12, § 60, 3 November 2022; and *Diémert*, cited above, § 31). It follows that the authority's decision to discontinue the case was lawful and not arbitrary or manifestly unreasonable (see, *mutatis mutandis*, *Nicolae Virgiliu Tănase*, cited above, § 197). Thus, in principle, in the absence of any exceptional circumstances, the third applicant's right to a court would have been respected if he had had, *ab initio*, the possibility of pursuing civil claims in separate civil proceedings, as was indeed the case (see paragraph 137 above).

143. However, the Court observes that in the present case it is not disputed that the investigating judge assigned to the case did not take any steps whatsoever following the opening of the criminal investigation file on 28 March 2018 as a result of which, on 27 November 2020, the proceedings were discontinued, and that around 800 investigations have suffered the same fate. The Government argued that at the time San Marino had seen a spike in serious crime (see paragraphs 111 and 119 above).

144. In this connection, the Court cannot but reiterate that the right of access to a court under Article 6 of the Convention calls for regulation by the State, which enjoys a certain margin of appreciation in this regard, and that such regulation may vary in time and in place according to the needs and resources of the community and of individuals (see the case-law cited at paragraph 126 above). The Court nevertheless considers that, while certain situations may legitimately call for the authorities' discretion in deciding which complaints to investigate or which crimes to prosecute, such choices should be dictated by objective considerations or needs, rather than be the result of obvious organisational inefficiencies or failings on the part of the authorities. In the present case no legislative measures limited the third applicant's access to the criminal proceedings. As to any discretion being applied in practice by the authorities, no evidence has been advanced to show

that, in a timely manner, the investigating judge had made a preliminary assessment of the third applicant's complaint to determine, at least *prima facie*, whether the facts complained of amounted to a criminal offence, or whether it was worth pursuing the investigation in the light of, for example, whether there would have been any legal impediments to a potential prosecution, such as the age of the minors, as argued by the Government (see paragraph 62 above). Accordingly there was an unjustified inaction on the part of the investigative authorities, and it has not been disputed that this was the result of a serious dysfunction in the domestic system at the relevant time, leading to around 800 such investigations becoming time-barred (see paragraphs 111, 119 and 143 above).

145. In these circumstances, it is for the Court to examine, firstly, the third applicant's behaviour and secondly, depending on that behaviour, any other avenue open to him within the parameters explained above (see paragraphs 139 and 140 above).

146. The Court observes that the third applicant was the victim of the alleged offence in the summer of 2015, and thereafter lodged no criminal or civil action. Upon the indications made by the judge in the separate proceedings lodged against his parents, a criminal investigation was opened *ex officio* against two minors on 28 March 2018. A request to join the criminal proceedings as a civil party, by the mother on behalf of the third applicant, was submitted only on 26 February 2019. Thus, the Court notes that the third applicant (or rather his parents on his behalf) did not attempt to bring civil claims (separately or in the context of a criminal complaint) against V. and D. at any point in time from the summer of 2015, when the alleged offence took place, until 26 February 2019, when a request to join the criminal proceedings (initiated *ex officio*) was finally lodged. The Court further observes that the declaration to the effect that he wanted to join the proceedings as a civil party was made only a few days before the expiry of the limitation period in respect of the alleged offence, which had been committed three and a half years earlier (in July 2015), and three months before the procedural time-barring of the investigation opened *ex officio*.

147. It follows that – despite the serious dysfunction afflicting the San Marino investigative judicial authority at the relevant time – the failure to consider the third applicant's civil claims in the avenue which he chose to pursue was not due to circumstances solely or decisively attributable to that dysfunction, nor can it be said that the third applicant pursued his interests diligently. In these circumstances, the question whether the applicant had any other available avenue, either *ab initio* or after the discontinuance (see paragraph 139 above), becomes relevant to determining whether the very essence of the third applicant's right has been impaired.

148. The Court notes that it has not been disputed that, following the alleged offence, the third applicant could have brought separate civil proceedings instead of joining the criminal proceedings years later. Indeed, given the relevant timelines (namely, the offence occurring in summer 2015,

criminal proceedings being initiated in March 2018, and the applicant lodging his civil party declaration eleven months later) it was not impossible that, had the applicant brought civil proceedings at the material time (2015), a civil determination might already have been made prior to the discontinuance of the criminal proceedings. The Court observes that, even accepting that such civil proceedings would have been stayed pending the outcome of the criminal proceedings, no evidence has been provided to suggest that the third applicant could not have continued those civil proceedings and obtained a determination on the merits of his civil claims on the conclusion of the criminal proceedings. While, in San Marino, the suspension of civil proceedings did not suspend the running of the limitation period applicable to civil claims, the latter period was substantially longer than the limitation period for the alleged offences, thus averting any real risk that the third applicant would not have had his civil claims determined.

149. In addition, despite his civil party declaration under Article 7 of the CCP, the discontinuance of the criminal proceedings did not bar the third applicant from lodging a separate civil action with a civil court once he was notified of the decision to discontinue those proceedings. Both parties agreed that it was still open to the third applicant to request a determination of the merits of his civil claims, before the civil courts. In fact, at the date of the oral hearing before the Grand Chamber, a further two and a half years after the discontinuance decision, the third applicant was still considering whether to bring separate civil proceedings.

150. In these circumstances, and bearing in mind that it was open to him, either prior to his civil party declaration under Article 7 of the CCP or after the discontinuance of the criminal proceedings, to lodge separate civil proceedings, the very essence of the applicant's right has not been impaired such that it cannot be said that the third applicant was denied access to a court for the determination of his civil rights.

151. Before concluding, the Court finds it opportune to point out that, although under Article 6 § 1 of the Convention there is no self-standing obligation to investigate crime, for punitive purposes and still less for the purposes of facilitating the bringing of civil claims, other Convention provisions, *inter alia*, Articles 2, 3, and 4 of the Convention, impose a self-standing duty of investigation in the ambit of the State's positive obligations under those provisions. Moreover, under Article 6 § 1 of the Convention the State remains the guarantor of the right to have a serious and genuine dispute concerning civil rights heard within a "reasonable time", irrespective of which court has jurisdiction to do so. Thus, the Court would make it clear that it is particularly concerned about the serious dysfunction identified in San Marino at the relevant time.

152. In the light of the above considerations, however, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Dismisses*, unanimously, the Government's preliminary objection as to non-exhaustion of domestic remedies;
2. *Dismisses*, unanimously, the Government's preliminary objection as to the applicability of Article 6 § 1 in respect of the third applicant;
3. *Upholds*, by a majority, the Government's preliminary objection as to the applicability of Article 6 § 1 in respect of the first and second applicants and *declares* applications nos. 6319/21 and 6321/21 incompatible *ratione materiae* with the provisions of the Convention and accordingly inadmissible;
4. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention in respect of application no. 9227/21 (the third applicant).

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg on 24 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert
Deputy to the Registrar

Síofra O'Leary
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Schembri Orland;
- (b) joint partly dissenting opinion of Judges Bošnjak, Pastor Vilanova, Kūris, Jelić, Felici, Guerra Martins and Derenčinović.

S.O.L.
J.C.

CONCURRING OPINION OF JUDGE SCHEMBRI ORLAND

1. The case concerns the discontinuance of criminal proceedings against third parties once the investigations had become time-barred. The applicants complained under Article 6 § 1 of the Convention that they (as injured parties) did not have access to a court to determine their civil claims as a result of the inaction of the authorities which had led to the criminal proceedings being discontinued.

2. I fully endorse the finding of inapplicability of Article 6 § 1 of the Convention, and that of no violation as applied to the respective applicants, together with the analysis and conclusions reached by the majority in this case. This case has brought together several threads prevailing in the previous case-law of the Court. It has done so in a way which, in my opinion, should attune the different approaches towards a common way forward when assessing the right of access to a court of a civil complainant/victim seeking compensation as a party in the criminal process against the suspected perpetrator. I will limit my opinion to certain aspects of the judgment whilst endorsing its extensive recapitulation of the Court's case-law on all relevant points.

3. This case brought into focus the interplay between the procedural right to compensation in the criminal process claimed by a victim and the consideration that the Convention does not, *per se*, guarantee such a right and does not compel the Contracting Parties to enable civil claims in respect of damage to be made in criminal proceedings. Furthermore, once the applicability threshold is overcome, the judgment seeks to resolve the apparent dichotomy of existing case-law, between the right of access to a court, on the one hand, and the delays in the determination of the civil claim which can, in certain defined circumstances, effectively impede such access.

4. *Petrella v. Italy*¹, a Chamber case, which, relying on the preceding *Arnoldi v. Italy*², nevertheless came fresh in the wake of *Nicolae Virgiliu Tănase v. Romania*³, a Grand Chamber case, had caused a dilemma. The judgment in *Tănase* would exclude any right of access to a court where there is a possibility of alternative effective avenues of civil redress. In the *Tănase* scenario the issue of unreasonable delay is not relevant or applicable because the right of access is examined in a vacuum. The Chamber in *Petrella* eschewed the Grand Chamber approach and, moreover, considered Article 6 § 1 to be applicable at the investigative stage of the proceedings despite the fact that in the Italian system the joinder of the civil action to the criminal action was only possible in the subsequent trial phase. The corollary to this approach could see the imposition of a general positive obligation on member

¹ no. 24340/07, 18 March 2021.

² no. 35637/04, 7 December 2017.

³ [GC], no. 41720/13, § 207, 25 June 2019.

States to investigate crimes for the purpose of facilitating the bringing of civil claims where such a self-standing duty is not required because Articles 2, 3 and 4 of the Convention have not come into play.

5. The suggestion that member States could be exposed to a finding of a violation of the right of access to a court guaranteed by Article 6 § 1 of the Convention in similar situations, where such right was not recognised by the domestic legislator, or, where recognised, in full disregard of the procedural formalities applicable to the criminal process, would not only throw the principles of subsidiarity and margin of appreciation to the wind, but could, in my opinion, taint the criminal process with such an uncertainty that the very process could be compromised. Some practical issues come to mind. What criteria could be applied by a judge presiding over a criminal case to consider a victim as a civil party, where that victim has disregarded the very procedural formalities legally required of him/her? How would the suspect/accused react to a claimant who lacks the requisite formal status but expects the same procedural rights resulting from such status? What procedural rights could even be available to the victim in the criminal process, as a civil party (and not as a mere injured party), if that victim has not yet availed himself or herself of the procedural rights to claim such status according to the law?

6. The right of access to a court is not absolute. The first procedural obligation falls on the victim to regulate his or her actions in line with the clear and foreseeable laws of procedure and to acquire formal civil party status. The facts in this case show that the first and second applicants had not fulfilled the necessary formalities to be recognised as civil parties. Article 7 of the San Marino CCP is clear and unequivocal: “During criminal proceedings, a civil action is exercised by means of a signed declaration to the effect that one wants to join the proceedings as a civil party (*dichiarazione di costituzione di parte civile*)”. This legal provision still stands and it is this declaration which triggers the process for being joined to the case as a civil party. A mere reservation of the right has no such legal effect. Consequently, the first and second applicant could not claim to have the legal avenue before the criminal court closed to them by the judge’s inaction because, simply put, they had not done what was necessary to open that avenue.

7. These basic considerations define the moment when the right of access to a court *as a civil party in criminal proceedings* is effectively invoked by the victim. Prior to that moment, we only have mere intentions, express or implied, before us. Procedural law, which in many legal systems is a matter of public policy, deals with rights. A legitimate interest in an outcome may, in certain circumstances, give rise to a right, but not in full disregard of the requisite legal formalities envisaged by the domestic legislator in a manner which is compatible with the Convention.

8. Criminal procedure in this context falls to the member State to regulate, and parties to the criminal process, be they victims claiming a civil right (where this is possible), or the suspect/accused, are required to adhere to such

formalities. Quality of law was not an issue in this case, and neither did delayed justice form the scope of the complaint before the Grand Chamber, although it was put forward as the cause of the failure to secure a determination of the civil claim.

9. The observance of formalised rules of procedure, through which parties secure the determination of a civil dispute, is key to ensuring against arbitrariness. This is a basic principle affirmed in *Zubac v. Croatia*⁴ in the context of civil proceedings and consistently reaffirmed by the Court. This reasoning should equally apply to the current context and indeed the present judgment is faithful to the *Zubac* principles, which, as premised, are a constant in our case-law.

10. Key to the Court’s response to the question of applicability *ratione materiae* of Article 6 § 1 of the Convention, under its civil head, is the “civil party approach” as differentiated from an approach based on an injured-party or victim status. This fully recognises the authority of the domestic system to regulate civil claims in criminal proceedings, and requires that the procedural right of action should apply at the relevant stage of the criminal proceedings in issue (thereby avoiding the problems encountered for the respondent State in situations comparable to that found in *Arnoldi* and consolidated in *Petrella*, cited above). It is this requirement of adherence to the procedural formalities laid down in the domestic law that evidences the importance attached by the victim to the civil right. A nuanced consideration applies where no such formal civil party status is provided for by the legislator, and then Article 6 will apply when such a manifestation of the importance attached by the victim is clear. It was this non-compliance by the first and second applicants with the formalities of San Marino law which led to the conclusion that their complaint was incompatible *ratione materiae* with Article 6 § 1 of the Convention in its civil limb.

11. This is an eminently logical approach. A procedural right of action is triggered from the moment it is invoked and in accordance with the requisite formalities. There is no problem where an applicant has invoked such a right – Article 6 § 1 will be applicable if the criteria laid down in the judgment are also satisfied⁵. It also recognises the principle of autonomy of civil and criminal actions under San Marino law, which continues to leave the civil avenue open to the applicants, despite their having failed to comply with the

⁴ [GC], no. 40160/12, § 96, 5 April 2018.

⁵ The applicant must have a substantive civil right (such as the right to compensation for damage sustained) recognised under domestic law and, secondly, the domestic legislator must have endowed the victim of a crime with a (procedural) right of action to pursue that civil right in, and at the relevant stage of, the criminal proceedings; provided the civil right being pursued in the criminal proceedings is not actively (in other words, proceedings are not suspended) being pursued in parallel, before some other court. Lastly, the criminal proceedings must be decisive for the civil right in issue; in other words, the criminal proceedings must affect the civil component and must not have been brought abusively.

formalities required of them for the pursuit of their civil claims before the courts of criminal jurisdiction.

JOINT PARTLY DISSENTING OPINION OF JUDGES
BOŠNJAK, PASTOR VILANOVA, KŪRIS, JELIĆ, FELICI,
GUERRA MARTINS AND DERENČINOVIĆ

1. With due respect to our colleagues in the majority, we are unable to concur with their conclusions regarding the inadmissibility of the applications nos. 6319/21 (Stellino Fabbri) and 6321/21 (Angelina Marro). In our view, all three applications were admissible.

2. The rationale behind this dissenting opinion lies in the need to have an admissibility test characterised by sound logic and, secondly and above all, one that is capable of ensuring the necessary flexibility required by the great variety of different domestic legal frameworks governing the procedural means through which victims may seek damages in criminal proceedings.

3. In our opinion, the paragraphs from 88 to 93 introduce admissibility criteria that are insufficiently flexible and overly rigorous. Whilst we can agree with the requirement that victims must “demonstrate the importance they attach to [the] civil right” (meaning the civil right at issue in the criminal proceedings), it seems to us that limiting the means of demonstrating this importance to a very strict observance of the “formalised rules of procedure” is, by contrast, neither a wise choice, nor a choice imposed by the Convention. As the judgment recognises (see paragraph 90), there are also systems “having more flexible and less formalistic approaches (i.e. where no official ‘civil party’ status exists, for example, those systems requiring solely that a civil claim was lodged or brought to the attention of the domestic courts) ...”. This multifaceted nature of national systems, being very different from each other, and with rules that are not always clear, as the discussion on the present case has highlighted, suggests that a less formalistic approach is called for, one which seeks, on the one hand, to provide effective protection of the right of access to a court, and on the other, to ensure that a court cannot be reproached for excessive formalism. It is indeed well-enshrined in the Court’s case-law that “excessive formalism” can run counter to the requirement of securing a practical and effective right of access to a court under Article 6 § 1 of the Convention (see, for example, *Zubac v. Croatia* [GC], no. 40160/12, § 97, 5 April 2018, and the references therein). From the victimological perspective, such a lack of flexibility could have negative consequences, and could appear insensitive to a victim-oriented approach, which is now widely recognised.

4. The aim that should be pursued is to make the admissibility test “member State neutral”, as legal systems differ from one another, use various labels and formal frameworks for victims’ participation, allow for their formal claims at different stages, and so forth.

First of all, it is up to the Court to assess whether the applicant is an injured party or a victim of an alleged criminal offence; and, then, whether a civil

right of the applicant resulting from an alleged offence is at stake. Once these conditions are met, it would be necessary to ensure that domestic law provides for the seeking of damages or the claiming of a civil right in criminal proceedings. Moreover, the applicant has at least to demonstrate a clear and unequivocal intention to seek damages or to claim a civil right in criminal proceedings. The fact of seeking damages or claiming a civil right must not be, in the specific circumstances of the case, clearly inappropriate or clearly inadequate.

By following the test just outlined, it would be possible to prevent the different and multifaceted domestic procedural framework – that the victim must follow for seeking damages or claiming a civil right in the criminal proceedings – from assuming an excessive importance capable of compromising the very essence of the right of access to a court. At the same time, the margin of appreciation enjoyed by the High Contracting Parties in recognising, or not, the possibility for victims to claim reparation for the damage caused by a criminal offence in the criminal proceedings would still be respected.

5. If the conditions outlined above had therefore been applied to the applications lodged by Stellino Fabbri and Angelina Marro, they should have been considered admissible. Both applicants, in fact, declared themselves victims of personal injuries suffered in April 2016, perpetrated against them by N. (paragraph 12). Their right to physical integrity was therefore at stake (paragraph 13, with reference to medical reports). The law of the Republic of San Marino provides for the possibility of seeking damages in criminal proceedings (paragraph 27). Both applicants demonstrated a clear and unequivocal intention to seek damages in criminal proceedings; in fact they declared from their initial criminal complaint that they would “join any eventual proceedings against the person complained of”, also appointing a lawyer to legally represent them (see paragraph 13). The second applicant further asked for a date to be set for the taking of the requisite “oath of calumny”; the request was even reiterated, emphasising the risk that the proceedings might be discontinued (see paragraph 15). There is no element that allows it to be considered, in the specific circumstances of the case, that seeking damages in the criminal proceedings was inappropriate or inadequate.

Once declared admissible, both applications would, in our view, have led to a finding of a violation of Article 6 § 1 with reference to the right of access to a court, and in line with the test established by the present judgment (see paragraph 140). The investigating judge responsible for dealing with the complaints did not, in fact, take any steps at all (see paragraph 16). It therefore follows that the serious dysfunction of the domestic system is the sole reason for the discontinuance of the proceedings, the applicants having chosen to pursue the civil claim via the criminal avenue (see paragraph 140).

APPENDIX**List of cases**

No.	Application no.	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	6319/21	15/01/2021	Stellino FABBRI 1955 Acquaviva San Marinense	Marino Federico FATTORI Rossano FABBRI
2.	6321/21	15/01/2021	Angelina MARRO 1973 San Giovanni Italian	Marino Federico FATTORI Rossano FABBRI
3.	9227/21	02/02/2021	Andrea FORCELLINI 2003 Fiorentino San Marinense	Marino Federico FATTORI Rossano FABBRI