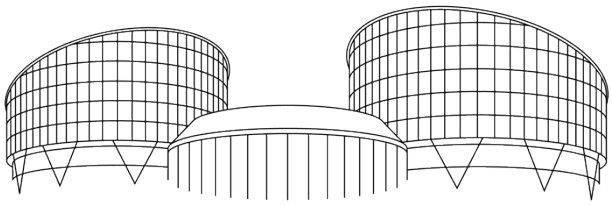

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ANNA TODOROVA v. BULGARIA

(Application no. 23302/03)

JUDGMENT

STRASBOURG

24 May 2011

FINAL

24/08/2011

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

In the case of Anna Todorova v. Bulgaria**,**

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. de Gaetano, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 23302/03) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian and Belgian national, Ms Anna Nikolova Todorova ("the applicant"), on 18 July 2003.

2. The applicant was represented by Mr S. Yankov, a lawyer practising in Plovdiv, Bulgaria. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged that the authorities had not properly investigated the death of her son in a road traffic accident and had deprived her of any redress in that regard. She also alleged that her civil claim against the person allegedly responsible for the accident had not been determined within a reasonable time.

4. The Belgian Government, having been informed of their right to intervene in the case (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court), did not avail themselves of that opportunity.

5. By a decision of 8 December 2009, the Court (Fifth Section) declared the application admissible.

6. The application was later transferred to the Fourth Section of the Court, following the re-composition of the Court's sections on 1 February 2011.

7. Neither the applicant nor the Government filed further observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1949 and lives in Seraing, Belgium.

9. On 24 October 1994 her son, Mr Zhivko Todorov Todorov, who was born in 1972 and lived in Plovdiv, Bulgaria, was involved in a road traffic accident. On 2 November 1994 he died from his injuries.

A. The events of 24 October 1994 and Mr Todorov's death

10. In the autumn of 1994 Mr Todorov befriended S.N. On the morning of 24 October 1994 the two travelled from Plovdiv to Varna. They were travelling by car, a BMW 5 Series belonging to a company owned by S.N.'s family. In the afternoon they left Varna and headed back to Plovdiv. On their way back, they passed through the town of Chirpan at about 10 p.m., where they met S.N.'s brother and two friends of his, I.M. and I.I. According to later statements of S.N. and a friend of his, S.S. (see paragraphs 27 and 28 below), shortly after that on the road to Plovdiv they saw S.S., whose car was stopped at the side of the road because he had a flat tyre. They lent him the BMW's spare tyre and continued on their way.

11. When, some time after 11 p.m., they were passing through the village of Plodovitovo, where the speed limit was fifty kilometres per hour, they started overtaking a lorry with a trailer. The lorry, driven by P.P., reached a crossroad and started turning left. The BMW was moving behind it at about one hundred kilometres per hour. It did not slow down and collided head-on with the lorry's trailer. Immediately after the crash the BMW caught fire. P.P., who had not sustained any injuries, got out of the lorry and, with the help of the driver of a Lada Niva with registration plates from the town of Yambol, took Mr Todorov and S.N. out of the burning BMW.

12. At about midnight Mr Todorov and S.N. were taken to a hospital in Chirpan. Mr Todorov was in a very bad condition and unconscious. S.N.'s injuries, although serious, were not as critical. Some time later a police officer came to the hospital. He was unable to interview Mr Todorov or S.N., the former being unconscious and the latter apparently being in a state of shock and incapable of making coherent statements. After that the officer visited the scene of the accident and took notes and pictures.

13. On 28 October 1994 Mr Todorov was transferred to a hospital in Plovdiv. He did not regain consciousness and died on 2 November 1994.

14. On 3 November 1994 a doctor from the forensic medicine department of the Plovdiv Medical University performed an autopsy on Mr Todorov's body. He found numerous traumatic injuries to his head,

limbs and internal organs. The doctor's conclusion was that he had died from his brain injuries. In his opinion, these injuries had been caused by the impact of the collision.

B. The criminal proceedings

15. On the night of the accident the police opened an inquiry into the actions of S.N. on suspicion that, by breaching road traffic regulations, he had caused the accident and had thus negligently inflicted bodily injury on Mr Todorov.

16. On 25 October 1994 the police interviewed P.P. He described the accident and said that he had taken the two injured men out of the BMW with the help of other drivers who had stopped nearby. The same day he gave a blood sample. The sample was analysed on 1 November 1994 and it was determined that his blood had no alcohol content.

17. On 16 December 1994 the officer investigating the case asked an expert to determine whether Mr Todorov's death had been a result of the accident.

18. On 3 January 1995 the police sent the case to the Chirpan District Prosecutor's Office, proposing to convert the inquiry into a fully fledged homicide investigation. The case was then forwarded to the Stara Zagora Regional Prosecutor's Office, which on 20 January 1995 opened a criminal investigation.

19. On 9 February 1995 the investigator to whom the case had been assigned asked an expert to determine whether P.P. had manoeuvred properly. In his report, filed on 5 March 1995, the expert said that P.P. had carried out the left turn correctly and that the accident had occurred because of the BMW's high speed, well above the maximum allowed on that part of the road.

20. On 1 March 1995 the investigator interviewed P.P. again.

21. On 7 March 1995 the investigator asked an expert to determine (a) the exact spot where the BMW and the lorry's trailer had collided; (b) the BMW's and the lorry's exact speed before the accident; (c) the distance between the BMW and the lorry at the time the lorry began its left turn; and (d) whether it had been possible for the BMW's driver to avoid the accident. In his report, filed on 13 March 1995, the expert said that (a) the collision had taken place on the road; (b) the lorry had been travelling at thirteen kilometres per hour and the BMW at about one hundred kilometres per hour; (c) the BMW had been eighty-three metres behind the lorry at the time the lorry had started to turn; and that (d) the BMW's driver could have stopped before the collision point.

22. It seems that no procedural steps were taken during the following months.

23. On 6 September 1995 the investigator sent the file to the Stara Zagora Regional Prosecutor's Office with a recommendation to discontinue the proceedings. On 26 September 1995 that Office referred the case back, noting that, although more than half a year had passed following the opening of the proceedings, the inquiries had not been comprehensive and thorough. No steps had been carried out with the participation of S.N. and various other pieces of evidence had not been gathered.

24. In the meantime, on 14 September 1995 the applicant and her husband, who later passed away, brought a civil party claim against S.N.

25. On 23 October 1995 the investigator interviewed S.N. He described the events of 24 October 1994 and asserted that, although the BMW had belonged to his and his brother's company, Mr Todorov had been the one driving it at the time of the accident. He also said that he would be able to find witnesses who could confirm that assertion.

26. On 17 November 1995 the investigator interviewed P.P. once again. He mentioned the driver of the Lada Niva (see paragraph 11 above), but said that he did not remember his name or the exact number of his registration plates. He described how the two of them had taken the two injured men out of the BMW, and said that the one behind the wheel had been S.N. After that the investigator organised an identity parade at which P.P. identified S.N. as the BMW's driver.

27. On 22 November 1995 the investigator interviewed S.S. He said that he knew S.N. well, but had not known Mr Todorov at all. He also said that when S.N. and Mr Todorov had stopped to help him with the flat tyre, the one driving the BMW had been Mr Todorov.

28. On 24 November 1995 the investigator charged S.N. and interviewed him. S.N. asserted that the person driving the BMW at the time of the accident had been Mr Todorov. On the way from Varna they had switched several times, but at the time of the accident the one behind the wheel had been Mr Todorov. This had been witnessed by several people in Chirpan. It had also been witnessed by his friend, S.S., on the road between Chirpan and the place of the accident.

29. The same day the investigator interviewed I.M. and I.I., who said that they had been having dinner with S.N.'s brother in Chirpan when they had met S.N. and Mr Todorov. They also said that they were acquainted with S.N., but had known Mr Todorov only by sight. Both of them stated that the one driving the BMW at the time of their meeting had been Mr Todorov.

30. On 7 December 1995 the investigator sent the case to the Stara Zagora Regional Prosecutor's Office, recommending that the proceedings be discontinued. He noted that the technical expert report and the inspection of the site of the accident showed that the accident had been the fault of the BMW's driver. The only contentious issue was whether this had been S.N. or Mr Todorov. P.P. had stated that the one behind the wheel had been S.N.

However, the latter had disputed this assertion and had provided three witnesses – I.M., I.I. and S.S. – who had all asserted that the one driving the BMW had been Mr Todorov. It could therefore be concluded that the BMW had been driven by Mr Todorov.

31. On 10 January 1996 the Stara Zagora Regional Prosecutor's Office referred the case back to the investigator for additional investigation.

32. On 18 January 1996 the investigator interviewed the police officer who had started the inquiry. He said that he had first gone to the hospital and then to the scene of the accident, but was unable to say which of the two persons in the BMW had been the driver.

33. On 4 April 1996 the investigator asked two medical experts to assess the extent of S.N.'s injuries and to express an opinion on whether he had indeed been unable to make coherent statements after the accident. In their report, filed on 9 May 1996, the experts said that it was impossible to determine this solely from the materials in the file because shortly before the accident S.N. had been involved in another road traffic accident. It was necessary to examine him personally.

34. On 11 July 1996 the investigator asked five experts to express their opinion on whether Mr Todorov or S.N. had been driving the BMW at the time of the accident. However, the experts were unable to examine S.N., who had gone missing, and the report could not be completed. On 30 December 1996 the experts sent the file back to the investigator and asked him to order that S.N. be compelled to appear.

35. On 11 April 1997 the Stara Zagora Regional Prosecutor's Office, to which the file had been sent, returned it for further investigation. It ordered that S.N. be compelled to submit to an examination by the experts.

36. On 24 April 1997 the investigator requested the police to trace S.N. with a view to summoning him. The police supplied information about his address on 2 May 1997. On 13 May 1997 he was summoned for 20 May 1997, but failed to appear. Accordingly, on 9 July 1997 the investigator ordered that he be brought by force. On 23 July 1997 the Stara Zagora Regional Prosecutor's Office decided to place him in custody. On 21 November 1997 instructions were given for him to be found.

37. On 30 March 1998 S.N. appeared before the investigator. He was charged, interviewed and allowed to examine the file with his counsel. He said that he stood by his previous statements.

38. On 13 October 1998 the investigator sent the case to the Chirpan District Prosecutor's Office, recommending that S.N. be brought to trial.

39. On 26 January 1999 the Stara Zagora Regional Prosecutor's Office sent the case back to the investigator, noting, among other things, that he had not properly worded the charge, that no information had been gathered on any previous road traffic offences committed by S.N., and that the medical expert report ordered on 11 July 1996 had not been finalised. It instructed the investigator to examine whether P.P. had made the left turn in

line with road traffic rules and, if he found that this was not the case, to charge him as well.

40. On 9 February 1999 the investigator asked an expert to determine whether P.P. had turned left properly. In his report, filed on 5 March 1999, the expert stated that P.P. had not breached any road traffic rules.

41. On 11 March 1999 the investigator asked five experts to determine, on the basis of the injuries sustained by Mr Todorov and S.N., which of the two had been driving the BMW at the time of the accident. The experts studied the documents in the file, including the medical report drawn up when Mr Todorov had been admitted to the hospital in Chirpan, his autopsy report, and a medical report on S.N.'s condition on the day after the accident. On 8 June 1999 they examined S.N. and on 11 June 1999 subjected him to an X-ray and a CAT scan. However, they were not able to inspect the BMW, as it had apparently disappeared.

42. On 14 July 1999 the investigator interviewed S.N. in relation to the BMW's whereabouts. He said that he had left it on a street in the village of Gradina. Somebody had later removed it from there and he had no idea where it was.

43. In their report the experts said that, without inspecting the BMW and on the basis of the medical data alone, they could not reach a definite conclusion as to which of the two had been driving it at the time of the accident.

44. On 23 August 1999 the investigator charged S.N. anew and interviewed him, and on 7 September 1999 ordered that the applicant be allowed to participate in the proceedings as a civil claimant.

C. The discontinuance of the proceedings and the applicant's legal challenge against that

45. On 15 September 1999 the investigator sent the case to the Stara Zagora Regional Prosecutor's Office, proposing that S.N. be brought to trial.

46. However, on 27 September 1999 the Stara Zagora Regional Prosecutor's Office decided to discontinue the proceedings, reasoning that it had not been conclusively established who had been driving the BMW at the time of the accident. According to I.M., I.I. and S.S., it had been Mr Todorov, whereas P.P. maintained that it had been S.N. The experts had been unable to arrive at a categorical conclusion on this point. It was also unclear whether the line in the middle of the carriageway had been continuous or dotted. Therefore, the accusation had not been proved. On 19 May 2001 the prosecutor's office sent the case of its own motion to the Stara Zagora Regional Court.

47. In a decision of 6 June 2001 the Stara Zagora Regional Court, noting that in accordance with an intervening legislative amendment the decision to

discontinue an investigation was no longer subject to automatic review by the courts, but could only be reviewed pursuant to an application by those concerned, referred the case back to the prosecution authorities with instructions to inform the applicant of the discontinuance.

48. On 27 June 2001 a prosecutor of the Stara Zagora Regional Prosecutor's Office again discontinued the investigation. He described the circumstances of the accident and said that it was clear that the BMW's driver had breached road traffic regulations, whereas P.P. had properly made a left turn. However, despite taking all the necessary steps, the investigation had been unable to ascertain who had been driving the BMW at the time of the accident. Three witnesses – I.M., I.I. and S.S. – were categorical that the BMW had been driven by Mr Todorov. The experts were unable to arrive at a definite conclusion on this point. The police officer who had inspected the scene could not say who had been driving the BMW either. On the other hand, P.P., when interviewed, had stated that the BMW had been driven by S.N., and had identified him as the driver during an identity parade. It was also unclear whether the line in the middle of the carriageway had been continuous or dotted. Therefore, the accusation had not been proved.

49. This decision was sent to the applicant on 2 January 2003.

50. On 10 January 2003 the applicant sought judicial review by the Stara Zagora Regional Court. She argued that the conclusion that it could not be determined whether S.N. had been behind the wheel at the time of the accident was based on incomplete evidence. The authorities' preference for the testimony of I.M., I.I. and S.S., who had not witnessed the accident, over the testimony of P.P., who had taken the victims out of the burning BMW, was unwarranted. The discrepancy between their versions should have been elucidated through a confrontation. She further pointed out that it would not have been very hard to establish the identity of the Lada Niva's driver and then interview him, which had not been done.

51. On 24 January 2003 the court, observing that the prosecution authorities had failed to serve a copy of the application on S.N., referred the case back to them with instructions to do so. They apparently complied with these instructions and re-sent the file to the court.

52. After holding a hearing on 7 May 2003, in a decision of 23 May 2003 the court upheld the decision to discontinue the proceedings. It held that when hearing a challenge against a decision discontinuing a criminal investigation it could not scrutinise the manner in which the prosecution authorities had assessed the evidence, nor take their place and fill in the gaps in their reasoning. It was not competent to gather fresh evidence either; its assessment had to be based on the available material. Accordingly, even if it were to find gaps in it, it could not set aside the discontinuance decision on that ground.

53. The applicant appealed, but, following a legislative amendment effective from 3 June 2003 and providing that first-instance court decisions reviewing prosecutor's decisions to discontinue criminal investigations were final, the court terminated the proceedings on 23 June 2003.

54. Throughout the proceedings the applicant wrote many letters to the prosecuting authorities, urging them to expedite the processing of the case. On some of those occasions the Chief Prosecutor's Office sent letters to the lower prosecutor's offices, instructing them to finalise the case promptly.

D. The civil proceedings brought by the applicant against S.N.

55. On 7 December 1998 the applicant brought a tort claim against S.N. in the Plovdiv Regional Court. After holding a hearing on 5 February 1999, on 16 March 1999 the court stayed the proceedings pending the outcome of the criminal investigation. On several occasions between 2001 and 2003 it enquired about the investigation's progress. On 22 December 2003, following the upholding of the investigation's discontinuance, it resumed the examination of the claim.

56. The court then held two hearings, on 11 February and 9 April 2004. The applicant could not be found and summoned for the first of those at her home, and was regarded as summoned under a rule allowing constructive summoning where a party failed to inform the court of a change of address. The court summoned the applicant for the second hearing through the counsel who represented her before the proceedings were stayed. However, neither the applicant nor the lawyer appeared. The court admitted in evidence the prosecutor's decision to discontinue the criminal proceedings and the decision whereby the Stara Zagora Regional Court had upheld the discontinuance (see paragraphs 48 and 52 above).

57. The Plovdiv Regional Court dismissed the applicant's claim on 10 May 2004. It held as follows:

> "[The] prosecutor's decision [of 27 September 1999 – see paragraph 46 above] and [the] Stara Zagora Regional Court's decision [of 23 May 2003 – see paragraph 52 above] were admitted in evidence without being challenged. The prosecutor's decision shows that the criminal proceedings against [S.N.] under Article 343 § 1 (c), read in conjunction with Article 342 § 1 of the Criminal Code [see paragraph 60 below] have been discontinued for lack of evidence. The reasons for the discontinuance are that it was not established in a categorical manner who had driven the car at the time of the road traffic accident, and that there was a lack of categorical findings as to whether the line in the middle of the carriageway at the area of the accident had been continuous or dotted. In those circumstances, the [court] finds that the claims under section 45(1) of the Obligations and Contracts Act [see paragraph 61 below] are unfounded and should not be allowed. ..."

58. Notice of the court's judgment was sent to the applicant's address in Bulgaria, but could not be delivered because she no longer lived there.

Another notice was sent to the above-mentioned lawyer; it was received by a colleague of his on 8 June 2004.

59. There is no indication that the applicant appealed against the judgment.

II. RELEVANT DOMESTIC LAW

60. Article 343 § 1 (c), read in conjunction with Article 342 § 1 of the Criminal Code 1968, makes it an offence to cause the death of another by driving in reckless disregard of road traffic regulations. The penalty on conviction is up to six years' imprisonment.

61. The civil-law consequences of road traffic accidents are governed by the general law of torts. The relevant provisions are set out in sections 45 to 54 of the Obligations and Contracts Act 1951 (*Закон за задълженията и договорите*). Section 45(1) provides that everyone is obliged to make good the damage which they have, through their fault, caused to another. In all cases of tortious conduct, fault is presumed unless proved otherwise (section 45(2)). Compensation is due for all damage that is a direct and proximate result of the tortious act (section 51(1)). The amount of compensation in respect of non-pecuniary damage is to be determined by the court in equity (section 52).

62. The law concerning civil-party claims in criminal proceedings and separate civil claims is set out in the Court's admissibility decision in the case of *Tonchev v. Bulgaria* ((dec.), no. 18527/02, 14 October 2008) and in paragraphs 29 and 30 of the Court's judgment in the case of *Dinchev v. Bulgaria* (no. 23057/03, 22 January 2009).

63. The provisions governing discontinuance of criminal proceedings before trial are set out in the Court's decision in the case of *Nenkov v. Bulgaria* ((dec.), no. 24128/02, 7 October 2008).

64. The rules governing stays of civil proceedings and the effects of a decision to discontinue a criminal investigation on the examination of a separate civil claim arising out of the same events were at the relevant time contained in Articles 182, 183 and 222 the Code of Civil Procedure 1952. They provided as follows:

Article 182 § 1

"The court shall stay the proceedings:

...

(d) whenever criminal elements, the determination of which is decisive for the outcome of the civil dispute, are discovered in the course of the civil proceedings."

Article 183 § 1

"Proceedings which have been stayed shall be resumed on the court's own motion or upon a party's request after the respective obstacles have been removed..."

Article 222

"The final judgment of a criminal court is binding on the civil court which examines the civil consequences of the criminal act in relation to the points whether the act was perpetrated, whether it was unlawful, and whether the perpetrator was guilty of it."

65. The former Supreme Court has given a number of rulings as to the effect of the above provisions.

66. In a decision of 1 December 1966 (тълк. реш. № 142 от 1 декември 1966, ОСГК на ВС), the General Meeting of the Civil Chambers of the former Supreme Court, in giving a binding interpretation of Articles 182 § 1 (e) and 222 of the Code, held that a prosecutorial decision discontinuing a criminal prosecution on the ground that the accused has not committed the impugned act is, unlike a judgment of conviction or acquittal, not binding on the civil court that rules on the civil consequences of that act.

67. In a judgment of 18 January 1980 (реш. № 3421 от 18 януари 1980 г. по гр. д. № 1366/1979 г., ВС, I г. о.), the First Civil Division of the Supreme Court held:

"In principle, the fact that a criminal offence [has been committed] may be established only in proceedings under the Code of Criminal Procedure. That is why, by Article 182 [§ 1] (d) of the Code of Civil Procedure [1952], where an alleged civil right derives from a fact which amounts to an offence under the Criminal Code, the civil court is bound to stay the civil proceedings. That is necessary in order to follow the judgment of the criminal court. This is mandatory for the civil courts in all cases, regardless of the criminal offence to which [the proceedings] relate. The binding force of the judgments of criminal courts is set out in Article 222 of the Code of Civil Procedure [1952].

Under [that provision], the final judgment of a criminal court is binding on the civil court which examines the civil consequences of the criminal act in relation to the points whether the act was perpetrated, whether it was unlawful, and whether the perpetrator was guilty of it. The law does not allow the [civil] court freely to assess the evidence and requires that court, in order to abide by the criminal judgment, to regard as established the facts that that judgment has found to have occurred or otherwise. The criminal court's judgment is *res judicata* in relation to the matters mentioned in Article 222. That *res judicata* effect has to be taken into account by all courts and State authorities. It cannot be challenged when the criminal court's judgment has taken effect. It presupposes that the act that forms the subject matter of the criminal judgment and the act that needs to be established in the civil proceedings coincide. It does not matter whether the act has been perpetrated by the defendant to the civil action or is an act by a third party that has an effect on the defendant's liability. [The court] must treat as binding not only convictions, but also acquittals, in cases where they have established the lack of elements of the tort [in question]: for instance, the lack of an tortious act, [or] the lack of a causal link between the act and the damage [suffered by the claimant]. However, a criminal court's judgment does not

need to be treated as binding where it has acquitted the defendant on the ground that his or her act was not criminal – an act, although not amounting to a criminal offence, may still be a tort. The binding effect of the criminal court's judgment relates to all elements of the criminal offence. When the amount of the damage is an element of the offence, the criminal court's findings as to that amount are binding on the court which rules on the civil claim. When the criminal court has made findings in relation to the amount of the damage caused because it was an element of the criminal offence of which a person has been accused, those findings are binding on the court determining the civil claim. [For instance,] in the case of a theft, where the sum of money stolen is an element of the criminal offence, the criminal court's findings as to that sum are binding in the civil case. [Similarly, in] the case of the offence of wilful mismanagement ..., the amount of damage caused is an element of the offence; in order for the impugned act to have constituted an offence, it must have caused significant damage. In order to determine whether the damage is significant, the criminal court must make findings as to its amount. That is why the amount of the damage featuring in the criminal court's judgment is binding [on the civil court]."

68. In a judgment of 13 December 1988 (реш. № 817 от 13 декември 1988 г. по гр. д. № 725/1988 г., ВС, IV г. о.), concerning a claim for damages arising out of a road traffic accident, the Fourth Civil Division of the former Supreme Court held:

"In dismissing the claim, the [lower] court found that the only party responsible for the accident was the claimant, who, at a distance of about ten metres, suddenly jumped in front of the car in order to cross the street and that therefore, despite the steps taken by the driver, the collision was not avoided.

That conclusion was based on the fact that the criminal investigation against the driver had been discontinued on the grounds of lack of evidence, lack of some of the elements rendering the act a criminal offence, and lack of guilt.

By basing its findings on the discontinuance of the criminal investigation, the [lower court] acted in breach of Article 222 of the Code of Civil Procedure, which provides that only the final judgment of a criminal court is binding on the civil court which deals with the civil consequences of the impugned act ... The prosecutor's decision to discontinue the investigation has no evidential value and his or her findings are not binding on the court dealing with the civil consequences of the act. Where there is no judgment of a criminal court finding the accused not guilty of causing the claimant's injuries, the civil court must establish whether or not the defendant has committed the alleged act on the basis of all types of evidence admissible under the Code of Civil Procedure. The prosecutor's decision to discontinue the investigation has no evidential value and does not show that the defendant is not responsible for the road traffic accident."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

69. The applicant complained that the authorities had not investigated the death of her son properly and had deprived her of any redress in that regard. She relied on Article 2 of the Convention which provides, in so far as relevant:

> "1. Everyone's right to life shall be protected by law. ..."

A. The parties' submissions

70. The Government submitted that the investigation of the accident had started immediately. The case had been referred back for further investigation many times, and all required steps had been taken. The authorities had gathered all relevant pieces of evidence, and the investigation had been comprehensive, impartial and independent.

71. In the applicant's view, the investigation could not be seen as effective. She pointed out that the authorities had failed to finalise it for an extremely long time, and asserted that they had made glaring omissions in the gathering and assessment of evidence. In particular, P.P. had not been properly interviewed. No attempt had been made to identify and question the driver of the Lada Niva. S.N. had been interviewed for the first time about a year after the accident, which had allowed him to concoct a favourable version of the events. No efforts had been made to verify S.S.'s statement by, for instance, checking whether the BMW's spare tyre was missing. All expert reports had been ordered belatedly and had accordingly been unable to arrive at reliable conclusions. No serious efforts had been made to trace S.N. when he had gone missing between 1997 and 1998. No attempt had been made to test I.M.'s and I.I.'s statements. The emergency medical doctors and nurses had not been interviewed, and the BMW had not been inspected and preserved for further testing. None of these deficiencies had been rectified by the court hearing the application for judicial review of the decision discontinuing the proceedings because of the stance that it had taken as to its competence in such proceedings. This stance had given the prosecution authorities unlimited discretion and had made it possible for their fully unwarranted conclusions to stand.

B. The Court's assessment

72. Article 2 does not concern only deaths resulting from the use of force by agents of the State. In the first sentence of its first paragraph it lays

down a positive obligation on the Contracting States to take appropriate steps to safeguard the lives of those within their jurisdiction. That obligation applies in the context of any activity in which the right to life may be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII). The Court has held, in relation to the medical sphere, that in case of deaths of patients in care, whether in the public or private sector, the above obligation calls for an effective judicial system which can determine the cause of death and bring those responsible to account (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, § 89, ECHR 2004-VIII; and *Šilih v. Slovenia* [GC], no. 71463/01, § 192, 9 April 2009). The same applies to deaths resulting from road traffic accidents (see *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007).

73. Although in some situations compliance with that obligation entails resort to criminal-law remedies (see *Öneryıldız*, cited above, § 93, concerning a dangerous household-refuse tip, as well as *Al Fayed v. France* (dec.), no. 38501/02, §§ 73-78, 27 September 2007, and *Railean v. Moldova*, no. 23401/04, § 28, 5 January 2010, concerning road traffic accidents in which lives were lost in suspicious circumstances), if the infringement of the right to life is not intentional, Article 2 does not necessarily require such remedies; the State may meet its obligation by affording victims a civil-law remedy, either alone or in conjunction with a criminal-law one, enabling any responsibility of the individuals concerned to be established and any appropriate civil redress, such as an order for damages, to be obtained (see *Calvelli and Ciglio*, § 51; *Vo*, § 90; and *Šilih*, § 194, all cited above). However, that remedy should exist not only in theory; it must operate effectively in practice, within a time-span allowing the case to be examined without unnecessary delay (see *Calvelli and Ciglio*, cited above, § 53 *in fine*; *Byrzykowski v. Poland*, no. 11562/05, § 105 *in fine*, 27 June 2006; *Dodov v. Bulgaria*, no. 59548/00, §§ 83 *in fine* and 95, ECHR 2008-...; *Šilih*, cited above, § 195; *G.N. and Others v. Italy*, no. 43134/05, § 96, 1 December 2009; and *Oyal v. Turkey*, no. 4864/05, § 74, 23 March 2010). The object and purpose of the Convention as an instrument for the protection of individual human beings requires its provisions to be interpreted and applied so as to make its safeguards practical and effective (see *Öneryıldız*, cited above, § 69).

74. In the instant case, there is nothing to indicate that the death of the applicant's son was caused intentionally, and the circumstances in which it occurred were not such as to raise suspicions in that regard. Therefore, Article 2 did not necessarily call for a criminal-law remedy. The Court must then take a comprehensive look at the procedures that were available to the applicant in relation to her son's death. There were two such procedures. The first was the criminal investigation opened by the prosecuting authorities; the applicant took part in it and brought a civil claim (see

paragraph 24 above). The second was the separate civil action that the applicant brought against S.N. (see paragraph 55 above). The question is whether in the concrete circumstances any of those satisfied the State's obligation under Article 2 of providing an effective judicial system (see *Byrzykowski*, cited above, §§ 106 and 107).

75. The Court will start by examining the manner in which the criminal investigation unfolded, because such proceedings were by themselves capable of meeting that obligation (see *Šilih*, cited above, § 202, and *Zavoloka v. Latvia*, no. 58447/00, §§ 36 and 39, 7 July 2009).

76. The first striking feature of that investigation is its considerable length: it lasted in total more than six and a half years (see paragraphs 15 and 46 above). That was owing to a number of delays and inadequacies in the carrying out of vital investigative steps, which made it necessary for the prosecuting authorities to refer the case back to the investigating authorities on no less than four occasions (see paragraphs 23, 31, 35 and 39 above, and *Byrzykowski*, cited above, § 111). It then took another three years and almost nine months to inform the applicant of the investigation's discontinuance and examine her legal challenge against that (see paragraphs 46-53 above).

77. Secondly – and this point is closely related with the first – it does not seem that the authorities in charge of the proceedings deployed reasonable efforts to gather the evidence and establish the facts. They were able to determine quite early on that the accident had been the fault of the car's driver, not the lorry's (see paragraphs 19 and 30 above). The only material outstanding issue was, as noted by them, who this driver had been: the applicant's son or the accused, S.N. The authorities were faced with two conflicting versions on that point. The first was that of a direct eyewitness, P.P., who was not related to the accused and asserted that it was he who had been driving the car. The second was that of the accused, supported by three witnesses, I.M., I.I. and S.S., who were friends of his and were not direct eyewitnesses (see paragraphs 25-29 above). It is beyond doubt that it is for the domestic authorities to determine such factual issues. The question, however, is whether they made a reasonable attempt to do so.

78. To determine the point, the investigator in charge of the case interviewed the police officer who had started the inquiry (see paragraph 32 above) and tried to obtain an expert opinion. However, as both of those steps were taken a considerable time after the events, and as the second of them was not properly pursued (see paragraphs 33-43 above), they did not yield any information. The authorities did not explore any other options to resolve the factual contradiction with which they were faced.

79. In view of those oversights and, more importantly, of the inordinate amount of time that it consumed, the criminal investigation can hardly be regarded as effective for the purposes of Article 2. It is, then, necessary to

examine the effectiveness of the separate civil proceedings brought by the applicant (see *Šilih*, §§ 202 and 203, and *Dodov*, § 91, both cited above).

80. In the Court's view, those proceedings were, in principle, capable of providing adequate redress in relation to the death of the applicant's son (see *Rajkowska*, cited above). However, the Court does not consider that they did so in the instant case, for the following reasons.

81. Firstly, the proceedings lasted five years and almost five months, at one level of jurisdiction, because, under the Bulgarian Code of Civil Procedure, they had to be, and were in fact, stayed pending the outcome of the criminal investigation (see paragraphs 55 and 64-68 above). While there was nothing inherently wrong with the stay (see *Byrzykowski*, § 116, and *Šilih*, § 205, both cited above), the underlying delays in the criminal investigation were, as already noted, problematic (ibid., as well as, *mutatis mutandis*, *Djangozov v. Bulgaria*, no. 45950/99, § 38, 8 July 2004, and *Todorov v. Bulgaria*, no. 39832/98, § 48, 18 January 2005). As the Court observed above, the requirements of Article 2 cannot be met if the available remedies do not operate effectively within a reasonable time. Indeed, while the proceedings were stayed the applicant could not adduce any evidence, while at the same time, with the passage of time, the availability of such evidence greatly diminished. As noted above, the delay with which the criminal investigating authorities acted prevented the experts appointed by them from elucidating a vital aspect of the case. It is true that after the proceedings were resumed, the applicant did not take part in them and did not try to adduce evidence in support of her claim. However, it would not be realistic to expect her to do so after so much time had elapsed since the events.

82. Secondly, the trial court dismissed the applicant's claim exclusively on the basis of the findings made in the criminal investigation (see paragraph 57 above), which were, as already noted, tainted by the failure to gather in due time crucial pieces of evidence (see, *mutatis mutandis*, *Eugenia Lazăr v. Romania*, no. 32146/05, § 90, 16 February 2010). It is true that the court's approach could be explained by the applicant's failure to pursue diligently her civil claim after the proceedings were resumed, with the result that the court did not have before it any other evidence on which to base its ruling. It is also true that in an appeal against the trial court's judgment the applicant would probably have been able to obtain from an appeal court a ruling that the case should be examined on the basis of all the evidence, because under Bulgarian law a civil court is not formally bound by the findings that the prosecuting authorities make when discontinuing a criminal investigation (see paragraphs 64-68 above, as well as *Assenov and Others v. Bulgaria*, 28 October 1998, § 112, *Reports of Judgments and Decisions* 1998-VIII, and, in contrast, *Tarariyeva v. Russia*, no. 4353/03, § 101, 14 December 2006). However, it cannot be overlooked that an appeal would have consumed even more time, and that the applicant would have

faced even greater – possibly insuperable – difficulties, many years after the events, to produce convincing evidence in support of her claim (see, *mutatis mutandis*, *Atanasova v. Bulgaria*, no. 72001/01, § 46 *in fine*, 2 October 2008, and *Dinchev*, cited above, § 50 *in fine*). In as much as the criminal investigation failed to shed sufficient light on the facts surrounding the death of the applicant's son, in practice the applicant was deprived of access to the effective judicial system required by Article 2 of the Convention (see paragraphs 72 and 73 above). Therefore, in the specific circumstances of this case the civil-law remedy that was available to her cannot be regarded as effective for the purposes of that provision.

83. The Court concludes that the legal system as a whole, faced with an arguable case of a negligent act causing death, failed to provide an adequate and timely response consonant with the State's obligation under Article 2 of the Convention to provide an effective judicial system. There has therefore been a violation of that provision.

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

84. The applicant complained that her claim for damages against S.N. had not been determined within a reasonable time. She relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

85. The Government submitted that the length of the criminal proceedings was not attributable to the authorities.

86. The applicant submitted that those proceedings had lasted an inordinate amount of time.

87. Having regard to its findings under Article 2, the Court considers that it is not necessary to examine separately whether there has been a violation of Article 6 § 1 of the Convention (see *Byrzykowski*, § 121, and *Šilih*, § 216, both cited above).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. Article 41 of the Convention provides:

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

A. Damage

89. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage. She submitted that she had suffered greatly as a result of the tragic loss of her son. That suffering had been amplified by the inability of the legal system to bring those responsible to justice for so many years.

90. The Government did not comment on the applicant's claim.

91. The Court observes that the State was not found liable for the death of the applicant's son, but solely for its failure to provide an adequate and timely response to the road traffic accident in which he lost his life. The Court nevertheless considers that the applicant must have experienced severe frustration on that account. Ruling in equity, as required under Article 41, the Court awards her EUR 8,000, plus any tax that may be chargeable.

B. Costs and expenses

92. The applicant sought reimbursement of EUR 5,000 incurred in expenses for the domestic proceedings, and EUR 5,000 incurred in lawyer's fees for the Strasbourg proceedings. She did not provide any documents in support of her claim.

93. The Government did not comment on the applicant's claim.

94. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been, *inter alia*, actually incurred. To this end, Rule 60 §§ 2 and 3 of the Rules of Court provides that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court "may reject the claims in whole or in part". In the present case, noting that the applicant has not produced any documents in support of her claim, the Court does not make any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 2 of the Convention, in that the State failed to provide an effective judicial system in relation to the death of the applicant's son;

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

3. *Holds* by six votes to one
   (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Nicolas Bratza President