La CEDU sull'aspetto procedurale del diritto alla vita
(CEDU, sez. I, sent. 6 febbraio 2020, ric. n. 40394/10)

La Corte EDU si è pronunciata sul diritto alla vita sancito dall'articolo 2 della Convenzione. Nel caso in esame, la ricorrente lamentava che lo Stato era responsabile dell'incidente stradale che era costato la vita a suo figlio e a sua sorella. Lamentava inoltre, che le successive indagini erano state inefficaci.
La Corte non potendo giungere a conclusioni riguardo alla presunta responsabilità dello Stato per la morte del figlio e della sorella della ricorrente, ha limitato l'esame alla sola valutazione della conformità delle indagini nazionali alle norme pertinenti ai sensi dell'articolo 2 della Convenzione, attinente all'aspetto procedurale.
La Corte ha notato che dopo aver appreso dell'incidente mortale, le autorità hanno avviato prontamente un procedimento penale ed hanno intrapreso una serie di importanti misure investigative. Tuttavia, tutte queste misure sono state oscurate dalla successiva lunghezza dell'inchiesta e dai ritardi da parte delle autorità. Sono stati riscontrati lunghi periodi di totale inattività di quest'ultime, che inoltre non sono riuscite a giungere a nessuna conclusione.
La Corte ha ribadito che l'esistenza di irragionevoli periodi di inattività e la mancanza di diligenza da parte delle autorità nello svolgimento del procedimento, rendono l'inchiesta inefficace indipendentemente dal risultato finale.
A causa dei ritardi accumulati, le autorità hanno permesso che i procedimenti penali stagnassero per più di dieci anni. Secondo la Corte la mancanza della dovuta diligenza è stata l'unica causa del termine dei procedimento ed è proprio a causa dell'inefficacia dell'indagine che alla Corte è stato impedito di pronunciarsi sulla responsabilità dello Stato ai sensi dell'articolo 2 sotto l'aspetto sostanziale.
Pertanto, l'inchiesta sull'incidente mortale non è stata efficace e di conseguenza vi è stata una violazione dell'articolo 2 della Convenzione sotto l'aspetto procedurale.

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

FIFTH SECTION

CASE OF SAKVARELIDZE v. GEORGIA
(Application no. 40394/10)

JUDGMENT

Art 2 (procedural) • Effective investigation • Exceptionally protracted investigation into fatal road traffic accident resulting in discontinuation of criminal proceedings against driver as time-barred •

Ineffectiveness of domestic investigation precluding the Court's examination of State's responsibility under Art 2 (substantive) on account of involvement of military vehicle in the accident

STRASBOURG
6 February 2020

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

In the case of Sakvarelidze v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Mārtiņš Mits,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Claudia Westerdiek, *Section Registrar,*
Having deliberated in private on 14 January 2020,
Delivers the following judgment, which was adopted on that date:
PROCEDURE

1. The case originated in an application (no. 40394/10) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Ms Mariam Sakvarelidze ("the applicant"), on 18 June 2010.

2. The applicant was represented successively by Ms T. Avaliani and Ms N. Londaridze, lawyers practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

3. The applicant complained that the respondent State had been responsible for a road traffic accident which had cost the lives of her son and sister, and that the subsequent criminal investigation had been ineffective.

4. On 4 June 2013 the Government were given notice of the application under Article 2 of the Convention.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Tbilisi.

Road traffic accident

6. On 22 and 23 November 2003 widespread popular protests took place in Georgia. Together with the sequence of events surrounding the change of power, these became known as the "Rose

Revolution" (see *Georgian Labour Party v. Georgia*, no. 9103/04, §§ 11-13, ECHR 2008). As the relations between the relevant political actors were tense at that time, various police forces were mobilised, often patrolling the streets of Tbilisi in their official vehicles. A state of emergency was formally declared by the relevant authorities during those two days.

7. At around 5.30 p.m. on 22 November 2003 an armoured military vehicle (AMV) driven by a State agent, who was either a law-enforcement or military officer at the material time (see paragraph 14 below), violently hit a car, in which the applicant and her family members were travelling, in a street in Tbilisi. As a result of the accident, the applicant's son, who had been driving the car, and her sister died, while the applicant and her nephews, minor children, sustained serious bodily injuries.

8. According to the applicant's version of the events, which was disputed by the Government, the driver of the AMV fled from the scene of the accident without informing the police, calling an ambulance or otherwise providing help to the passengers of the car.

Criminal investigation

9. On 23 November 2003 the Ministry of Defence opened a criminal case into the fatal road traffic accident. Various investigative measures were conducted in the course of the investigation.

10. In particular, on 28 November 2003 experts from a forensic unit of the Ministry of Defence, after having examined the scene of the accident and conducted a detailed on-site reconstruction of the events, issued a forensic report, establishing that the AMV had been travelling at above the permitted speed limit on the wrong side of the road.

11. Between 1 and 3 December 2003 the driver of the AMV, as well as the officers who had been seated inside the military vehicle when the accident had occurred, were interviewed as witnesses.

12. On 3 December 2003 the applicant was granted victim status in the on-going criminal investigation and was questioned by investigators from the Ministry of Defence for the first time.

13. A second forensic examination, conducted by experts from the Ministry of Defence on 16 January 2004, reached the same conclusion. It confirmed that the cause of the road traffic accident had been the fact that the AMV had been travelling on the wrong side of the road and that its driver, A.M., had therefore clearly breached the traffic regulations.

14. In the light of the parties' conflicting submissions on that particular question, it was not possible to infer from the case file with certainty whether A.M. had been a military or police officer when the accident of 22 November 2003 had occurred (see paragraph 7 above).

15. On 10 February 2004 A.M. was charged with an offence under Article 400 §§ 1 and 3 of the Criminal Code (see paragraph 38 below). When questioned as a suspect on 13 February 2004, he claimed that it had been the car driven by the applicant's son which had been on the wrong side of the road, and that he had been unable to prevent the accident from occurring.

16. In order to assess the veracity of A.M.'s statements, on 17 February 2004 forensic experts from the Ministry of Defence conducted a third forensic examination. Its results excluded any possibility

of the accident having occurred in the circumstances as described by A.M. On the contrary, the results of the third forensic examination confirmed again that it was the AMV which had been on the wrong side of the road and had exceeded the maximum permitted speed limit.

17. In February and March 2004 a number of witnesses were interviewed by the investigators from the Ministry of Defence, including the officers who had been travelling inside the AMV when the accident had occurred, and two police patrol officers who had been the first to arrive at the scene of the accident.

18. On 24 March 2004 the applicant enquired with the relevant authorities about progress in the investigation into the accident of 22 November 2003, urging the Chief Public Prosecutor's Office to speed up the proceedings. It is not clear from the case file whether she received any reply to her query.

19. On 1 April 2004 a fourth forensic examination was conducted, this time by experts from the National Forensic Bureau of the Ministry of Justice. According to the results, it was no longer possible, given the lapse of time, to reconstruct the exact circumstances surrounding the road accident of 22 November 2003 and to establish on which side of the road the AMV had been travelling when it crashed into the car.

20. On 19 April 2004 the investigation of the case was transferred from the Ministry of Defence's military prosecutor's office to the investigative department of the Ministry of State Security.

21. In June, July, November and December 2004 and February and March 2005, the applicant repeatedly enquired with the Ministry of State Security whether any progress had been made in the investigation. The ministry replied to some of her complaints in more or less similar terms, informing her that there were still various investigative measures to be conducted.

22. In March 2005 the Ministry of State Security was amalgamated with the Ministry of the Interior, and became a department within the latter ministry's structure.

23. On 28 April 2005 the investigator of the Ministry of the Interior decided to discontinue the investigation for want of evidence of a criminal offence in the actions of the AMV driver. In this decision, the investigator referred exclusively to the results of the fourth forensic examination of 1 April 2004 (see paragraph 19 above).

24. On 16 May 2005 the applicant appealed to the Tbilisi City Court against the decision of 28 April 2005 to close the criminal investigation. On 5 July 2005 the court quashed the investigator's decision and remitted the case for a fresh investigation. The court referred in particular to the forensic reports of 28 November 2003, and 16 January and 17 February 2004 (see paragraphs 10, 13 and 16 above), as well as to a statement made by the applicant that certain officers from the Ministry of the Interior had been trying to dissuade her from pursuing the criminal proceedings. The court concluded that the investigation had been ineffective and needed to be conducted anew.

25. The Tbilisi City Court's decision was upheld by the Tbilisi Court of Appeal on 26 July 2005, and the case was thus remitted to the Ministry of the Interior. Subsequently, the applicant

repeatedly enquired with the ministry about the progress in the investigation, but all her enquiries were left unanswered.

26. On 22 February 2006 the Tbilisi City Public Prosecutor's Office ("the TCPPO") took over the investigation of the case from the Ministry of the Interior. The TCPPO studied the case materials, conducted additional investigative measures, re-examined relevant witnesses (see paragraphs 11 and 17 above) and conducted a confrontation between the applicant and the driver of the military vehicle. On 23 February 2006, it issued another decision to discontinue the proceedings for want of evidence of a criminal offence.

27. The applicant appealed on 20 March 2006, and on 20 May 2006 the Tbilisi City Court quashed the TCPPO's decision of 23 February 2006, reasoning that the investigation had been deficient. The court noted the applicant's complaint that after the case had been transferred from the Ministry of Defence to the Ministry of the Interior, the investigation had started lacking in candour.

28. The Tbilisi City Court's decision was upheld by the Tbilisi Court of Appeal on 22 May 2006, and the case was remitted to the TCPPO for further examination.

29. On 24 July 2006 the applicant enquired with the TCPPO about any progress made in the investigation, complaining about its unreasonable length. As a result, on 29 July 2006 the General Public Prosecutor's Office, noting that the investigation was still ongoing, instructed the TCPPO to expedite the proceedings.

30. On 15 August 2006 the applicant requested that the TCPPO interview the driver of the AMV and the military officers who had been travelling in it when the road accident had occurred on 22 November 2003. The TCPPO replied on 17 August 2006 that there was no need to do so, as all of them had already been heard several times.

31. On 30 January 2007 the applicant lodged another application with the TCPPO, requesting a repeat interrogation of the suspect. The TCPPO rejected that request on 1 February 2007 for the same reasons as before (see the preceding paragraph).

32. On 23 January and 3 July 2008, and 16 January, 3 June, 8 July and 25 September 2009 the applicant repeatedly complained, in similar terms, of the ineffectiveness of the investigation conducted by the TCPPO. In some of her complaints she insisted that the hierarchically superior body, the Chief Public Prosecutor's Office, should take over the investigation from the TCPPO. All her requests were rejected by the prosecutorial authority on various dates.

33. In April and May 2010 the applicant enquired again with the TCPPO about the progress in the investigation. In its replies of 19 April and 4 May 2010, the prosecution authority advised her that despite the investigative measures it had conducted, it had still been impossible to establish with certainty what had happened during the road traffic accident of 22 November 2003.

34. On 5 and 6 February 2013 the TCCPO interviewed the two police patrol officers who had been the first to arrive at the scene of the accident on 22 November 2003. Those two witnesses had already been interviewed by the investigators of the Ministry of Defence as early as 2004 (see paragraph 17 above). No other investigative measures were conducted thereafter.

35. On 1 March 2017 the TCPPO closed the investigation owing to the expiry of the relevant statute of limitation, under Article 71 § 1 (c) and Article 400 §§ 1 and 3 of the Criminal Code and Article 105 § 1 (e) of the Code of Criminal Procedure (see paragraphs 37 and 39 below). The ten-year statutory limitation period had run out on 22 November 2013.

RELEVANT DOMESTIC LAW

36. Article 12 § 3 of the Criminal Code stated that an offence committed without malicious aforethought would be qualified as serious if the minimum prison term it carried was five years.

37. Article 71 § 1 (c) of the Criminal Code provided that a person should be exempted from criminal liability if ten years had passed since the commission of an offence qualified as serious.

38. Under Article 400 §§ 1 and 3 of the Criminal Code, anyone who caused the death of two or more people by breaching the driving regulations or otherwise manoeuvring a military vehicle was guilty of an offence punishable by imprisonment for a term of six to ten years.

39. Article 105 § 1 (e) of the Code of Criminal Procedure provided that a criminal investigation had to be discontinued once the offence became time-barred.

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

40. Citing various provisions of the Convention, the applicant complained that the respondent State had been responsible for the road traffic accident of 22 November 2003 which had cost the lives of her son and sister, and that the subsequent criminal investigation had been ineffective. The Court, being the master of the characterisation to be given in law to the facts of the case, will consider the application under Article 2 of the Convention, which reads as follows:

Article 2

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

Admissibility

41. The Government argued that the applicant had failed to demonstrate due diligence by taking the appropriate initiative to lodge her application with the Court with requisite expedition, as required by the six-month rule laid down in Article 35 § 1 of the Convention. They specified in that connection that, having received the prosecutorial decision of 1 February 2007, the applicant should have realised that the criminal investigation into the road traffic accident of 22 November 2003 was ineffective and lodged the application within the following six months. However, the present application had been lodged as late as 18 June 2010.

42. The applicant disagreed, arguing that the relevant facts of the case clearly showed that she had been diligent in making regular enquiries about progress in the investigation at the domestic level.

43. The Court reiterates that pursuant to the principle of legal certainty, which is a cornerstone of the six-month rule contained in Article 35 § 1 of the Convention, a victim of action allegedly in contravention of Articles 2 and 3 of the Convention must take steps to keep track of the relevant criminal proceedings or lack thereof, and lodge his or her application with due expedition once he or she becomes, or should have become, aware of the lack of any effective criminal investigation (see, amongst many other authorities, *Akhvlediani and Others v. Georgia* (dec.), no. 22026/10, §§ 23-29, 9 April 2013, and *Ekrem Baytap v. Turkey* (dec.), no. 17579/05, 29 April 2010). Where time is of the essence for resolving an issue in a case, there is a burden on the applicant to ensure that his or her claims are raised before both the relevant domestic authorities and the Court with the necessary expedition to ensure that they may be properly and fairly resolved (see, among other authorities, *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III). Indeed, with the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects that any effective investigation can be undertaken will increasingly diminish, and the Court's own examination and judgment may be deprived of meaningfulness and effectiveness (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 161, ECHR 2009).

44. The Court observes that in the instant case a criminal investigation into the road traffic accident of 22 November 2003 was opened promptly, and by 3 December 2003 the applicant was already granted victim status. She then used her procedural status to regularly enquire about progress in the investigation, starting from an early stage of the proceedings. Thus, it cannot be said that she did not show an interest in having the relevant facts elucidated through a criminal investigation at the domestic level (contrast *Akhvlediani and Others*, cited above, § 25; *Manukyan v. Georgia* (dec.), no. 53073/07, § 30, 9 October 2012; and *Deari and Others v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 54415/09, §§ 47-49, 6 March 2012). The Court is not convinced by the Government's claim that the six-month time-limit ought to be calculated from the prosecutorial decision of 1 February 2007. That decision was of a rather anodyne procedural nature, merely rejecting one of the applicant's procedural requests; it was not a decision on the final discontinuation of the proceedings; nor was it a decision denying the applicant the right to be meaningfully involved in the investigation or undermining the eventual effectiveness of the investigation by prejudging its outcome (contrast, for instance, *Shavlokhova v. Georgia* (dec.) [Committee], no. 4800/10, § 23, 18 September 2018). Even after the prosecutorial decision of 1 February 2007 had been issued, the applicant maintained, in the following years and until lodging the present application with the Court, reasonable contact with the authorities at regular intervals, taking steps to speed up the investigation's progress in the hope of a more effective outcome (see paragraphs 31-33 above; compare *Huseynova v. Azerbaijan*, no. 10653/10, § 89, 13 April 2017, and *Malika Yusupova and Others v. Russia*, nos. 14705/09 and 4 others, §§ 164-66, 15 January 2015).

45. In the light of the circumstances in the present case, the Court does not consider that the applicant failed to fulfil her obligation to show due diligence. While the date of 1 February 2007 has appeared to be an inappropriate one for the reasons stated above (see the preceding paragraph), the Court observes that the Government have not suggested any other date, preceding the lodging of the present application, which could have triggered the running of the six-month

time-limit for the purposes of the applicant's complaints under Article 2 of the Convention. The Government's objection must therefore be dismissed.

46. The Court further holds that the complaints under Article 2 of the Convention are not inadmissible on any other grounds. They must therefore be declared admissible.

Merits

The parties' arguments

47. With respect to the substantive aspect of Article 2 of the Convention, the applicant submitted that the State's responsibility under the Convention was engaged because the road traffic accident of 22 November 2003, which had taken the lives of her son and her sister, had been caused by a breach of the traffic regulations committed by the driver of an AMV, a military officer, in the exercise of his official duties. He had been driving on the wrong side of the road in excess of the maximum speed limit. As regards the procedural aspect of the Convention provision in question, the applicant focused, among other arguments, on the unreasonable length of the criminal investigation. She submitted that despite the fact that the initial investigative measures undertaken by the investigators of the Ministry of Defence had already sufficed for holding the driver of the AMV responsible for the accident, the prosecution authority had clearly been unwilling to do so.

48. The Government replied that given that the domestic authorities had not been given a chance to establish the exact circumstances of the road accident of 22 November 2003, it would be premature for the Court to assess the State's liability under the substantive aspect of Article 2 of the Convention. Thus, they contested the applicant's claim that the AMV driver had breached the traffic regulations by speeding on the wrong side of the road, as no such factual findings had ever been finally reached by the domestic authorities. The negligent actions of a State official, even if he or she had been acting in the exercise of his or her official duties, could not suffice, as such, for bringing the respondent State's substantive liability into play. As regards the procedural limb of Article 2, the criminal investigation into the road accident had commenced promptly and the investigative authorities had undertaken an array of relevant investigative measures. The applicant had been sufficiently involved in the investigation, as the next-of-kin of the victims of the accident, and the criteria for public scrutiny and transparency had thus been satisfied. Given that the procedural obligation to conduct an effective investigation was one of means and not of results, the Government argued that the respondent State had fully complied with that obligation.

The Court's assessment

(a) Substantive obligations under Article 2 of the Convention

49. The Court recalls, at the outset, that Article 2 covers not only intentional killing but also situations where death may result as an unintended outcome of the use of force by state agents (see, for instance, *McShane v. the United Kingdom*, no. 43290/98, § 101, 28 May 2002). It reiterates in this connection that the exact circumstances surrounding the road traffic accident of 22 November 2003, in particular, the speed at which the AMV had been travelling, the side of the road on which it had crashed into the car driven by the applicant's son, and the question of whether or not A.M.,

the driver of the AMV, had fled the scene of the accident, were all in dispute between the parties (see paragraphs 8, 47 and 48 above). Without knowledge of such crucial facts, it is impossible to assess properly the applicant's claim that the respondent State should be held responsible for the alleged breach of the traffic regulations on account of either negligent or deliberate conduct on the part of the AMV driver, who was either a military or police officer at the material time (see paragraph 14 above; contrast *Mikhno v. Ukraine*, no. 32514/12, §§ 125 and 129, 1 September 2016, and *Kotelnikov v. Russia*, no. 45104/05, §§ 93 and 94, 12 July 2016). Having regard to its subsidiary role, the Court must remain cautious when it is called upon to reconstruct the exact facts surrounding an accident which occurred sixteen years previously. It must bear in mind that the competent domestic authorities are better placed and equipped for such a fact-finding mission (compare, among many other authorities, *McShane*, cited above, § 103, and *Shanaghan v. the United Kingdom*, no. 37715/97, § 95, 4 May 2001). Indeed, the situation at hand cannot be equated to a death in custody, where the burden of proof may be regarded as resting on the State to provide a satisfactory and plausible explanation (see *McShane*, cited above, §§ 101 and 104), or to a death that occurred as a result of the State's failure to put in place an adequate regulatory framework for dangerous activities (see *Mikhno*, cited above, § 126; *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 209, ECHR 2011 (extracts); and *Öneryıldız v. Turkey* [GC], no. 48939/99, § 90, ECHR 2004-XII). Neither has the applicant ever complained, nor is there any similar suggestion on the facts of the case, that the death of the applicant's next-of-kin was caused either by a framework deficiency or the State's failure to discharge "a preventive operational measure" (compare with *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 135 and 136, 25 June 2019). While it was a military vehicle that caused the fatal road traffic accident, it cannot be inferred from the facts that there might have been use of force by the AMV's driver for which State responsibility under Article 2 arises (contrast with *McShane*, cited above, § 101).

50. Consequently, the Court considers that it is not in a position to reach any definite findings under the Convention with regard to the alleged responsibility of the respondent State for the death of the applicant's son and sister under the substantive limb of Article 2 of the Convention. Based on the material available in the case file and in the light of the conduct of the investigative authorities at the domestic level, it will thus confine the examination of this application to an assessment of whether the domestic investigation was in compliance with the relevant standards under the procedural limb of Article 2 (see, for various circumstances where the Court proceeded with the examination of Article 2 complaints under the procedural limb, *Nicolae Virgiliu Tănase*, cited above, §§ 137-138, 153 and 157-158; *Kotelnikov*, cited above, §§ 99-101 and 111; *Masneva v. Ukraine*, no. 5952/07, § 51, 20 December 2011; *Fedina v. Ukraine*, no. 17185/02, § 63, 2 September 2010; *McShane*, cited above, § 105; and *Shanaghan*, cited above, § 99).

(b) Procedural obligation under Article 2 of the Convention

(i) General principles

51. The first sentence of Article 2 of the Convention requires the States, amongst other obligations, to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life in the context of any activity, whether public or not, in which the

right to life may be at stake (see, among many other authorities, *Zubkova v. Ukraine*, no. 36660/08, § 35, 17 October 2013). In the case of a life-threatening injury or death, the above obligation calls for an effective independent judicial system to ensure enforcement of the aforementioned legislative framework by providing appropriate redress (see, for example, *Anna Todorova v. Bulgaria*, no. 23302/03, § 72, 24 May 2011). This obligation also applies in the context of designing a framework for the protection of life from road traffic accidents (see, for example, *Al Fayed v. France* (dec.), no. 38501/02, §§ 73-78, 27 September 2007; *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007; and *Railean v. Moldova*, no. 23401/04, § 30, 5 January 2010). An effective judicial system, as required by Article 2, may – and under certain circumstances must – include recourse to the criminal law (see *Cioban v. Romania* (dec.), no. 18295/08, § 25, 11 March 2014). Whilst States have the discretion to decide how a system for the implementation of a regulatory framework protecting the right to life must be designed and implemented, what is important is that whatever form the investigation takes, the available legal remedies, taken together, must amount to legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress (see *Antonov v. Ukraine*, no. 28096/04, § 46, 3 November 2011).

52. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009). Thus, in a number of cases before the Court concerning the implementation of a domestic regulatory framework for the protection of life from road traffic accidents, the finding of a violation was largely based on the existence of unreasonable delays and a lack of diligence on the part of the authorities in conducting the proceedings, regardless of their final outcome (see *Anna Todorova*, cited above, § 76; *Antonov*, cited above, §§ 50-52; *Igor Shevchenko v. Ukraine*, no. 22737/04, §§ 57-62, 12 January 2012; *Sergiyenko v. Ukraine*, no. 47690/07, §§ 51-53, 19 April 2012; *Prynda v. Ukraine*, no. 10904/05, § 56, 31 July 2012; and *Zubkova,* cited above, §§ 41-42, 17 October 2013).

(ii) Application of these principles to the circumstances of the present case

53. Turning to the facts of the present case, the Court notes that, having learned about the fatal road traffic accident of 22 November 2003, the authorities promptly instituted criminal proceedings and undertook, in the immediate aftermath, a number of important investigative measures, such as an on-site reconstruction of the events, questioning of the suspect and witnesses, and relevant forensic examinations. However, all of those positive steps taken in the early stages of the investigation were subsequently overshadowed by the overall length of the investigation and the prohibitive delays on the part of the investigative authorities. The road traffic accident and the death of the applicant's son and sister occurred on 22 November 2003, whereas the investigation ended on 1 March 2017, more than thirteen years later, without any final determination of the case on the merits. The exceptionally protracted investigation, which in itself raises serious concerns as to the domestic authorities' compliance with the requirements of promptness and reasonable expedition (see, for instance, *Starčević v. Croatia*, no. 80909/12, § 58, 13 November 2014), was further exacerbated by several lengthy periods of total inactivity on the part of the investigative

authorities (see paragraphs 21-23 and 28-34 above and compare, for instance, *Prynda*, cited above, § 56; *Zubkova*, cited above, § 41; and *Dvořáček and Dvořáčková v. Slovakia*, no. 30754/04, §§ 68 and 69, 28 July 2009). On various occasions the domestic authorities themselves acknowledged that the investigators had acted without due diligence when collecting evidence (see paragraphs 27-29 above, and compare, for instance, *Antonov*, cited above, §§ 50 and 51, and *Oleynikova v. Ukraine*, no. 38765/05, § 81, 15 December 2011).

54. At the same time, the Court cannot discern any particular reason for such a protracted investigation at the domestic level. In particular, while the person who had been driving the AMV had been identified, the witnesses were heard and the relevant forensic examinations conducted repeatedly in the very early stages, the authorities failed to reach any conclusion in the criminal proceedings. The Government did not even argue that a lengthy investigation had been justified by the necessity to perform numerous vital procedural measures, by the applicant's behaviour, or for other relevant reasons (compare, for instance, *Igor Shevchenko*, § 60, and *Sergiyenko*, § 52, both cited above, and contrast with *Nicolae Virgiliu Tănase*, also cited above, § 184). In this connection, the Court reiterates that justice delayed is often justice denied, as the existence of unreasonable periods of inactivity and a lack of diligence on the authorities' part in conducting the proceedings renders the investigation ineffective irrespective of its final outcome (see, as a recent authority, *Vazagashvili and Shanava v. Georgia*, no. 50375/07, § 89, 18 July 2019, with further references). The Court further observes that, as a result of the accumulated delays, the investigative authorities' allowed the criminal proceedings to stagnate for more than ten years, which resulted in the expiry of the relevant statute of limitations and the consequent discontinuation of the proceedings without establishing the criminal responsibility of the AMV driver (compare *Mažukna v. Lithuania*, no. 72092/12, § 83, 11 April 2017, and *Angelova and Iliev v. Bulgaria*, no. 55523/00, §§ 101 and 116, 26 July 2007). Such a lack of due diligence, which in the eyes of the Court looks like a deliberate delay, was the sole cause of the proceedings becoming time-barred. This is yet another indication of the fact that the criminal-law system has proved to be far from rigorous and deprived the applicant of any possibility of obtaining redress (compare, *mutatis mutandis*, *V.K. v. Russia*, no. 68059/13, § 185, 7 March 2017; *Kraulaidis v. Lithuania*, no. 76805/11, §§ 58 and 63, 8 November 2016; and *İzci v. Turkey*, no. 42606/05, § 72, 23 July 2013). It is exactly because of the ineffectiveness of the domestic investigation that the Court has been prevented to rule on the responsibility of the respondent State under the substantive limb of Article 2 of the Convention (see paragraphs 49 and 50 above).

55. The foregoing considerations are sufficient to enable the Court to conclude that the investigation of the fatal road traffic accident of 22 November 2003 was not effective. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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."

Damage

57. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government contested the claim as excessive.

59. The Court, making its assessment on an equitable basis, awards the applicant EUR 25,000 in respect of non-pecuniary damage.

Costs and expenses

60. The applicant did not submit any claim for costs and expenses. Accordingly, the Court makes no award under this head.

Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Declares the application admissible;

Holds that there has been a violation of the procedural aspect of Article 2 of the Convention;

Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeableto the applicant, to be converted into the currency of the respondent State at the rate applicable at 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 6 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Síofra O'Leary
RegistrarPresident