



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

## FOURTH SECTION

### CASE OF JIVAN v. ROMANIA

*(Application no. 62250/19)*

### JUDGMENT

Art 8 • Private life • Failure to ensure effective protection for an elderly person through inadequate assessment of the severity of his disability, thereby depriving him of a personal assistant as provided by domestic law • Failure to strike a fair balance between competing interests

STRASBOURG

8 February 2022

**FINAL**

**08/05/2022**

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



**In the case of Jivan v. Romania,**

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

Yonko Grozev, *President*,

Faris Vehabović,

Iulia Antoanella Motoc,

Gabriele Kucsko-Stadlmayer,

Pere Pastor Vilanova,

Jolien Schukking,

Ana Maria Guerra Martins, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 62250/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Ioan-Doroteu Jivan (“the applicant”), on 22 November 2019;

the decision to give notice to the Romanian Government (“the Government”) of the complaints concerning the right to respect for the applicant’s private life (Article 8 of the Convention) and the length of the proceedings (Article 6 of the Convention) and to declare the remainder of the application inadmissible;

the parties’ observations;

the letter by the applicant’s son and only heir, Mr Ioan-Dan Jivan, informing the Court of the applicant’s death and of his wish to pursue the present application;

Having deliberated in private on 18 January 2022,

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

## INTRODUCTION

1. The application concerns allegations that the domestic authorities wrongly assessed the severity of the applicant’s disability, thus depriving him of the possibility of benefiting from a personal assistant, and that the proceedings concerning that assessment had lasted too long. It was communicated under Articles 8 and 6 § 1 of the Convention respectively.

## THE FACTS

2. The applicant was born in 1930 and died in 2020. He lived in Oradea. He was represented by Mr D.M. Marcu, a lawyer practising in Oradea. On 27 April 2020 Mr Ioan-Dan Jivan, his son and only heir, expressed his wish to continue the proceedings.

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

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

5. In 2017 the applicant was in his late eighties. He had a partially amputated leg, which he lost in 2015, when he was eighty-five years old, and suffered from several medical conditions, such as cataracts, loss of hearing and incontinence. He needed a wheelchair to move around and had recently become bedridden as he had lost the strength to manipulate his wheelchair. He lived on the fourth floor of a building and was helped in his daily activities by his son. There were no neighbours or other family members nearby to offer support.

6. On 27 June 2017 a physician acting at the request of the Bihor Commission for the Assessment of Adults with Disabilities (“the Commission”, see paragraph 14 below) evaluated the applicant’s functional status according to the index of independence in activities of daily living (“the ADL index”). She established the applicant’s score as follows: zero points in relation to personal hygiene, dressing, and using the bathroom – with occasional incontinence (one point) –, and two points in relation to feeding. The applicant’s overall score was three points (see paragraphs 16 to 19 below).

7. On 11 July 2017, following a visit to the applicant’s flat to assess his living arrangements and their compatibility with his medical situation, the Commission produced a social enquiry report. It noted that the applicant was bedridden, and could move around his flat only in a wheelchair. He needed help with feeding, moving and transport, using means of communication, taking care of his finances and medication. He was fully dependent on support for his personal hygiene, dressing, preparing food, housework, and grocery shopping. The report also mentioned that the applicant was living on his own and received money, food, and help with housekeeping from his son.

8. On 25 September 2017 an inspector from the Service for the Complex Evaluation of Adults with Disabilities of the Bihor County Directorate General for Social Welfare and Child Protection (see paragraph 14 below) visited the applicant’s home and reported on his living conditions. The report described the applicant’s medical condition and general poor physical state, and noted that he was unable to take care of his basic needs on his own, he was able to sit but not walk, had significantly lost his muscular mass, and weighed 40-45 kg. It recommended consolidating his support network and ensuring constant support to supplement his lost autonomy.

9. On 3 October 2017 the Commission issued a certificate establishing that the applicant suffered from a medium-level disability (see paragraph 15 below). The applicant contested the assessment and requested to be recognised as suffering from a severe disability necessitating a personal assistant. He explained his situation in detail and relied on his medical file, the ADL index and the social enquiry report. Eventually the certificate was

annulled by the courts as it did not give reasons for the assessment (final decision of 5 November 2018 of the Oradea Court of Appeal).

10. On 20 December 2018 the Commission issued a new certificate, confirming the medium-level disability. The Commission also considered that the applicant's condition was permanent and did not necessitate periodic reassessment.

11. On 14 January 2019 the applicant contested the Commission's decision before the Bihor County Court and asked again to be recognised as suffering from a severe disability necessitating a personal assistant. He argued that the evidence adduced, that is, his medical file, the ADL index, and the social enquiry report, attested that he was completely reliant on support. He argued that the law classified that situation as being a case of severe disability necessitating a personal assistant. He noted that the Commission had not contested those findings but had failed to take them into account when establishing the degree of disability.

12. On 5 March 2019 the Bihor County Court allowed the applicant's claim. The relevant parts of its decision read as follows:

"In the light of the medical and psychosocial criteria set [by law] for the classification [into various degrees of disability], the ADL index, the medical evidence and the social enquiry report call for classifying [the applicant]'s disability as being severe necessitating a personal assistant. [Moreover] the law expressly provides that a patient who has completely lost the capacity to feed himself or herself, maintain personal hygiene and care, and thus needs assistance, a situation in which [the applicant] also finds himself, constitutes a severe disability necessitating a personal assistant. Despite this, the [Commission] classified [the applicant]'s condition as a medium-level disability. Consequently, the certificate must be annulled and the [Commission] must issue a new certificate correctly reflecting the [applicant's] degree of disability, that is a severe disability necessitating a personal assistant.

...

The court does not have the power to make a medical, psychological, and social evaluation of the patient, that evaluation being made by specialists. At the same time, the court does not decide on the patient's level of disability, that decision being taken exclusively by the [Commission]. However, the court has the power to verify the correlation between the socio-medical reports and the level of disability as regulated by Order [no. 762/2007]. In the present case an inconsistency has been found [between the two], in so far as the medical and social reports call for a different level of disability than that which was established in the contested certificate, bearing in mind the table of classification provided for by Order [no. 762/2007]."

13. The Commission appealed and in a final decision of 22 May 2019, the Oradea Court of Appeal reversed the above judgment and found that the certificate of 20 December 2018 (see paragraph 10 above) had been accurate. The relevant parts of the decision read as follows:

"The medical condition which was taken into account for establishing the level of disability is 'partial amputation of the left leg' and [the applicant] did not prove (with expert reports or medical data) that he also suffered from any other physical, sensory,

psychiatric, mental and/or associated conditions which under Order [no. 762/2007] must be evaluated to establish the level and type of disability.

...

The court notes that the applicant's principal medical condition is not among those classified as constituting a severe disability, but among those classified as a medium disability.

Contrary to the decision at first instance, the court considers that the ADL index of 27 June 2017, according to which [the applicant] ... is in a state of total dependency needing a personal assistant, and the social enquiry report according to which he needs help for his daily activities, medication and grocery shopping, are not sufficient to conclude that his disability is severe necessitating a personal assistant, in so far as his mobility condition is not among those classified by law at that level of disability, and as the assessment that the Commission undertakes is a complex process which takes into account not only social criteria but also medical and psychological criteria."

## RELEVANT LEGAL FRAMEWORK

### I. DOMESTIC LAW

14. Law no. 448/2006 on the protection and promotion of the rights of people with disabilities ("the Disability Act") puts in place a protection mechanism for people with disabilities, based on the following principles: respect for human rights; non-discrimination; equal opportunities; social solidarity; freedom to choose, control and make decisions concerning one's own life and the services and type of support received; social inclusion; and respect for the specific needs of people with disabilities. It sets up for each county a Commission for the Assessment of Adults with Disabilities, which operates under the authority of the relevant local council and consists of two physicians, a psychologist, a member of civil society and a social assistant (Article 85). The Act also sets up, within each County Directorate General for Social Welfare and Child Protection, a Service for the Complex Evaluation of Adults with Disabilities (Articles 87 and 88). The role of that service is to prepare a report of the complex evaluation of people seeking disability benefits under the Act. On the basis of that report, the Commission for the Assessment of Adults with Disabilities assesses the level of disability of the persons concerned, in accordance with the criteria (medical, psychological and social) and scales set forth by joint order of the Ministry of Work, Family and Equal Opportunity and the Ministry of Health.

15. In accordance with Article 86 of the Disability Act, the levels of disability are: mild, medium, accentuated and severe. Under Article 35 of the same Act, a person with severe disability is entitled to a personal assistant, based on the socio-psycho-medical evaluation.

16. By Order no. 762/2007, the Ministry of Work, Family and Equal Opportunity and the Ministry of Health approved the criteria for the complex

evaluation of the level of disability required by the Disability Act as well as for the assessment of the ADL index (see paragraph 6 above).

17. Chapter 7.III.1 of that Order describes the levels of disability and access to assistance in the case of amputation. In this context, partial amputation as a medical condition is classified as a medium disability. The ADL index for amputation is calculated as follows:

- personal hygiene: autonomous – 2 points, partial help – 1 point, dependent – 0 points;
- dressing: autonomous – 2 points, autonomous for dressing but help needed for putting shoes – 1 point, dependent – 0 points;
- using the bathroom: autonomous – 2 points, help needed – 1 point, helped in bed – 0 points;
- sphincter control: continence – 2 points; occasional incontinence – 1 point, incontinence – 0 points;
- feeding: feeding independently – 2 points, help needed for using the knife – 1 point; dependent – 0 points.

18. The overall ADL index is defined as follows:

- stage I – 10 points: autonomy
- stage II – 8 to 10 points: quasi-independence
- stage III – 3 to 8 points: assisted independence
- stage IV – 0 to 3 points: total dependency, necessitates personal assistant.

19. The Order indicates that the medium disability is compatible with any profession except those requiring, for example, standing, and recommends, among others, ensuring prostheses and orthoses in order to allow participation in social life without restrictions. For the severe disability the Order indicates as follows:

“The social inquiry has a major role in establishing the level of autonomy and of functionality left ... [in order to ensure assistive devices] which would allow the person concerned to carry out the daily activities as autonomously as possible. ...

Based on the result of the complex evaluation, a person may be classified as having a severe disability necessitating a personal assistant when he/she has lost completely the capacity to [take care of himself/herself] and needs permanent help, or [as having a] severe [disability] without personal assistant when he/she needs partial help for some of the daily activities.”

## II. EUROPEAN UNION LAW

20. The relevant provisions of the Treaty on European Union (OJ C 202, 7.6.2016) read as follows:

### Article 2

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in

a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

**Article 6**

“1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.”

21. The relevant provision of the Treaty on the Functioning of the European Union (OJ C 202, 7.6.2016) – which constitutes the legal basis, for instance, for Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation which prohibits discrimination based on religion or belief, disability, age or sexual orientation – reads as follows:

**Article 19**

“1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

22. The relevant provisions of the Charter of Fundamental Rights of the European Union read as follows:

**Article 25 - The rights of the elderly**

“The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.”

**Article 26 - Integration of persons with disabilities**

“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”

**III. INTERNATIONAL MATERIALS**

23. The relevant provisions of the United Nations Convention on the Rights of Persons with Disabilities (“the CRPD”), which was ratified by Romania on 31 January 2011, read as follows:

**Article 1 - Purpose**

“The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity ...”

### **Article 3 - General principles**

“The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons ...”

### **Article 19 - Living independently and being included in the community**

“States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

### **Article 20 - Personal mobility**

“States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost ...”

### **Article 28 - Adequate standard of living and social protection**

“1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: ...

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes ...”

## THE LAW

### I. PRELIMINARY ISSUE

24. The Government submitted that the applicant's son, Mr Ioan-Dan Jivan, had no legitimate interest in pursuing the application lodged by his late father and requested that the application be struck out of the list of cases, in accordance with Article 37 § 1 (c) of the Convention.

25. The applicant died in 2020, while the case was pending before the Court. On 27 April 2020 his son and only heir informed the Court that he wished to pursue the present application (see paragraph 2 above). The Court has accepted on numerous occasions that close relatives of a deceased applicant are entitled to take the applicant's place in the proceedings, if they express their wish to do so (see, among other authorities, *Dalban v. Romania* [GC], no. 28114/95, §§ 38-39, ECHR; *Mile Novaković v. Croatia*, no. 73544/14, § 33, 17 December 2020; and *Kanal v. Turkey*, no. 55303/12, §§ 5 and 23, 15 January 2019).

26. The Court does not see any special circumstances in the present case to depart from its established case-law and is prepared to accept that the applicant's son can pursue the application initially brought by the applicant. Consequently, the Government's objection must be dismissed (see *Mile Novaković*, cited above, § 34, and *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 68-75, ECHR 2012 (extracts)).

27. For practical reasons, Mr Ioan-Doroteu Jivan will continue to be called "the applicant" in this judgment, although Mr Ioan-Dan Jivan is now to be regarded as such (see *Dalban*, cited above, § 1).

### II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicant complained that by denying him the benefit of a personal assistant, a right of which he should have benefitted by virtue of law (see paragraphs 15 to 19 above), the authorities had breached his right to respect for his private life, in so far as they had deprived him of his autonomy and of access to the outside world, thus forcing him into isolation.

He relied on Article 8 of the Convention, which, in so far as relevant, reads as follows:

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

## A. Admissibility

### 1. Applicability

29. The Court must first decide whether Article 8 is applicable to the facts of the present case (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018, and *Association ACCEPT and Others v. Romania*, no. 19237/16, § 62, 1 June 2021).

30. The concept of “private life” within the meaning of Article 8 of the Convention is a broad one not susceptible to exhaustive definition and embraces, among other things, a right to self-determination (see *Parrillo v. Italy* [GC], no. 46470/11, § 153, ECHR 2015 with further references). Moreover, the notion of personal autonomy is an important principle underlying the interpretation of the guarantees enshrined in Article 8 (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). It concerns a particularly important aspect of the applicant’s existence and identity – one of the core rights attracting the protection of Article 8 of the Convention (contrast *Parrillo*, cited above, § 174).

31. However, Article 8 cannot be considered applicable each time an individual’s everyday life is disrupted, but only in the exceptional cases where the State’s failure to adopt measures interferes with that individual’s right to personal development and his or her right to establish and maintain relations with other human beings and the outside world. It is incumbent on the individual concerned to demonstrate the existence of a special link between the situation complained of and the particular needs of his or her private life (see *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V).

32. In a number of cases, the Court has held that Article 8 is relevant to complaints about public funding to facilitate the mobility and quality of life of disabled applicants (see *McDonald v. the United Kingdom*, no. 4241/12, § 46, 20 May 2014, with further references).

33. In *Pretty*, the Court held that the very essence of the Convention was respect for human dignity and human freedom; indeed, it was under Article 8 that notions of the quality of life took on significance because, in an era of growing medical sophistication combined with longer life expectancies, many people were concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflicted with their strongly held ideas of self and personal identity (see *Pretty*, cited above, § 65). Although the facts of the present case differ significantly from those of *Pretty*, in so far as the present applicant believed that the level of care offered by the authorities forced him into isolation and deprived him of his autonomy (see paragraph 28 above), he too was faced with the possibility of living in a manner which “conflicted with [his] strongly held ideas of self and personal identity” (see, *mutatis mutandis*, *McDonald*, cited above, § 47).

34. In the present case, the applicant's actual conditions were severe: he was old, immobilised, partially incontinent, and needed help for his daily activities (see paragraph 5 above). Because of his health, in the context of his living arrangements, the applicant was found to need constant support (see paragraphs 6, 7 and 8 above). The domestic authorities were thus called to make assessments which impacted on the applicant's personal autonomy and dignity, and thus on his enjoyment of his right to respect for private life as guaranteed under Article 8 § 1 of the Convention (see, *mutatis mutandis*, *Pretty*, cited above, §§ 61 and 67; *McDonald*, § 47; and *Pentiacova and Others v. Moldova* (dec.), no. 14462/03, ECHR 2005-I).

35. Therefore, the Court considers that the refusal to classify the applicant's condition as severe necessitating a personal assistant was capable of having an impact on his enjoyment of his right to respect for private life as guaranteed under Article 8 § 1 of the Convention. Consequently, Article 8 is applicable to the facts of the present case.

## 2. *Other grounds for inadmissibility*

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

## **B. Merits**

### 1. *The parties' submissions*

#### **(a) The applicant**

37. The applicant argued that the domestic authorities had failed to undertake a complex evaluation of his case, assessing all his medical conditions and social difficulties taken together, as required by law.

#### **(b) The Government**

38. The Government replied that the evaluation of the degree of disability was a complex process which had been undertaken by the authorities in the applicant's case in compliance with the applicable law and standards: it had been based on evaluations of his medical and psychological situation, the social context, the educational and professional context, and his abilities and degree of dependency. The authorities had thus made a global assessment of the applicant's personal and social situation.

39. Furthermore, the domestic proceedings had been thorough, all elements of the file had been examined, and the final decision had been based on a direct and global examination of the applicant's personal situation. As a matter of subsidiarity, the Court should not call into question the findings of the domestic courts.

## 2. *The Court's assessment*

### (a) General principles

40. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance which has to be struck between the competing interests; and in both contexts the State enjoys a certain margin of appreciation (see *Evans v. the United Kingdom* [GC], no. 6339/05, § 75, ECHR 2007-I).

41. The Court has previously considered a number of cases concerning funding for care and medical treatment as falling within the sphere of possible positive obligations because the applicants complained in substance not of action but of a lack of action by the respondent States (see, for example, *Sentges v. the Netherlands* (dec.), no. 27677/02, 8 July 2003, and *Pentiacova and Others*, cited above). Those cases concerned the refusal by the State to provide funding for medical equipment and/or treatment. As the present case also ultimately concerns a refusal to grant the applicant the right to adequate support (as a consequence of his medical condition allegedly being wrongly classified, see paragraphs 10, 12 and 13 above), the Court is prepared to approach it as one involving the State's positive obligations towards ensuring the applicant's right to respect for his private life (contrast *McDonald*, cited above, § 48, which the Court approached from the standpoint of an interference with the right at stake, in so far as it concerned withdrawal of a pre-existing benefit).

42. The Court reiterates that a wide margin is usually allowed to the State under the Convention in issues of general policy, including social, economic, and healthcare policies (see, for instance, *McDonald*, cited above, § 54, with further references). However, if a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, such as persons with disabilities, or elderly dependent people, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question (see *Guberina v. Croatia*, no. 23682/13, § 73, 22 March 2016, in the context of discrimination of a physically disabled child; *Alajos Kiss v. Hungary*, no. 38832/06, § 42, 20 May 2010, in the context of the restriction of a mentally disabled person's right to vote; and *Cînta v. Romania*,

no. 3891/19, § 41, 18 February 2020, in the context of the restriction of a mentally ill parent's right to contact with his child).

**(b) Application of those principles to the facts of the present case**

43. The Court notes at the outset that the Disability Act calls for the protection of people with disabilities in the light of the guiding principles enshrined in that law, including freedom of choice, social inclusion and respect for the specific needs of the individuals concerned. The level of protection afforded is based on a complex and personalised evaluation to establish an individual's level of disability. That assessment must rely not only on medical data but also on other indicators of the individual's degree of autonomy (or lack thereof), assessed in the light of his or her living conditions (see paragraphs 14 and 16 to 19 above).

44. Moreover, the CRPD, to which the respondent State is party, recognises people with disabilities as full subjects of rights and as rights holders (see paragraph 23 above). The CRPD encourages respect for dignity, individual autonomy and independence.

45. The principles reflected in Articles 19, 20 and 28 of the CRPD are of particular relevance to the present case. The respondent State, as a party to that Convention, has recognised the equal rights of all persons with disabilities and their right to an adequate standard of living and social protection, and has committed itself to take effective and appropriate measures to help persons with disabilities to live independently and be included in the community and to ensure their personal mobility (see paragraph 23 above).

46. On the basis of the domestic requirements, social services assessed that the applicant was in a state of total dependency and required a personal assistant in order to meet his basic needs (see paragraphs 6 to 8 above). The Commission classified the applicant's condition as a medium-level disability (see paragraph 10 above). In other words, it estimated that the applicant was able to manage his daily activities without the help of a personal assistant. This assessment was also shared by the Court of Appeal, which was the final domestic court to examine the merits of the case and the first to deny the applicant's claim (see paragraph 13 above). The Court cannot but observe that those findings stand in stark contrast to the applicant's particular situation as explained in detail in the report of 25 September 2017 (see paragraph 8 above). In this context, it observes that the option of granting the applicant the support of a personal assistant was provided by law (see paragraphs 15 to 19 above).

47. In the light of the principle of subsidiarity, it is not for the Court to substitute its views for those of the national authorities and to interpret and apply the domestic law (see, *mutatis mutandis*, *Z v. Finland*, 25 February 1997, § 98, *Reports of Judgments and Decisions* 1997-I, and *Glor v. Switzerland*, no. 13444/04, § 91, ECHR 2009). The domestic courts,

however, to whom that task falls, must interpret the domestic law in a manner which is compliant with the States' obligations under the Convention.

48. In this connection, the Court cannot but note that the Commission and the Court of Appeal focused their assessment on the applicant's principal medical condition, that is, the partial amputation of his leg (see paragraph 13 above), while nevertheless at least acknowledging the severity of his condition and the lack of support (see, notably, paragraph 13 *in fine*, above). In his claims before the authorities, the applicant raised arguments related to his broader situation, both medical and social, and provided evidence to support his action (see paragraphs 9 and 11 above). In the Court's view, those arguments were specific, relevant and important, and the Government did not argue otherwise. However, neither the Commission, when issuing the certificate of 20 December 2018 (see paragraph 10 above), nor the Court of Appeal, in its final decision of 22 May 2019 (see paragraph 13 above), explicitly engaged with them.

49. In particular, the applicant's right to autonomy and respect for his dignity do not seem to have been taken into account in the domestic assessments in question (the Commission's certificate or the Court of Appeal's decision). His living conditions and the lack of a support network – provided either by neighbours or by his family – were not mentioned in those decisions either. Moreover, the authorities did not take into account the applicant's age or the fact that he had lost his leg at the age of eighty-five (see paragraph 5 above). The implications that such a drastic change must have had on the life of an old person were not referred to in the domestic assessments either. Nothing in the impugned decisions explained the apparent discrepancies between the applicant's particular situation of a lack of autonomy and support, and the finding that he was not entitled, under the domestic law, to a personal assistant. As a consequence of those decisions, the applicant was left to fend for himself and the authorities did not offer any alternative practical arrangements to ensure him the constant support he needed.

50. From this standpoint, the present case differs from the situation in *Sentges and Pentiacova and Others* (both cited above), which both concerned the State's refusal to provide funding for additional medical equipment and/or treatment, even though support and treatment were already available free of charge to the applicants. Those cases, declared inadmissible by the Court, did not concern a complete loss of autonomy such as that experienced by the applicant in the present case. The issue at stake in the present case is not a choice between basic care or additional, more expensive care – which, being a matter of allocation of limited State resources, falls within the State's margin of appreciation (see paragraph 42 above and *Pentiacova and Others*, cited above) – but rather about ensuring the applicant the appropriate level of care and dignity, as provided for by law and its interpretation in the light of its aims and principles (see paragraphs 15 to 19 above).

51. Bearing in mind what was at stake for the applicant, as well as his overall vulnerability – which required enhanced protection from the authorities (see paragraph 42 above) – the Court must be convinced that the State struck a fair balance between the competing public and private interests at stake.

52. Having regard to all the above considerations, and notwithstanding its subsidiary role and the respondent State’s margin of appreciation, the Court considers that the domestic authorities did not do what was reasonable in the circumstances of the case to ensure the applicant, an elderly disabled person, effective protection of his right to respect for his private life, thus failing to strike the fair balance required by Article 8.

53. For these reasons, the Court concludes that there has been a violation of Article 8 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

54. The applicant complained that the domestic proceedings had taken too long and that in delaying the examination of his action, the domestic court had failed to take into account his age and the difficulties he encountered in his daily life. He relied on Article 6 of the Convention, which reads as follows, 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 ...”

55. The Government argued that the applicant had failed to exhaust the available domestic remedies, in so far as he had not used the compensatory remedy provided by the Civil Code.

56. The applicant argued that because of his age, health issues, and lack of financial resources, he should have been exonerated from making use of the remedy indicated by the Government.

57. The Court has already established that since 22 March 2015 a civil action for damages has constituted an effective domestic remedy for complaints raised by applicants with regard to the length of domestic proceedings (see *Brudan v. Romania*, no. 75717/14, §§ 86 and 88, 10 April 2018). It has since consistently reaffirmed these findings (see, in particular, *George-Laviniu Ghiurău v. Romania*, no. 15549/16, § 50, 16 June 2020; *Marius Alexandru and Marinela Ștefan v. Romania*, no. 78643/11, § 112, 24 March 2020; and *Jidic v. Romania*, no. 45776/16, §§ 57, 60-61, 18 February 2020). The Court has no reason to consider that the applicant’s circumstances, however dire, were such as to exempt him from the obligation to avail himself of that remedy.

58. Accordingly, the Government’s objection of failure to exhaust domestic remedies must be upheld. This complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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**

60. The applicant claimed 2,631 Romanian lei (RON) (approximately 530 euros (EUR)) in respect of pecuniary damage, representing the additional sum that he should have received from October 2017 to April 2020 if he had been granted the benefits for a severe disability instead of those for a medium disability. He further requested EUR 50,000 in respect of non-pecuniary damage.

61. The Government argued that the applicant had failed to provide any supporting documents for the claim in respect of pecuniary damage and thus asked the Court to dismiss it. They further argued that the claim in respect of non-pecuniary damage was excessive and that the finding of a violation should constitute sufficient just satisfaction.

62. Having regard to the nature of the violation found and making its assessment on an equitable basis, the Court awards the applicant's son EUR 8,000 in respect of pecuniary and non-pecuniary damage combined, plus any tax that may be chargeable.

##### **B. Costs and expenses**

63. The applicant also claimed RON 1,482 (approximately EUR 300) for the costs and expenses incurred before the domestic courts and the Court, representing lawyer's fees and postal costs. He submitted supporting bills.

64. The Government contested the claims.

65. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 300 covering costs under all heads, plus any tax that may be chargeable to the applicant's son.

##### **C. Default interest**

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant's son and heir has standing to continue the present proceedings in the applicant's stead;
2. *Declares* the complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant's son, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
    - (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant's son, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth  
Deputy Registrar

Yonko Grozev  
President