



## Romanian legal system dealt adequately with case concerning a car accident

The **Grand Chamber**<sup>1</sup> judgment [Nicolae Virgiliu Tănase v. Romania](#) (application no. 41720/13) concerned a judge who had been severely injured in a car accident in 2004. The criminal proceedings, which Mr Tănase had joined as a civil party, were discontinued eight years later with a decision not to prosecute the other two drivers involved in the accident.

Before the European Court of Human Rights, Mr Tănase complained in particular that the criminal investigation had been ineffective and too long and that it had been impossible for him to obtain a decision on his civil claim.

The Grand Chamber took the opportunity to clarify which Articles of the European Convention on Human Rights should be applied in the case of an accident causing severe injury. Given the life-threatening injuries Mr Tănase had sustained, it decided that it would examine the part of his complaint concerning the effectiveness of the investigation exclusively under Article 2 (right to life) of the European Convention.

In today's judgment in the case the European Court held:

by 13 votes to four, that there had been **no violation of Article 2** as concerned the investigation into the accident. It had been thorough and had resulted in a large body of evidence addressing what could have caused the accident. Mr Tănase had had access to the case file and had been able to make full use of the remedies available to him under domestic law to challenge the authorities' decisions and to ask for additional evidence;

by 16 votes to one, that there had been **no violation of Article 6 § 1 (right of access to court)**. Even though his civil claim had never been examined by a criminal court because the authorities had discontinued the proceedings against the other two drivers, he could have used other channels to defend his civil rights; and,

by 10 votes to seven, that there had been **no violation of Article 6 § 1 (right to a fair trial within a reasonable time)**. A period of nearly eight years to complete the investigation, given its complexity, had not been excessive and the authorities had consistently taken steps during the proceedings to clarify the circumstances of the case.

### Principal facts

The applicant, Nicolae Virgiliu Tănase, is a Romanian national who was born in 1943 and lives in Ploiești (Romania).

On 3 December 2004 Mr Tănase, a judge at the time, had a road traffic accident. He alleged, among other things, that a third party had crashed into the back of his car, shunting it into the back of a parked military lorry.

He suffered serious internal injuries and fractures, requiring several operations, repeated stays in hospital and between 200 to 250 days of medical care. According to expert reports in 2005 and 2007 the accident had endangered his life and caused him to suffer from post-traumatic stress.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Immediately after the accident the police opened a criminal investigation. They collected evidence, including measurements and photographs from the scene of the accident and blood samples from the three drivers involved. They also took statements from them and their passengers.

Mr Tănase joined the criminal proceedings as a civil party in June 2005. Over the next eight years, there were three rounds of proceedings at two levels of jurisdiction. Investigators explored several possibilities as to who had been at fault. Technical expert reports looked into whether Mr Tănase had been driving too fast, whether the driver who had gone into the back of his car had been at a safe distance and whether the military lorry had been parked correctly. Experts were also ordered to establish whether Mr Tănase had been shunted into the parked lorry or whether he had first hit the lorry and then his car had been hit by the other car.

Throughout the proceedings Mr Tănase repeatedly challenged the investigators and judges involved, and requested further expert and technical reports.

Ultimately, no criminal proceedings were ever instituted against Mr Tănase. The authorities did consider the possibility that he had been at least partly responsible for the accident, notably through drink driving. His blood sample was the only one which showed positive for alcohol. However, the investigation did not finally elucidate this question.

The authorities discontinued the criminal proceedings against the drivers of the other two vehicles. It found that the lorry had been parked legally by its driver and therefore not all the elements of an offence had been met. As for the driver of the car which had allegedly crashed into the back of the applicant's car, it could not be established whether it had been the impact of his car which had caused the applicant's injuries, the impact with the lorry, or a combination of the two. In any case, the statute of limitations had taken effect in June 2012.

The courts dismissed both an appeal on points of law by the applicant and a constitutional challenge in 2013.

## Complaints, procedure and composition of the Court

Mr Tănase complained that the criminal investigation into his car accident had taken too long and had been ineffective, alleging that it had been impossible for him to obtain a decision on his civil claim because the authorities had failed to examine the merits of the case.

He further complained about the manner in which the authorities had handled the investigation. He alleged in particular that their main concern had been to hide and distort the truth, rather than clarify the circumstances of the accident, and that that had amounted to humiliating and degrading treatment.

He relied in particular on Articles 3 (prohibition of degrading or inhuman treatment), 6 (right to a fair trial) and 13 (right to an effective remedy) of the European Convention on Human Rights.

The application was lodged with the European Court of Human Rights on 21 June 2013.

On 17 April 2014 the application was [communicated](#) to the Romanian Government under Article 3 of the Convention. On 2 June 2015, the President of the Section [decided](#) to invite the Government to submit further written observations under Articles 2 (right to life) and 8 (right to respect for private life) of the Convention.

On 18 May 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber<sup>2</sup>. A hearing was held on 15 November 2017.

<sup>2</sup> Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,  
 Angelika **Nußberger** (Germany),  
 Linos-Alexandre **Sicilianos** (Greece),  
 Robert **Spano** (Iceland),  
 Işıl **Karakaş** (Turkey),  
 Ganna **Yudkivska** (Ukraine),  
 Nebojša **Vučinić** (Montenegro),  
 Kristina **Pardalos** (San Marino),  
 Vincent A. **De Gaetano** (Malta),  
 Paul **Lemmens** (Belgium),  
 Krzysztof **Wojtyczek** (Poland),  
 Egidijus **Kūris** (Lithuania),  
 Yonko **Grozev** (Bulgaria),  
 Armen **Harutyunyan** (Armenia),  
 Gabriele **Kucsko-Stadlmayer** (Austria),  
 Marko **Bošnjak** (Slovenia),  
 Tim **Eicke** (the United Kingdom),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

## Decision of the Court

First, the Court noted that Mr Tănase's complaints were twofold, concerning on the one hand the conduct of the criminal investigation and on the other his treatment by the authorities involved in the investigation.

Even though Mr Tănase had essentially relied on Article 3, the Court found it appropriate to also examine the case under Articles 2 (right to life) and 8 (right to respect for private and family life).

### Applicability of Articles 2, 3 and 8 in the case of an accident causing severe injury

The applicant had never argued during the investigation that the other two drivers had intended to hurt him, and there was no evidence to suggest that that had been the case. His suffering had been the result of chance or negligence and could not be considered the consequence of "treatment" to which he had been "subjected" within the meaning of Article 3. Indeed, there had been no intention to harm, humiliate or debase him.

Nor had there been any intention to harm the applicant's physical and psychological integrity, as protected by Article 8. Furthermore, although he had engaged in an activity that took place in public and involved a risk of serious personal harm, such risk was minimised by traffic regulations.

Consequently, the Court found that neither Article 3 nor Article 8 were applicable in the applicant's case and declared his complaints under those provisions related to the investigation inadmissible.

As concerns the applicability of Article 2, the Court noted, on the one hand, that a complaint in a case involving a dangerous activity with a real and imminent risk to life could be examined under that provision, even if there were no injuries. On the other hand, if it was not clear whether there had been a real and imminent risk of death, the level of the injuries sustained took on greater prominence. In such cases a complaint could only be examined under Article 2 where the level of the injuries was such that the victim's life had been put in serious danger.

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have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

The applicant's injuries had been severe enough to pose a serious danger to his life and therefore the Court considered that Article 2 was applicable. It decided that it would examine the part of his complaint concerning the effectiveness of the investigation exclusively under Article 2.

#### Article 2 (effectiveness of the investigation)

The Court found that the investigation and collection of evidence had been thorough. The authorities' decision to discontinue the proceedings had not been taken hastily or arbitrarily. It had followed years of investigative work which had resulted in the accumulation of a large body of evidence, including forensic and technical elements. The evidence addressed questions such as the conduct of the drivers and the causes of the accident. Mr Tănase had had access to the case file during the investigation and court cases. He had also been able to challenge the authorities' independence and impartiality and to ask for additional evidence to be included in the file. The State could not be found liable under Article 2 simply because it had ultimately taken a decision not to prosecute.

The Court concluded that the legal system as applied in the circumstances had dealt adequately with the applicant's case and found no violation of Article 2 of the Convention.

#### Article 6 § 1 (access to court and length of proceedings)

Mr Tănase had lodged a civil claim in the context of the criminal proceedings against the two other drivers involved in the accident. That claim had never been examined by a criminal court because the authorities had discontinued the proceedings against those drivers.

However, he could have used other channels to defend his civil rights. He could have brought separate civil proceedings against the other drivers when he had joined the criminal proceedings as a civil party. Although any civil case would probably have been stayed pending the outcome of the criminal proceedings, there was nothing to suggest that he could not have obtained a decision on the merits of his claims afterwards. Alternatively, he could have lodged a separate civil action once the criminal courts' judgments upholding the prosecuting authorities' decision to discontinue the criminal proceedings had become final.

The Court therefore found that Mr Tănase had not been denied access to court for a determination of his civil rights and there had been no violation of Article 6 § 1 in that regard.

As concerned his complaint about the length of the investigation, the Court considered that just over seven years and eight months had not been excessive given the complexity of the case. In particular, the investigators had had to explore several scenarios and there had been repeated forensic and technical expert reports. Moreover, the authorities had been active, collecting evidence and making significant efforts to clarify the circumstances of the case. They could not be held accountable for certain delays, namely Mr Tănase's not being available for questioning because of his health issues or his using the remedies available to him under domestic law.

As a whole the proceedings had therefore complied with the "reasonable time" requirement under Article 6 § 1 and there had been no violation of that provision.

#### Article 13 (right to an effective remedy)

The Court held that there was no need to examine separately Mr Tănase's complaint under Article 13. It did not concern any other issue than that of the effectiveness of the criminal investigation which had already been examined under Article 2.

#### Article 3 (investigative authorities' handling of the investigation)

The Court noted that, in previous cases, it had assessed whether the national authorities' handling of an investigation had constituted inhuman or degrading treatment. It had notably examined and laid

down principles for the examination of disappearance cases, namely whether the authorities had been indifferent or callous in their response to close relatives, resulting in anguish and uncertainty.

However, Mr Tănase's case did not concern a disappearance or any other exceptional circumstance examined in such case-law. The Court thus declared this complaint inadmissible as manifestly ill-founded.

### Separate opinions

Judges Raimondi, Sicilianos, Karakaş, Vučinić and Harutyunyan expressed a joint partly dissenting opinion. Judge De Gaetano, joined by Judge Vučinić, also expressed a partly dissenting opinion. Judge Kūris and Judge Grozev each expressed a partly dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.