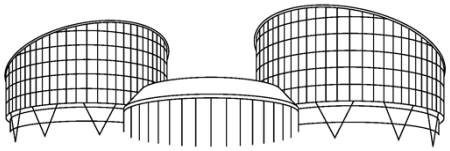

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DANCIU AND OTHERS v. ROMANIA

(Application no. 48395/16)

JUDGMENT

Art 2 (procedural) • Failure by the authorities to carry out a prompt and effective investigation into an alleged murder attempt • Lack of timely and adequate reaction at the preliminary stages of the investigation • Witnesses not questioned immediately after the incident • Injured party not greatly involved in the proceedings • Imperative to have more than one forensic medical report when divergent opinions • State responsible for delays in presentation of reports and opinions of court-appointed experts

STRASBOURG

12 May 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 Danciu and Others v. Romania,

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

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application no. 48395/16 against Romania lodged with the Court on 8 August 2016 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Romanian nationals, whose names are listed in the Annex ("the applicants");

the decision to give notice to the Romanian Government ("the Government") of the complaint concerning Article 2 of the Convention;

the parties' observations;

Having deliberated in private on 21 April 2020,

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

INTRODUCTION

The application concerns the inefficiency of the criminal investigation into an alleged murder attempt on the applicants' relative.

THE FACTS

1. The applicants, whose details are set out in the Annex, are relatives of Mr Dumitru Danciu senior (hereinafter, "the injured party", or "D.D. sr."), who died on 9 August 2011. The first and second applicants are his sons, the third applicant is his surviving wife and the fourth applicant is his daughter. The applicants were represented by Mr E.C. Iordăchescu, a lawyer practising in Cluj-Napoca.

2. The Government were represented by their Agent, most recently Ms S.-M. Teodoroiu, from the Ministry of Foreign Affairs.

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

I. INCIDENT OF 17 SEPTEMBER 2008

4. On 17 September 2008 the Borşa local police received an emergency call concerning an ongoing altercation taking place in front of a local restaurant. By the time police officers V.L. and M.D., arrived at the scene of the incident, the injured party, D.D. sr., had already been taken to hospital. No witness statements or any other evidence was collected from the scene at the time.

5. Another police officer, G.H., went to the hospital and took a statement from the injured party about what had happened. D.D. sr. said that "G.T.'s son" (hereinafter "G.T. jr.") had attacked him with tear gas spray and then hit him in the head with a wooden stick. G.T. jr. had continued to hit him in the head even after he had fallen to the floor; two other persons, one of whom had been working in the local restaurant, had tried to stop G.T. jr., but to no avail. D.D. sr. further stated that when his wife (the third applicant) had entered the restaurant and seen him on the floor, she had called the emergency number and asked for help. He had then been taken to hospital for medical examinations.

6. In his statement, the injured party said that he wanted the police to take action against the perpetrator and sanction him accordingly. He also confirmed having been informed by the police that he needed to lodge a written complaint in relation to the circumstances mentioned above.

7. On 30 September 2008 the injured party received a medical report issued by the Sighetu Marmației forensic medicine department, confirming that he had sustained an open head injury on the left side, as well as minor concussion, possibly caused by a blow with a hard object. The injuries would require between forty-five and fifty days of medical care, if there were no further complications.

II. CRIMINAL COMPLAINT CONCERNING THE INCIDENT OF 17 SEPTEMBER 2008

8. On 12 November 2008 the injured party lodged a criminal complaint with the Maramureş County Court against G.T. sr., G.T. jr., V.D., O.D. and F.M., accusing them of attempting to murder him on 17 September 2008.

In the complaint he stated that on that day he had wanted to go to the local restaurant with his wife and an acquaintance (later referred to as his mother). When they were about to enter the restaurant, a car had come towards them at full speed. Five people, namely those indicated above, had got out of the car. They had all been armed with wooden sticks. One of them had sprayed tear gas in the injured party's eyes, and then all of them had hit him in the head and on the hands. He had fallen down but had continued to be hit until he lost consciousness.

His wife had managed to call the police. Police officer G.H. had arrived and called an ambulance, which had taken him to hospital, while his wife and the five persons had been taken to the police station. However, for unknown reasons, no statements had been taken at that stage at the police station.

The injured party submitted that he knew those persons because he had previously won a civil case against them, in relation to the ownership of a piece of land.

9. D.D. sr. further mentioned that while he was still in hospital, namely on 27 and 28 September 2008, O.D. had come to see him and threatened to kill him. The hospital staff had called the police, who had escorted O.D. out and fined him for the incident.

The injured party also stated that both he and his wife had had previous conflicts with O.D. and V.D., who had been fined for having hit them.

III. PRE-TRIAL INVESTIGATION INTO THE INCIDENT OF 17 SEPTEMBER 2008

10. On 4 February 2009 the case prosecutor heard evidence from D.D.sr., who reiterated the details mentioned in his criminal complaint (see paragraph 8 above), including in respect of the previous conflicts he had had with the alleged perpetrators.

He named several witnesses who had allegedly been present, either at the time of the incident of 17 September 2008, or on 27 and 28 September 2008 at the hospital (see paragraphs 5 and 9 above).

He also said that at the relevant time, the five suspects were under investigation in relation to a criminal complaint lodged by a bailiff, who had accused them of failing to comply with a final judgment granting the injured party property rights over a plot of land, as well as of disturbing the injured party's peaceful possession of that land.

On the same date the injured party lodged civil claims against the alleged perpetrators.

11. The injured party was readmitted to hospital between 13 and 24 February 2009 following a deterioration in his state of health, in particular a balance disorder, vertigo, insomnia and depression, as well as a hearing impairment in his left ear.

12. D.D. sr.'s medical file was then updated, and on 26 February 2009 the forensic medical report of September 2008 (see paragraph 7 above) was supplemented accordingly. It was concluded that the injuries would require twenty additional days of medical care, thus totalling sixty-five to seventy days.

13. In so far as no other steps had been taken by the case prosecutor in relation to his criminal complaint, the injured party complained before the High Court of Cassation and Justice of the inefficiency of the investigation.

That complaint was sent to the prosecutor's office by the Maramureş County Court.

14. On 23 April 2009 the prosecutor allowed the injured party's complaint, qualified as a complaint about the protraction of the proceedings. Noting that no investigative steps had been taken by the case prosecutor since 12 November 2008 (see paragraph 5 above), other than the hearing of evidence from the injured party on 4 February 2009 (see paragraph 10 above), the prosecutor fixed a deadline of 4 May 2009 (*termen de anchetă*), by which the case prosecutor had to have taken all necessary measures to deal efficiently with the case.

15. On 8 May 2009 the case prosecutor decided to open a criminal investigation against G.T. sr., G.T. jr., V.D., O.D. and F.M., on suspicion of attempted first-degree murder and serious disturbance of public order.

16. On 13 May 2009 the case prosecutor heard the five suspects, who were assisted by their chosen lawyer. They all declared that at the time of the impugned incident, they had been in a different town, naming several witnesses who could confirm their whereabouts. All of them submitted that the injured party was an aggressive person who was often inebriated and had a lot of enemies. They accepted in principle to undergo a polygraph test. However, such tests were never undertaken.

17. In his statement, G.T. jr. declared that on 16 and 17 September 2008 he and the witness, P.B., had been at a client's house (the client's name was not provided) to make him a stove. His father, G.T. sr., who had originally talked to the client about the stove, was no longer able to deliver what he had promised, because he had been attacked by D.D. sr. on 16 September. As he had been hospitalised on the same day, G.T. jr. had had to replace him in delivering the order to the client.

18. G.T. sr. declared that on 17 September 2008 he and his wife had been at the Sighetul Marmaţiei hospital, seeking to obtain a medical certificate confirming his injuries, which D.D. sr. had inflicted on him the previous day.

19. V.D. declared that he had also gone to the same hospital with G.T. sr. and his wife, so as to obtain a medical certificate confirming his own injuries. He said that on 14 September he had been hit by D.D. sr. and his sons, therefore on 17 September 2008 he had had his hand in plaster.

20. F.M. declared that on 17 September 2008 he had been at work, namely at the restaurant he was running together with his brother. He said that that fact could be confirmed by the employees who had been present.

21. On 28 August 2009 the injured party complained before the Maramureş County police that he had been threatened by his aggressors and that it was therefore urgent to move on with the criminal investigation.

22. On 9 September 2009 the complaint was allowed by the prosecutor, in view of the fact that no further steps had been taken since 13 May 2009 (see paragraph 16 above). The prosecutor ordered that a medical report be

produced concerning the injuries sustained by the injured party; that the injured party be re-heard and confronted with the alleged aggressors if necessary; that witnesses be heard; and that any other evidence be produced. The time-limit for finalising the investigation was set for 1 October 2009.

23. On 21 September 2009 the injured party was asked by the case prosecutor to explain the reasons for his absence from the medical examination scheduled on 8 May 2009 at the Baia Mare forensic medicine department; the examination had been ordered by the case prosecutor in order to obtain a new medical report. The injured party argued that he had never been notified about the medical appointment, and that in any case on that day he had been hospitalised in Cluj Napoca.

24. On the same date the injured party's wife (the third applicant), as well as his mother, gave their witness statements before the prosecutor. Both women, as well as the injured party, were subsequently confronted with each of the alleged aggressors.

25. On that occasion, G.T. sr. explained that the injuries suffered by the injured party had probably been caused by his falling from his horse cart in an advanced state of inebriation.

26. The medical report of 24 September 2009 drawn up by the Baia Mare County forensic unit at the case prosecutor's request concluded that the injuries sustained by the injured party on 17 September 2008 had required eighteen to nineteen days of medical care and had never endangered the injured party's life; no disability had been determined; and his hospitalisation between 13 and 24 February 2009 (see paragraph 11 above) had no causal link with the injuries sustained on 17 September 2008.

27. On 26 April 2010 the Borşa police notified the injured party that he was to appear in Cluj Napoca on either 28 April or 5 May 2010 before a medical commission, which the case prosecutor had ordered to issue a medical report. The injured party declared that he would not go to the examination, because he had already been examined "by another medical commission in Bucharest".

28. On 13 May 2010 two witnesses proposed by the injured party gave statements in which they submitted that on the day of the incident, they had heard some noise in front of the local restaurant, but could not provide any other details about it.

29. On 13 July 2010 the Cluj Napoca forensic medicine institute issued a letter stating that in the absence of the injured party, who had failed to appear before the medical commission for examination (see paragraph 27 above), they were unable to produce any report concerning the injuries sustained by him on 17 September 2008.

However, based exclusively on the injured party's medical file, they concluded that there was no clinical or para-clinical justification for the diagnosis of an open head injury and concussion, no such trauma having been noted on the relevant medical observation sheets.

30. On 23 September 2010, while in Borşa hospital, the injured party was heard by the case prosecutor. He declared that he no longer wanted to be subjected to any further medical examinations, given that the injuries inflicted on him in September 2008 had required sixty-five to seventy days of medical care. He also declared that the signature on the statement given to the police on 17 September 2008 (see paragraph 5 above) was not his own, and that he had not declared at the time that only G.T. jr. was responsible for the attack.

31. In the period between June and December 2010 the case prosecutor heard eleven witnesses.

32. On 20 December 2010 the case prosecutor issued an indictment against G.T. jr., charging him with hitting the injured party and other forms of violence (see paragraph 62 below) against him, as well as with causing a serious disturbance of public order. The prosecutor considered that there was insufficient evidence to charge G.T. jr. with attempted first-degree murder; this was based on the fact that the intention of G.T. jr. had been to revenge his father, who had been hit the previous day by D.D. sr., and not to take the latter's life. Moreover, the medical documents indicating the seriousness of the injuries, which had required eighteen to nineteen days of medical care, showed that the blows had not been so intense as to be able to cause loss of life. In this connection, the prosecutor also referred to the conclusions issued by the Cluj Napoca forensic medicine institute, indicating that the injured party had not suffered any cranial trauma (see paragraph 29 above).

33. The case prosecutor also decided to terminate the proceedings in respect of the other alleged perpetrators, namely G.T. sr., V.D., O.D. and F.M. He found it relevant that in his first complaint, the injured party himself had pointed only to G.T. jr. as the alleged perpetrator, without mentioning the involvement of any other person (see paragraph 5 above). Moreover, there was no other evidence proving that the four suspects had participated in the criminal act against the injured party.

34. The case prosecutor's decision not to initiate criminal proceedings against G.T. sr., V.D., O.D. and F.M. was not challenged by the injured party.

IV. CRIMINAL CASE BEFORE THE DOMESTIC COURTS

35. On 9 August 2011, while the criminal proceedings against G.T. jr. were pending before the Vişeu de Sus District Court, the injured party died.

36. At the request of the police, an autopsy was carried out on 1 September 2011. It revealed, *inter alia*, swelling of the brain as well as purulent meningitis. It also revealed the existence of a very high alcohol level in the victim's blood. The death was established to have been

non-violent and due to the toxic and septic consequences of the purulent meningitis.

37. At a hearing held on 27 September 2011 the District Court took note of the applicants' wish to pursue proceedings on the injured party's behalf, in their capacity as heirs. The court ordered a new autopsy report to establish the circumstances of the injured party's death.

38. Accordingly, on 12 April 2012 the Cluj Napoca forensic medicine institute issued a new medical report, based on a set of medical documents concerning the injured party's multiple hospitalisations and consequent medical supervision. The experts concluded that on 17 September 2008 the injured party had suffered an open head injury on the left side, as well as minor concussion. Those injuries had required twenty-five to thirty days of medical care. However, the neurological lesions and the spinal fracture detected subsequent to the incident of 17 September 2008, as well as the death of the injured party, had no causal connection with the cranial trauma sustained on that date, the lesions being of a pathological rather than traumatic nature.

39. On 26 June 2012 the District Court took note of the medical experts' conclusions and in view of the number of days of medical care required, it changed the legal classification of the charge from hitting and other forms of violence to acts causing bodily harm (see paragraph 62 below).

40. On 23 October 2012 the Vişeu de Sus District Court acquitted G.T. jr. and thus dismissed the civil claims lodged by the applicants on behalf of the injured party.

41. The court indicated that the injured party's wife (the third applicant) could not be heard as a witness because she had been present in the court room throughout the proceedings. The injured party's mother had died before the court proceedings had taken place, hence she could no longer be heard either. One other witness named by the injured party was also heard by the court, but his statements were not conclusive, as he said that he had not seen the injured party on that day.

42. When heard by the court, G.T. jr. stated that the name of the client for whom he had built a stove on the day of the incident (see paragraph 17 above) was O.M.P.. The court then heard O.M.P. as a witness. He declared that at the beginning of September (the year was not mentioned), the defendant had made him a stove at his home. The same alibi was confirmed by another witness, P.B., who declared that at the time of the impugned incident, G.T. jr. had been present at O.M.P.'s house, located in another town, where he had been making a stove.

43. The court noted that the conflictual relations between the injured party and the family of G.T. jr. were beyond doubt. However, the injured party himself had presented different versions of the facts, initially indicating one and subsequently several aggressors (see paragraphs 5, 8 and 10 above). At the same time, there was documentary evidence in the

case file proving that the injured party used to often call the emergency line without any specific reason, simply claiming that he was in danger. The court therefore considered that one explanation for the incident, other than the prosecutor's hypothesis that G.T. jr. had wanted to revenge his father, was that D.D. sr. had wanted to counterbalance the criminal complaint lodged against him by G.T. jr.'s family in relation to the incidents of 14 and 16 September 2008 (see paragraphs 17-19 above).

44. The court concluded that the adduced evidence was not sufficiently decisive to rebut the presumption of innocence operating to the benefit of G.T. jr. and thus to justify a criminal conviction.

45. The applicants and the prosecutor's office appealed against the District Court's judgment, arguing mainly that the changes of legal classification, first by the case prosecutor in his indictment, from attempted first-degree murder to hitting and other forms of violence (see paragraph 32 above) and then by the first-instance court, to acts causing bodily harm (see paragraph 39 above) were unlawful and unfounded.

46. On 16 October 2013 the Cluj Court of Appeal allowed the appeals and remitted the case to the lower court for retrial. It held that the correct legal classification of the criminal acts to be examined was that of attempted first-degree murder, given that the aggressor had used a wooden stick or a baseball bat to hit the injured party in the head, which had resulted in an open head injury. The court emphasised that in classifying the criminal act, the essential element was the intention of the perpetrator, and not necessarily the number of days of medical care required by the injuries inflicted.

The court also criticised the fact that the lower court had considered only the evidence adduced before it, while completely ignoring, without any justification, the evidence adduced during the investigation stage.

47. The case was sent for re-trial before the Maramureş County Court, which re-examined all of the available evidence, including by hearing the parties again.

48. On 30 September 2015 the County Court convicted G.T. jr. for attempting to commit first-degree murder and sentenced him to six years' imprisonment.

49. The court noted that the majority of the witnesses had amended their statements given during the re-trial so as to favour the defendant, by saying either that he had not been present at the time and place of the incident, or that no incident had ever occurred. However, the court had decided to ignore those new statements as being made *pro causa* and as being contradictory to the witnesses' previous statements, namely those given before the investigative authorities and before the Vişeu de Sus District Court. In its reasoning, the court relied on the latter statements, as they had been made at a time closer to the incident.

50. Furthermore, the court noted that the defendant had given the name of the client for whom he had built a stove only three years after the incident, whereas at first he had claimed that he could not remember that name (see paragraphs 17 and 42 above); at the same time, the witness himself had at first said that the defendant had built a stove for him sometime at the beginning of September, without any indication of the year (see paragraph 42 above), and then, before the county court, the same witness had said that the stove had been built precisely six years earlier. The county court also noted that the witness who had provided G.T. jr. with an alibi, P.B., was in fact an employee of the T. family; his statement was therefore unreliable.

51. The court also found relevant the defendant's unjustified refusal to take a polygraph test, even though such a test was not considered as evidence in a criminal case.

52. The court noted that there were witnesses who had confirmed the incident, namely police officer V.L. (see paragraph 4 above; having died in 2009, the other police officer, M.D., had never given any statement before the authorities), an employee of the local restaurant and one other witness who had seen the injured party and his wife entering the restaurant at the time of the alleged incident.

53. The court also allowed the applicants' civil claims and awarded them 6,500 Romanian lei (RON – approximately 1,450 euros (EUR)) in respect of pecuniary damage, as well as the equivalent in RON of EUR 6,000 in respect of non-pecuniary damage.

54. The applicants appealed against the judgment, arguing that a harsher sentence should have been given to the accused. They also requested that a higher amount be paid in respect of non-pecuniary damage.

55. The defendant also appealed. The appellate court heard the defendant; no witnesses were heard in the appellate proceedings.

56. On 12 February 2016 the Cluj Court of Appeal allowed the defendant's appeal and acquitted him on the basis of lack of incriminating evidence. Consequently, it dismissed the applicants' civil claims in their entirety.

57. The appellate court noted the existence of a conflictual relationship between the family of the injured party on the one hand and the family of the defendant, on the other. It also noted the contradictions between the successive statements given by the defendant before the authorities, as well as his refusal to undertake a polygraph test. However, it considered that those elements were not sufficient to justify a conviction. Moreover, contradictions and hesitations as to the exact circumstances of the incident, including in respect of who had participated in it and who had witnessed it, existed also in the statements given by the witnesses called by the applicants. This had led the court to conclude that the presumption of the defendant's innocence had not been rebutted.

58. On 16 March 2016 the applicants appealed in cassation against that judgment, claiming that the Vişeu de Sus District Court had lacked jurisdiction to examine the case, in so far as the pre-trial investigation had focused on the criminal act of attempted first-degree murder, which had triggered the jurisdiction of a county court, rather than a district court. However, the indictment had changed the legal classification into "hitting and other forms of violence" and the case had been incorrectly sent before the above-mentioned District Court.

59. The appeal was allowed in principle (*admitere în principiu*) by the High Court of Cassation and Justice on 11 May 2016, in so far as the admissibility criteria had been complied with.

60. On 22 June 2016 the High Court dismissed the appeal as ill-founded, holding that an appeal in cassation was an extraordinary appeal which allowed the parties to challenge exclusively matters of jurisdiction involving the courts, and not the pre-trial investigative authorities.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

61. The relevant domestic legislation concerning civil actions joined to criminal proceedings are set out in the case of *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, §§ 66-70, 25 June 2019).

62. The provisions of the Criminal Code as in force at the material time concerning the criminal acts of hitting or other forms of violence, bodily harm, murder and first-degree murder are set out in the case of *Ciorcan and Others v. Romania* (nos. 29414/09 and 44841/09, § 73, 27 January 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

63. The applicants complained that the authorities had failed to carry out an effective and speedy investigation into the incident of 17 September 2008. They relied on Article 2 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

64. The Court 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. Submissions by the parties

(a) The Government

65. The Government accepted that the circumstances of the case rendered applicable the procedural limb of Article 2 of the Convention. They further submitted that the investigation had been effective, conducted lawfully and within a reasonable time, given the complexity of the case.

66. The authorities had been prompt in initiating the investigation, considering that the type of physical injuries inflicted on D.D. sr., which had required less than sixty days of medical care, had triggered the necessity of having a criminal complaint lodged with the prosecutor before any investigative act could be accomplished. Such necessity had been communicated to the injured party immediately after he had given his first statement at the hospital on the very day of the incident (see paragraph 6 above).

67. Furthermore, the authorities had remained active, and had made efforts to clarify the circumstances of the impugned incident. All witnesses indicated by the parties had been heard and re-heard during the criminal proceedings. Several forensic medical reports had been produced in the case, including in connection with the death of the injured party, so as to establish the circumstances of his demise and whether it had any causal link to the impugned incident. Both the injured party as well as his successors had been constantly involved in the proceedings and their requests had been dealt with in an appropriate and reasonable manner.

68. The Government further submitted that a significant part of the evidence adduced in the file was closely connected to the evidence relevant for another criminal case which concerned the incidents of 14 and 16 September 2008 respectively (see paragraphs 17-19 above), when the injured party's sons, namely the first two applicants, had physically assaulted G.T. sr. and the witness V.D. The latter proceedings had ended on 7 January 2016, when the two perpetrators had been sentenced to six years' imprisonment. In so far as the courts had decided not to join the two cases, in spite of the applicants' request to that effect, the difficulties of managing the evidence common to both files had rendered the proceedings even more complex.

69. The Government further mentioned that on 1 February 2014, thus while the proceedings had been pending before the courts, the new Criminal Code and Criminal Code of Procedure had entered into force, which had affected, *inter alia*, the summoning procedure, with direct effects on the overall length of the trial.

70. Lastly, the Government argued that at some point between 2011 and 2016, the number of judges allocated to the Criminal Section of the

Maramureş County Court had dropped from eight to five, following reorganisation based on the assessed workload for the respective Section. Similarly, the number of cases that had to be processed by a prosecutor attached to the Maramureş County Court in the period between 2008 and 2010 was on average 510 files per year. Despite those objective difficulties, the authorities had acted diligently in the present case, in their attempt to conduct an effective investigation into the impugned incident.

(b) The applicants

71. The applicants submitted that the domestic authorities had failed to comply with their obligations under Article 2, as follows.

72. Firstly, the authorities had not initiated the investigation on their own motion, despite the fact there had been sufficient elements indicating the seriousness of the crime committed, having regard to the object used for hitting, as well as to the part of the body that had sustained the blows.

73. Secondly, the necessary evidence, including at the place of the incident, had either not been secured at all, or had not been collected in a prompt manner, in spite of the fact that the police had arrived at the scene immediately after the incident; furthermore, the first investigative steps had been taken with an unjustified delay, as proved by the fact that the first measure taken in the case had been the hearing of the injured party some five months after the incident, and that of the direct witnesses one year thereafter. The unjustified delays in the investigative steps had been confirmed by two decisions of the prosecutor, who had concluded that the investigation had been protracted (see paragraphs 14 and 22 above). Moreover, the other witnesses had been heard more than one year after the incident had occurred.

74. Thirdly, the injured party had not been involved in the proceedings during the pre-trial phase, in so far as all the suspects and the witnesses were heard without him being allowed to participate in any way.

75. Finally, the authorities had failed to identify and sanction those responsible, even though they had prolonged the investigation for more than seven years, a delay which was unreasonably long in view of the fact that the case had not been particularly complex.

2. The Court's assessment

(a) General principles

76. By requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction, Article 2 imposes a duty on that State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. This obligation requires by implication that

there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a State agent (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April 2015 and the references cited therein).

77. The Court has further specified that compliance with the procedural requirements of Article 2 is assessed on the basis of several essential parameters: the adequacy of the investigative measures; the promptness of the investigation; the involvement of the deceased person's family; and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (ibid., § 225).

78. The Court emphasises also that, in so far as an investigation leads to charges being brought before the national courts, it considers that the procedural obligations under Article 2 extend to the trial stage of the proceedings. In such cases the proceedings as a whole, including the trial stage, must satisfy the requirements of this provision of the Convention (see *Sarbyanova-Pashaliyska and Pashaliyska v. Bulgaria*, no. 3524/14, § 38, 12 January 2017).

79. Lastly, a requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating suspicious deaths may generally be regarded as essential 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 *Olewnik-Cieplińska and Olewnik v. Poland*, no. 20147/15, § 137, 5 September 2019 and the reference cited therein).

(b) Application of these principles to the present case

80. The Court reiterates that it has, under certain circumstances, found the procedural obligation under Article 2 of the Convention to be engaged in cases of incidents where the person whose right to life was allegedly breached did not die. In such cases the Court considered it relevant that the victim had sustained life-threatening injuries. While there is no general rule, it appears that if the activity involved by its very nature is dangerous and puts a person's life at real and imminent risk, like the use of life-threatening violence, the level of injuries sustained may not be decisive and, in the absence of injuries, a complaint in such cases may still fall to be examined under Article 2 (see, *mutatis mutandis*, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 139-140, 25 June 2019, and all the references cited therein).

81. In the light of the above general principles and having regard, in particular, to the use of life-threatening violence against the applicant, the Court concludes that Article 2 is applicable in the present case. The Government did not dispute this (see paragraph 65 above).

82. The Court further considers that although the applicants' complaint principally concerned the allegedly excessive length of the investigation, which, they claimed, had precluded the investigative authorities from elucidating the relevant circumstances of the crime, the central question to be answered in the instant case is whether the investigation conducted into incident of 17 September 2008 was as a whole effective, in accordance with the requirements of Article 2 listed above.

83. At the outset, the Court observes that, following the criminal complaint filed by D.D. sr. on 12 November 2008 (see paragraph 8 above) the investigative authorities took the first steps in the investigation more than four months after the violent incident of 17 September 2008, namely on 4 February 2009 (see paragraph 10 above), when the case prosecutor heard the injured party for the first time.

84. The Court reiterates that in a situation when life has intentionally been put at risk, the authorities must act of their own motion once a matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures. Furthermore, the investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible. This is not an obligation of results, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, §§ 165-66, ECHR 2011).

85. In this connection, the Court takes note of the applicants' submissions according to which, in view of the gravity of the injuries inflicted on the victim, the authorities should have promptly initiated a criminal investigation on their own motion, without requiring the victim to formally lodge a criminal complaint. In any event, even after such a formal criminal complaint had been lodged in November 2008 (see paragraphs 8 and 83 above), no steps were taken in the investigation until February the following year.

86. The Court further notes that even though two police officers went to the scene in the immediate aftermath of the incident, they did not take any witness statements or secure any other potential evidence at the time (see paragraphs 4 and 8 above).

87. The Court also notes that despite the fact that the victim had named the alleged perpetrators at the latest on 12 November 2008 (see paragraph 8 above), the case prosecutor questioned them for the first time on 13 May

2009 (see paragraph 16 above), some nine months after the incident, without giving the victim any prior or ulterior notification. Moreover, that investigative measure was carried out only after the Maramureş County Court had allowed the injured party's complaint about the unjustified protraction of the proceedings and fixed a time-limit for the completion of the investigation (see paragraph 14 above).

88. It took the case-prosecutor another several months (see paragraphs 24 and 28 above) to question for the first time the witnesses indicated by the parties. Again, those steps were taken subsequent to a second complaint about the protraction of the proceedings lodged by the injured party and allowed by the prosecutor, who fixed a time-limit for the investigation to be finalised at 1 October 2009 (see paragraph 22 above). That time-limit was in any event exceeded by more than one year, as the indictment was not issued until 20 December 2010 (see paragraph 32 above).

89. In this connection, the Court reiterates that it has repeatedly underlined the importance of contacting and questioning witnesses in the immediate aftermath of such incidents, when memories are fresh (see, for instance, *Dinu v. Romania*, no. 64356/14, § 82, 7 February 2017). This aspect becomes even more relevant in a case such as the present one, given that the domestic courts had divergent opinions about the reliability of the witnesses' statements, which varied over time, precisely on account of the amount of time between the incident and the making of those statements (see paragraphs 49-50 above).

90. The overall length of the proceedings in the case was determined also by the remittal ordered by the appellate court in 2013, on account of a procedural error committed by the lower court, which had wrongfully classified the criminal acts under examination (see paragraph 46 above). Subsequently, the lower court had to start the proceedings anew, including by re-examining all the available evidence. The proceedings were thus further delayed, without any contribution to that delay by the applicants.

91. The Court takes note of the Government's submission concerning the high complexity of the case, which required the examination of complex evidence, including of a forensic nature, and which justified, in their view, the duration of the proceedings of more than seven years (see paragraphs 67-68 above).

92. The Court accepts that forensic medical reports were essential for elucidating the circumstances of the injuries as well as their degree of seriousness, including with reference to a potential causal link with the victim's subsequent death. However, it cannot ignore the fact that the necessity to have more than one such report became imperative once the medical experts started to have divergent opinions on the matter.

93. Thus, the experts' opinions varied from considering that the open head injury would require more than sixty-five to seventy days of medical

care (see paragraph 12 above), to opining that there had been no open head injury at all (see paragraph 29 above). Such differences of opinion undoubtedly required the need for a more precise medical assessment, hence partly justifying the prolongation of the proceedings. However, as mentioned above, the divergence itself cannot in any way be attributed to the applicants, as it is, as a matter of principle, the State's responsibility to put in place an effective mechanism, capable of providing prompt and reliable answers to questions raised by the criminal investigations. In that vein, the Court has already held that the State is also responsible for delays in the presentation of reports and opinions of court-appointed experts and that it may be found liable also for structural deficiencies in its judicial system that cause delays (see, *mutatis mutandis,* and in the context of Article 6 of the Convention, *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, § 128, 7 July 2015).

94. Similar considerations apply in relation to the Government's submissions concerning the heavy workload of the relevant domestic authorities at the material time (see paragraph 70 above). The Court reiterates that it is the State's responsibility to take appropriate measures such as, *inter alia*, efficiently estimating the human resources needs within the judicial system, so as to ensure that it functions appropriately and, in particular, that the Convention requirements concerning the reasonableness of the duration of proceedings are complied with (see, *mutatis mutandis*, *Mardosai v. Lithuania*, no. 42434/15, § 55, 11 July 2017; and among many other authorities in the context of Article 6 of the Convention, *Docevski v. the former Yugoslav Republic of Macedonia*, no. 66907/01, §§ 33-34, 1 March 2007).

95. The Court therefore concludes that in spite of some intermittent efforts made by the investigative authorities to elucidate the circumstances of the injuries sustained by D.D. sr. (see paragraphs 14, 22, 46 and 47 above), the overall adequacy of the investigative measures carried out must be called into question. The Court refers in particular to the lack of a timely and adequate reaction on the part of those authorities at the preliminary stages of the investigation, as complained of in the present case (see paragraphs 4, 8 and 74 above), including in relation to the way in which the injured party was involved in the investigation. Those shortcomings were confirmed by the authorities themselves, when they twice allowed the injured party's complaints about the protraction of the proceedings (see paragraphs 14 and 22 above).

96. The Court cannot but conclude that the aforementioned shortcomings inevitably had a negative impact on both the effectiveness and the duration of the subsequent investigative measures, by jeopardising the ability to establish the facts and amplifying the possibility of the crime to remain unpunished (see, *mutatis mutandis*, *Anna Todorova v. Bulgaria*, no. 23302/03, § 79, 24 May 2011).

97. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicants claimed the total sum of 15,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government argued that the claims were excessive, in view of the Court's relevant case-law on the matter.

101. The Court considers that the applicants must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violation found and making its assessment on an equitable basis, it awards the applicants jointly EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

102. The Court further observes that it has so far refused to give any specific indications to a Government that they should, in response to a finding of a procedural breach of Article 2, hold a new investigation (see *Abuyeva and Others v. Russia*, no. 27065/05, § 240, 2 December 2010 and all the references cited therein). Nor does it consider it appropriate to do so in the present case. The Court notes its above finding that in the present case the effectiveness of the investigation had already been undermined at the early stages by the domestic authorities' failure to take essential investigative measures (see paragraph 95 above). It is therefore very doubtful that the situation existing before the breach could be restored. In such circumstances, having regard to the established principles cited above the Court finds it most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention (see *Kukayev v. Russia*, no. 29361/02, § 134, 15 November 2007).

B. Costs and expenses

103. The applicants also claimed EUR 8,000 for the costs and expenses incurred before the domestic courts.

104. The Government argued that the amount was excessive and that in any event, the applicants had not submitted relevant documents to support in full their claim for the lawyer's fees.

105. 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 8,000 covering costs under all heads, plus any tax that may be chargeable to the applicants.

C. Default interest

106. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants jointly, 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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicants, 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.

Andrea Tamietti
Registrar

Jon Fridrik Kjølbro
President

Annex
List of applicants

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Dumitru DANCIU	1975	Romanian	San Giuliano Milanese, Italy
2	Ionuc DANCIU	1986	Romanian	San Giuliano Milanese, Italy
3	Sava DANCIU	1954	Romanian	Borșa, Romania
4	Lupa TIMIȘ	1974	Romanian	Como, Italy