



Conviction of Adrian Nastase, former Prime Minister of Romania, was not in breach of Convention

In its decision in the case of [Nastase v. Romania](#) (application no. 80563/12) the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned the conviction of Adrian Nastase, former Prime Minister and former Minister for Foreign Affairs of Romania, by the High Court of Cassation and Justice, for using his influence as chairman of a political party in order to obtain financing for his 2004 election campaign. The Court found that Mr Nastase's complaints were manifestly ill-founded or incompatible with the Convention, or to be rejected for failure to exhaust domestic remedies.

Principal facts

The applicant, Adrian Nastase, is a Romanian national who was born in 1950 and lives in Bucharest. Mr Nastase is a former Prime Minister, former Minister for Foreign Affairs, former member of parliament and former chairman of a political party. He is also a former university professor of law and a former lawyer at the Bucharest Bar.

On 7 February 2006 the National Anticorruption Directorate opened criminal proceedings against Mr Nastase in respect of a number of alleged corruption offences. In November 2006 he was committed to stand trial before the High Court of Cassation and Justice (the "High Court"). In response to a plea of unconstitutionality raised by him, the High Court found the opening of the criminal proceedings null and void and referred the case back to the public prosecutor's office.

On 20 June 2008 the public prosecutor's office opened a criminal investigation. In January 2009 Mr Nastase was committed for trial in the High Court with five other defendants. 47 public hearings were held at first instance before the High Court. Mr Nastase participated in nearly all of the hearings, assisted by lawyers of his choosing.

In a judgment of 30 January 2012 the High Court sentenced Mr Nastase to two years' imprisonment for using his influence as chairman of a political party in order to obtain financing for his 2004 election campaign. He was stripped of his electoral rights, his right to hold public office and his right to serve as chairman of a political party, for a period covering the length of his sentence and for two years thereafter.

The High Court noted that there was no direct evidence of Mr Nastase's guilt but that his criminal liability was justified by the specificity of the corruption offences and was established by legal reasoning based on documents and witness statements.

Mr Nastase and the public prosecutor appealed against that judgment.

In a decision of 20 June 2012 the High Court partly upheld Mr Nastase's appeal but maintained the criminal sanction imposed at first instance and the ancillary penalties. On the same day, following the delivery of the final judgment, Mr Nastase attempted to commit suicide by shooting himself when the police officers came to arrest him to take him to prison. Mr Nastase was immediately taken to hospital, where he underwent an operation, then on 26 June 2012 he was incarcerated in the prison of Rahova, then that of Jilava, where he served his sentence.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 December 2012.

Mr Nastase relied on Article 3 (prohibition of torture and inhuman or degrading treatment), Article 8 (right to respect for private and family life), Article 5 § 1 (a) (right to liberty and security), Article 6 § 1 (right to a fair hearing), Article 6 § 3 (a) (right to be informed promptly of the accusation against him), (b) (right to adequate time and facilities for preparation of defence) and (d) (right to examine witnesses), Article 18 (limitation on use of restrictions on rights), Article 7 (no punishment without law), Article 11 (freedom of assembly and association), Article 1 of Protocol No. 1 (protection of property) and Article 3 of Protocol No. 1 (right to free elections).

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Luis **López Guerra** (Spain),
Ján **Šikuta** (Slovakia),
Dragoljub **Popović** (Serbia),
Kristina **Pardalos** (San Marino),
Johannes **Silvis** (the Netherlands),
Valeriu **Grițco** (the Republic of Moldova), *Judges*,

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of torture and inhuman or degrading treatment\) and Article 8 \(right to respect for private and family life\)](#)

Mr Nastase alleged that his criminal conviction, following proceedings that he considered unfair, his prison sentence and the consequences from which he claimed to have suffered, namely his inability to lead a normal family life and the loss of his political and professional career, together with the media coverage of his case, had constituted humiliating treatment, had caused him serious psychological distress and had resulted in his attempting to commit suicide.

The Court took the view that the mere existence of allegedly unfair proceedings did not suffice in itself to attain the degree of seriousness required by Article 3 of the Convention. It found that Mr Nastase's claim that the interference with his right to respect for his private life did not have a legal basis could not be upheld. These complaints were ill-founded and had to be rejected.

[Article 6 § 1 \(right to a fair hearing\)](#)

Mr Nastase complained that he had not been given a hearing by an independent and impartial tribunal established by law, on the ground that one of the judges of the first-instance trial court had not been appointed as judge by decree of the President of Romania. He alleged that such a practice undermined the legality of the court.

As regards the independence and impartiality of the trial court, the Court could not find any circumstances that would justify Mr Nastase's concerns about the transfer of the judge in question from his former duties as head prosecutor of the National Anticorruption Directorate to the post of judge. The Court similarly noted that there was nothing to warrant Mr Nastase's concerns as to the existence of a relationship of subordination or dependency between the High Court and the public prosecutor's office. The Court considered this complaint manifestly ill-founded and rejected it.

Article 6 § 3 (d) (right to examine witnesses)

Mr Nastase had complained that he was not able to have all the prosecution witnesses examined and that he had been obliged to justify his requests for evidence, whereas the public prosecutor had not had to provide such justification.

The Court took the view that the domestic authorities had not failed in their positive obligation to use all the efforts that could be reasonably expected of them to secure to the defence the possibility of having the prosecution witnesses examined. Consequently, it concluded that the absence of those witnesses at the hearing and, accordingly, the reading-out of the statements that had been taken before the trial, had been justified on serious grounds.

As regards Mr Nastase's allegation that he had been obliged to justify his requests for evidence to be adduced, the Court did not find any reason to suggest that the proceedings had been conducted arbitrarily to his detriment. That complaint was ill-founded and had to be rejected.

Mr Nastase complained that over seven hundred prosecution witnesses had been examined by the High Court but only five witnesses for the defence.

The Court noted that the High Court had indicated that the statements for the prosecution had not been essential for the purposes of establishing the accused's criminal liability. The court had explained that the criminal liability of the defendants, including that of Mr Nastase, had mainly been established by the written documents in the file and that the statements had merely corroborated the factual circumstances for which there was other evidence. The Court took the view that the mere fact that there had been a discrepancy in the number of witnesses between those for the prosecution and those for the defence did not prove that Mr Nastase had been prevented from calling witnesses under the same conditions as those called by the public prosecutor. This complaint was thus manifestly ill-founded and had to be rejected.

Article 7 (no punishment without law)

Mr Nastase had complained about a change in the case-law of the High Court concerning the calculation of the limitation period for criminal liability. He alleged that the application of this change was illegal and arbitrary. He argued that the law applied to him had thus been unforeseeable and less favourable than that in force in 2004, at the time of the offences with which he was charged.

The Court noted that the extension of the limitation period under the High Court's new case-law and its application in the applicant's case had admittedly had the effect of extending the time-limit until which proceedings could be brought in respect of the offences in question. Such a situation did not, however, entail a breach of the rights guaranteed by Article 7, because that provision could not be construed as preventing an extension in limitation periods where the offences had never become time-barred. The Court observed that Mr Nastase had been convicted for acts in respect of which prosecution had never been time-barred. Those acts had constituted offences at the time they were committed and the sentences imposed were not harsher than those previously applicable. The complaint was manifestly ill-founded and had to be rejected.

Considering Mr Nastase's other complaints to be manifestly ill-founded or incompatible with the provisions of the Convention, or as having to be rejected for failure to exhaust domestic remedies, the Court, by a majority, declared the application inadmissible.

The decision is available only in 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.