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

Press Release
issued by the Registrar of the Court

ECHR 383 (2022)
08.12.2022

Since 13 January 2021 a remedy before the Romanian civil courts allows prisoners to obtain compensation for inadequate conditions of detention

In its decision in the case of Vlad v. Romania (application no. 122/17), concerning the conditions of detention of a former prisoner in Bucharest-Rahova Prison, the European Court of Human Rights has unanimously declared the application inadmissible.

The decision is final. The Court found, in particular, as follows.

Regarding the period prior to 23 December 2019 (when Law no. 169/2017 was still in force), the Court held that the applicant could no longer claim to be a victim of the matter he complained of, namely his inadequate conditions of detention in Bucharest-Rahova Prison, in so far as he had received compensation in the form of an automatic reduction of sentence under Law no. 169/2017.

As to the period after 23 December 2019 (the date on which Law no. 169/2017 was repealed), the Court considered that the applicant could have brought a civil action in tort against the authorities in the domestic courts in order to assert his complaint of inadequate conditions of detention in Bucharest-Rahova Prison, where he was detained until 19 August 2020. As the applicant had not informed the Court that he had brought such an action, this part of the application was rejected for failure to exhaust domestic remedies. In that connection the Court referred to its judgment in *Polgar v. Romania* in which it had analysed 21 examples of domestic rulings and found that the remedy in question was accessible and afforded sufficient procedural safeguards, that the examination of actions by the domestic courts met the standards established in the Court's case-law, that there was a presumption of non-pecuniary damage, and that the complainants had obtained adequate and sufficient redress. The Court had also identified 13 January 2021 as the date from which the remedy in question could be deemed effective in respect of individuals who considered that they had been subjected to inadequate conditions of detention and who were no longer, when they lodged their action, being held in conditions that were allegedly contrary to the Convention. Consequently, the Court reaffirmed the crucial importance of the subsidiary nature of its role and held that in the present case it should apply an exception to the general principle that the effectiveness of a given remedy was to be assessed with reference to the date on which the application was lodged (in this case 13 February 2017). It specified that the applicant in the present case had, at the time of his release and to this day, the possibility of bringing an action of this kind on the basis of Articles 1349 and 1357 of the Civil Code in respect of the damage he had allegedly sustained during the period after 23 December 2019.

Lastly, the Court observed that the national authorities' efforts to implement the recommendations made by the Court in a pilot judgment (in this instance *Rezmiveș and Others v. Romania*) were aimed at enabling cases concerning prison overcrowding to be dealt with at the domestic level, so as to counter the growing threat posed to the Convention system by large numbers of similar cases deriving from the same structural or systemic problem.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicant, Adrian-Nicolae Vlad, is a Romanian national who was born in 1979 and lives in Bucharest. In 2016 he was remanded in custody and subsequently received a prison sentence. He served his sentence in Bucharest-Rahova, Jilava and Târgu-Jiu prisons.

While serving his sentence the applicant received compensation in the form of a reduction of his sentence, under the provisions of Law no. 169/2017. This compensation was expressly awarded to individuals who, like the applicant, had been held in inadequate conditions. As a result, his sentence was reduced by 282 days in respect of the period of detention between 14 January 2016 (when he was remanded in custody) and 23 December 2019 (when Law no. 169/2017 was repealed). Owing to the reduction in sentence, the date on which he became eligible for release on parole was brought forward, resulting by implication in his early release. Accordingly, on 23 March 2021, while he was being held in Târgu-Jiu Prison, he was released on parole.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 February 2017.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, the applicant complained about his conditions of detention in Bucharest-Rahova Prison and the fact that he had not received any compensation in that regard after the repeal of Law no. 169/2017.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Armen **Harutyunyan** (Armenia),
Anja **Seibert-Fohr** (Germany),

and also Ilse **Freiwirth**, *Deputy Section Registrar.*

Decision of the Court

The Court observed that the applicant's detention in Bucharest-Rahova Prison had comprised one period during which Law no. 169/2017 on compensation in the form of an automatic reduction of sentence for persons detained in conditions contrary to Article 3 of the Convention had been applicable, and a second period following the repeal of that Law on 23 December 2019. The Court decided to examine separately the period of detention in respect of which compensation had been awarded (that is, the period prior to 23 December 2019) and the period that had not given rise to any compensation (from 23 December 2019 onwards).

The applicant's conditions of detention in Bucharest-Rahova Prison before 23 December 2019

Regarding the domestic remedy established by Law no. 169/2017, which had remained in force until 23 December 2019, the Court, in the case of *Dîrjan and Stefan v. Romania*[1], had found the remedy in question to be capable of affording adequate redress for the applicants' poor conditions of detention. In the present case the applicant had benefited from the provisions in question in the same conditions as the applicants in that case, since he had been granted a reduction in sentence in relation to the total period spent in detention before 23 December 2019 – which included his detention in Bucharest-Rahova Prison prior to that date – in so far as his conditions of detention during the period under consideration had been contrary to Article 3 of the Convention. The compensation, awarded expressly in respect of the violation of Article 3 of the Convention, had

[1] *Dîrjan and Stefan v. Romania* ((dec.), nos. 14224/15 and 50977/15, §§ 23-34, 15 April 2020).

resulted directly in the applicant's early release, thereby preventing the continuation of the alleged violation. Consequently, with regard to the period prior to 23 December 2019, the applicant could no longer claim to be a victim of the matter he complained of, namely his inadequate conditions of detention in Bucharest-Rahova Prison.

The applicant's conditions of detention in Bucharest-Rahova Prison after 23 December 2019

The Court noted that the compensatory remedy in the form of an automatic reduction of sentence had ceased to be available on 23 December 2019, the date on which Law no. 169/2017 had been repealed, and that the applicant had not received any compensation in respect of his detention in Bucharest-Rahova Prison from that date onwards (he had continued to be held there from 23 December 2019 to 19 August 2020).

The Court referred in that connection to the existence of a domestic remedy enabling individuals who, like the applicant, considered that they had been detained in inadequate conditions, to bring a civil action in tort in order to obtain compensation for the damage suffered. In the case of *Polgar v. Romania*[2] the Court had analysed 21 examples of domestic rulings and found that the remedy in question was accessible to the persons concerned and afforded sufficient procedural safeguards, that the examination of actions by the domestic courts met the standards established in the Court's case-law, that there was a presumption of non-pecuniary damage, and that the complainants had obtained adequate and sufficient redress. The Court had also identified 13 January 2021 as the date from which the remedy in question could be deemed effective in respect of individuals who considered that they had been subjected to inadequate conditions of detention and who were no longer, when they lodged their action, being held in conditions that were allegedly contrary to the Convention.

In the present case the Court had to determine whether the applicant, who had satisfied that condition at the latest by 23 March 2021, the date of his release on parole, should have exercised this remedy, bearing in mind that his application to the European Court had been lodged on 13 February 2017, that is, before the date from which an action in tort was deemed to constitute an effective remedy (13 January 2021).

The Court reiterated in that regard that the effectiveness of a given remedy was normally assessed with reference to the date on which the application was lodged. Nevertheless, it pointed out that in a number of cases it had made exceptions to that principle, which it considered to be justified by particular circumstances such as the enactment of new national legislation designed to remedy a systemic problem regarding the length of domestic judicial proceedings. Reaffirming the crucial importance of the subsidiary nature of its role, it had thus found in those cases that an exception to the general principle was justified and should be applied in all similar cases pending before it that had not yet been declared admissible.

The Court also noted that the change in the practice of the Romanian courts (see, in particular, the case-law summarised in *Polgar* and the examples of more recent domestic rulings referred to in paragraph 10 of the decision) was comparable to that resulting from the introduction of a compensatory remedy in the relevant Italian, Moldovan and Hungarian legislation. In each case, the change reflected the efforts of the national authorities to implement the recommendations made by the Court in a pilot judgment (in this instance *Rezmiveș and Others v. Romania*[3]) and was aimed at enabling cases concerning prison overcrowding to be dealt with at the domestic level, so as to counter the growing threat posed to the Convention system by large numbers of similar cases deriving from the same structural or systemic problem. The Court had no reason to doubt that this line of case-law continued to be applied.

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[2] *Polgar v. Romania*, no. 39412/19, §§ 82-97, 20 July 2021.

[3] *Rezmiveș and Others v. Romania*, nos. 61467/12 and 3 others.

In the Court's view, recourse to the Romanian courts afforded speedier redress than proceedings before it, and eased the Court's caseload by avoiding the need for it to examine large numbers of cases that were similar in substance. The applicant, at the time of his release and to this day, had the possibility of bringing a civil action in tort against the authorities on the basis of Articles 1349 and 1357 of the Civil Code, in respect of the damage he had allegedly sustained during his detention in Bucharest-Rahova Prison after 23 December 2019.

Consequently, the Court considered it appropriate in the present case to apply an exception to the general principle that the effectiveness of a given remedy was to be assessed with reference to the date on which the application was lodged. It therefore held that the applicant could have lodged a civil action in tort against the authorities in the domestic courts – a remedy chosen by a large number of individuals according to the numerous examples from the domestic case-law – in order to assert his complaint of inadequate conditions of detention in Bucharest-Rahova Prison after 23 December 2019. As the applicant had not informed the Court that he had brought such an action, this part of the application was rejected for failure to exhaust domestic remedies.

The decision is available only in French.

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