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

FOURTH SECTION

DECISION

Application no. 38066/16
Nicolae-Andrei GÎTLAN
against Romania

The European Court of Human Rights (Fourth Section), sitting on 31 August 2023 as a Committee composed of:

Faris Vehabović*, President*,
Anja Seibert-Fohr,
Anne Louise Bormann*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 29 September 2016,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr. Nicolae-Andrei Gîtlan, is a Romanian national born in 1978. He was imprisoned in several Romanian detention facilities. The relevant details are set out in the appended table.

The applicant's complaints under Article 3 of the Convention concerning the inadequate conditions of detention were communicated to the Romanian Government ("the Government").

THE LAW

Having examined all the material before it, the Court considers that for the reasons stated below, the present application is inadmissible.

Having relied on Article 3 of the Convention, the applicant complained principally of the inadequate conditions of his detention.

The Government argued that the applicant had failed to exhaust the available effective remedies for the complaint about the inadequate conditions of his detention, as an action in tort was an effective remedy for grievances similar to those of the applicant, allowing him to have the

violation of the Convention acknowledged, either explicitly or in substance, and to receive adequate and sufficient compensation at the domestic level. The Government expressly referred to *Polgar v. Romania* (no. 39412/19, 20 July 2021) and *Vlad v. Romania* ((dec.), no. 122/17, 15 November 2022), and invited the Court to declare the case inadmissible.

The Court recalls that in *Polgar v. Romania* (cited above, §§ 94-96,) it held that an action in tort, based on Articles 1349 and 1357 of the Romanian Civil Code, as interpreted consistently by the national courts, had represented since 13 January 2021 an effective remedy for individuals who considered that they had been subjected to inadequate conditions of detention and who were no longer, when they lodged their action, held in conditions that were allegedly contrary to the Convention.

Subsequently, in *Vlad v. Romania* (cited above, §§ 24-32), the Court considered it appropriate 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.

From the documents submitted by the Government, it transpires that the applicant was released on 2 May 2021. Although invited, the applicant did not inform the Court of having brought an action in tort before the Romanian courts. Therefore, in the light of all the material in its possession, since the applicant was no longer in detention conditions that were allegedly contrary to the Convention after the moment when the tort action had been considered as representing an effective remedy (see, *mutatis mutandis*, *Polgar*, § 96, and *Vlad*, § 23, both cited above), the Courts considers that his application must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 September 2023.

Viktoriya Maradudina
Acting Deputy Registrar

Faris Vehabović
President

APPENDIX

Application raising complaints under Article 3 of the Convention (inadequate conditions of detention)

Application no. Date of introduction	Applicant's name Year of birth	Facility Start and end date Duration	Sq. m per inmate	Specific grievances
38066/16 29/09/2016	**Nicolae-Andrei GÎTLAN** 1978	Tulcea and Brăila Prisons 23/12/2019 to 02/05/2021 1 year(s) and 4 month(s) and 10 day(s)	2.35 - 2.57 m²	Overcrowding (save for the periods between 24/11/2020-23/12/2020 and 14/01/2021-29/01/2021), lack or inadequate furniture, no or restricted access to shower, no or restricted access to running water, infestation of cell with insects/rodents