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

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Following on from its pilot judgment in 2017, the Court reviews the conditions of detention in Romanian prisons and the effectiveness of the domestic remedies

The case concerned the conditions of detention in Romanian prisons and the effectiveness of the domestic remedies, particularly the civil-law remedy of an action in tort.

In 2017 the Court had delivered the pilot-judgment *Rezmiveș and Others*[1], in which it found a structural problem. In today's judgment, it took stock of developments in the situation. There are currently about 5,000 similar cases pending before the Court.

In today's **Chamber** judgment[2] in the case of **Polgar v. Romania** (application no. 39412/19) the European Court of Human Rights held, unanimously, that there had been**:**

- a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, having regard to Mr Polgar's material conditions of detention in Deva Prison (from 27 February 2014 to 29 April 2015 and from 14 May 2015 to 25 May 2015); and

a violation of Article 13 (right to an effective remedy) taken together with Article 3 of the Convention. The Court noted that the domestic case-law had evolved considerably over the past few years and, in particular, since the *Rezmives and Others* judgment. It held that an action in tort, based on Article 1349 of the 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, being held in conditions that were allegedly contrary to the Convention. This conclusion was also valid for individuals complaining about inadequate transport conditions. In Mr Polgar's case, however, the final decision by a domestic court had been issued on 13 February 2019, that is, well before the date taken by the Court as the starting point from which the domestic remedy in question could be regarded as effective.

Under Article 46 (binding force and execution of judgments) of the Convention, the Court welcomed the steps taken by the national authorities since its pilot judgment in order to reduce prison overcrowding. With regard to the preventive remedy, it noted however that the downwards trend in prison overcrowding had stopped in June 2020 and that the numbers had risen again for six months. As a result, the Court was unable to reach a different conclusion from that reached in the *Rezmiveș and Others* pilot judgment. It therefore urged the Romanian State to ensure that the reforms to reduce prison overcrowding were continued and to maintain the prison population at manageable levels. With regard to the compensatory remedy, it reiterated its findings, above, concerning the effectiveness of this remedy as of 13 January 2021.

[1] *Rezmiveș and Others v. Romania*, nos. 61467/12 and 3 Others, 25 April 2017.

2. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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Principal facts

The applicant, Tibor Polgar, is a Romanian national who was born in 1962 and lives in Alba-Iulia (Romania).

Between 23 April 2012 and 1 July 2015 Mr Polgar was held in various Romanian prisons, in particular those in Aiud, Deva and Gherla, in respect of which he complained about the material conditions of detention (overcrowding, unhygienic conditions, a lack of bathroom facilities, poor ventilation and a lack of space to store and eat food). He also complained about the conditions in which he was transferred between those prisons.

In April 2017, before the Alba court, Mr Polgar brought an action in tort against the State, the National Prison Service (the ANP), the Aiud, Deva and Gherla Prisons and the Ministry of the Interior in respect of the damage he had allegedly sustained on account of the inadequate conditions of detention, basing his action on Article 1349 of the Civil Code. He requested about 88,000 euros (EUR).

In November 2017 the court held that Mr Polgar's action was time-barred for the period prior to 21 April 2014 and awarded him EUR 500 for his poor conditions of detention in Deva Prison from 22 April 2014 onwards. The parties appealed.

In February 2019 the Alba-Iulia Court of Appeal held that the obligation to pay Mr Polgar compensation lay with Deva Prison and the ANP. It also ruled that the amount of compensation awarded had not been derisory and that the conditions for the 10-year limitation period were not met in this case.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Polgar alleged that the conditions in which he had been detained in Aiud, Deva and Gherla Prisons, respectively, and in which he had been transferred between those prisons, amounted to inhuman and degrading treatment.

Relying on Article 13 (right to an effective remedy) taken together with Article 3, Mr Polgar complained of the ineffectiveness of his action in tort, concluding with the judgment delivered on 13 February 2019 by the Alba-Iulia Court of Appeal, on account of the manner in which the national courts had applied the length of civil-law limitation period and of the allegedly insufficient amount awarded in respect of non-pecuniary damage.

The application was lodged with the European Court of Human Rights on 16 July 2019.

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

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Section Registrar.*

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

The applicant's victim status: the Government argued that Mr Polgar had lost his victim status, as the national courts had acknowledged the violation of Article 3 of the Convention and had granted him EUR 500 in compensation for his stay in Deva Prison.

The Court noted, firstly, that Mr Polgar had been compensated on account of the inadequate conditions in which he had been detained in Deva Prison from 22 April 2014 to 29 April 2015, and from 14 May 2015 to 25 May 2015. However, the domestic courts had not taken into consideration his stay in that prison from 27 February 2014 to 21 April 2014 on the grounds that the applicant's judicial action in respect of that period had become time-barred. However, the applicant's detention in Deva Prison from 27 February 2014 to 29 April 2015 had not been interrupted and represented a continuous situation within the meaning of the Court's case-law (where the detention occurred in prisons of the same type and in similar conditions, without the individual being released or transferred to a different prison regime). It followed that the violation complained of had been only partially acknowledged by the authorities.

The Court noted, secondly, that the compensation awarded had not covered all of the period complained of, since the courts had excluded, as being time-barred, the period from 27 February 2014 to 21 April 2014, which represented a continuous situation within the meaning of the Court's case-law. It also specified that, where compensation was not fixed by law, but was determined in application of the provisions concerning liability in tort, as in the present case, the national courts were required to ensure that they applied the national legislation in a manner compatible with the Convention and the Court's case-law. However, the amount awarded by the national courts (EUR 500 for a period of one year, two months and 13 days) had been unreasonable when compared to that which the Court would have awarded in comparable situations. Thus, Mr Polgar had not been granted adequate and sufficient redress for the violation sustained and had not lost his victim status.

The applicant's conditions of detention in Deva Prison: the Court reiterated the principles established by its consistent case-law regarding the material conditions of detention. It noted in the present case that the national courts had found, with final effect, that while detained in Deva Prison Mr Polgar had had available personal space of less than 3 sq. m. Having regard to its relevant case-law, it considered that the conditions in which Mr Polgar was detained in Deva Prison from 27 February 2014 to 29 April 2015 and from 14 May to 25 May 2015 had been contrary to Article 3 of the Convention. There had therefore been a violation of this Article.

The applicant's other complaints: the Court rejected Mr Polgar's complaints about Aiud Prison and Deva Prison (for the period 18 November 2013 to 3 February 2014) and about the transfer conditions between the prisons, holding that they had been submitted too late. The complaint about Gherla Prison was manifestly ill-founded.

Article 13 (right to an effective remedy) taken together with Article 3

More than three years after the delivery of the pilot judgment in *Rezmiveş and Others,* the Government argued that the compensatory remedy had become effective through developments in the case-law. In support of this argument, they submitted copies of 21 recent examples from the case-law.

The Court specified that, once an applicant was no longer detained in conditions that he or she alleged to be contrary to the Convention, a compensatory remedy was in principle sufficient to redress the alleged violation.

Given the large number of examples of case-law and findings by the domestic courts, the Court made the following observations: (1) the burden of proof incumbent on complainants did not appear

to have been excessive, and in the majority of the examples, the complainants had used easily obtainable evidence; (2) the time taken by the domestic courts to examine actions concerning liability in tort did not seem to have been too long, and the complainants were not required to pay court fees; (3) the domestic courts had analysed the civil actions in question in conformity with the standards laid down in the Court's case-law; (4) a finding of inadequate conditions of detention or transport gave rise to a presumption of non-pecuniary damage; (5) the domestic courts had determined on an equitable basis the amount of compensation awarded in respect of the non-pecuniary damage sustained by the complainants and had not granted amounts lower than those awarded by the Court in similar cases.

In the light of these considerations, and of the general standard of living in the respondent State, the Court considered that the compensation obtained by the complainants following their civil-law actions for liability in tort under Article 1349 of the Civil Code, in the case-law examples provided by the Government, did not disclose, taken as a whole, a structural problem in the amounts awarded by the national courts.

Having regard to the criteria that the domestic courts had adopted for assessing poor conditions of detention and compensating the non-pecuniary damage sustained by the complainants, the Court noted that the domestic case-law had developed significantly over recent years, and especially since the *Rezmiveş and Others* pilot judgment.

In addition, this case-law had been consolidated with the judgement delivered on 19 February 2020 by the High Court, in which the basis criteria to be applied in remedies of this type were set out. That judgment, which had been notified to the parties on 14 April 2020, had been available for consultation from 13 July 2020 on the case-law database and the public could no longer have been unaware of it six months after its publication, that is, from 13 January 2021.

In view of the above, the Court concluded that an action for liability in tort on the basis of Article 1349 of the 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, being held in conditions that were allegedly contrary to the Convention. This conclusion was also valid for individuals complaining about inadequate transport conditions.

The Court stressed that were the domestic courts to refuse systematically to examine complaints of inadequate conditions of detention in conformity with the principles and standards laid down by the Court in its case-law, this could call into question the effectiveness of the remedy. It retained its jurisdiction for the ultimate review of any complaint by applicants, who, in accordance with the subsidiarity principle, had exhausted the available domestic remedies.

In the specific case of Mr Polgar, the Court noted that the final domestic decision about his case was issued on 13 February 2019, that is, well before the date identified by the Court as being the date on which the domestic remedy in question could be considered effective. It followed that there had been a violation of Article 13 of the Convention taken together with Article 3 in Mr Polgar's case.

Article 46 (binding force and execution of judgments)

According to the latest assessment by the Department for the Execution of the Court's Judgments, Romania had recently taken measures that may help to reduce overcrowding and its consequences in Romanian prisons. The Court welcomed the steps taken by the national authorities to reduce the problem of prison overcrowding and could only encourage the Respondent State to continue this work.

With regard to the preventive remedies, the Court noted with interest that the level of prison overcrowding had begun to fall just after the adoption of the pilot judgment and that requests to the post-sentencing judge enabled the domestic courts to assess the situations of overcrowding

complained of by certain prisoners. However, it noted that the downwards trend in prison overcrowding had stopped in June 2020 and that the numbers had risen again for six months, with an overcrowding rate of 119.2% in December 2020. As a result, the Court was unable to reach a different conclusion from that reached in the *Rezmiveş and Others* pilot judgment. Although the national legislation provided for a preventive remedy, it considered that without a clear improvement in detention conditions in Romanian prisons, especially in terms of prison overcrowding, there was nothing to suggest that this remedy was likely to provide prisoners with an effective possibility of bringing those conditions into line with the requirements of Article 3 of the Convention. The Court urged the Romanian State to ensure that the reforms to reduce prison overcrowding were continued and to maintain the prison population at manageable levels.

With regard to the compensatory remedy, the Court reiterated its findings above under Article 13 of the Convention.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 2,500 euros (EUR) in respect of non-pecuniary damage, and EUR 200 in respect of costs and expenses.

The judgment is available only in French.

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