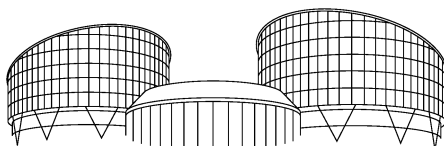


La Corte EDU sulle inadeguate condizioni dei centri di detenzione

(CEDU, IV sez., sent. 16 maggio 2024, ric. n.27381/17)

La Corte EDU si è pronunciata sul caso avente ad oggetto il ricorso presentato da un cittadino rumeno, il quale ha lamentato le inadeguate e pessime condizioni del centro di detenzione presso il quale è stato carcerato. Il ricorrente, recluso in due diversi periodi (2014-2018) e (2019-2021), ha denunciato in entrambi i casi di essere stato sottoposto ad un regime carcerario in contrasto con le garanzie di cui all'art. 3 della Convenzione. Più in particolare, ha reclamato la mancanza di aria fresca, la presenza di muffe ed insetti, la temperatura inadeguata etc.

La Corte di Strasburgo ha ritenuto il ricorso ricevibile solo in parte, respingendo la doglianza del ricorrente relativa alla sua seconda detenzione per mancato esaurimento delle vie di ricorso interne. Quanto, invece, al primo periodo di detenzione, la Corte ha constatato l'effettiva violazione dell'art. 3, ribadendo che la grave mancanza di spazio in una cella penitenziaria considerata sia isolatamente sia congiuntamente ad altre carenze, costituisce un elemento decisivo al fine di ritenere la descritta condizione detentiva degradante ed inadeguata.



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

FOURTH SECTION

CASE OF Omissis v. ROMANIA

(Application no. 27381/17)

JUDGMENT
STRASBOURG
16 May 2024

This judgment is final but it may be subject to editorial revision.

In the case of Omissis v. Romania,

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

Branko Lubarda, *President*,

Anne Louise Bormann,

Sebastian Rădulețu, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,
Having deliberated in private on 18 April 2024,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 24 April 2017.
2. The Romanian Government (“the Government”) were given notice of the application.

THE FACTS

3. The applicant’s details and information relevant to the application are set out in the appended table.
4. The applicant complained of the inadequate conditions of his detention in certain detention facilities in Romania. He was incarcerated during two periods: (i) from 28 December 2014 to 30 May 2018; and (ii) from 22 July 2019 to 17 August 2021.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

5. The applicant complained of the inadequate conditions of his detention. He relied on Article 3 of the Convention.
6. 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, and invited the Court to declare this application inadmissible.
7. The Court recalls that in *Polgar v. Romania*, no. 39412/19, §§ 94-96, 20 July 2021, 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 held in conditions that were allegedly contrary to the Convention (see also *Vlad v. Romania*, (dec.), no. 122/17, §§ 30-33, 15 November 2022).
8. The Court notes that the applicant was released from his first detention on 30 May 2018, i.e., before the tort action had been considered as representing an effective remedy (see, *mutatis mutandis*, *Polgar*, § 96 and *Vlad*, § 23, both cited above). Therefore, the Court dismisses the Government’s objection as to the non-exhaustion of domestic remedies and finds that the applicant did not have at his disposal an effective domestic remedy for his grievances regarding his first detention from 28 December 2014 to 30 May 2018.
9. The Court further notes that the applicant was released from his second detention on 17 August 2021, that is after the tort action had been considered as representing an effective remedy (see above). Therefore, the Court accepts the Government’s objection and finds that the applicant’s complaint related to his second detention from 22 July 2019 to 17 August 2021 must be dismissed for failure to exhaust domestic remedies.

10. The Government also raised a preliminary objection concerning the loss of the victim status by the applicant because he had been afforded adequate redress based on Law no. 169/2017 amending and completing Law no. 254/2013 on the execution of sentences for the period of detention from 28 December 2014 to 30 May 2018.

11. The Court notes that the domestic remedy introduced in respect of the inadequate conditions of detention in Romania and applicable until December 2019 was held to be an effective one in the case of *Dirjan and Ștefan v. Romania* (dec.), nos. 14224/15 and 50977/15, §§ 23-33, 15 April 2020.

12. As regards the applicant's detention from 28 December 2014 to 30 May 2018, in the light of all the material in its possession, the Court finds that this remedy was available to him, and he was, indeed, afforded adequate redress for the conditions during specific periods of detention indicated in column no. 6 of the appended table. Therefore, the Court accepts the Government's objection and finds that this part of the application (for further details see the appended table) is incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

13. Turning to the remaining period of the applicant's detention the details of which are indicated in column no. 3 of the appended table, the Court notes that the applicant was kept in detention in poor conditions. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122-41, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-59, 10 January 2012).

14. In the leading case of *Rezmiveș and Others v. Romania*, nos. 61467/12 and 3 others, 25 April 2017, the Court already found a violation in respect of issues similar to those in the present case.

15. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's conditions of detention during the period indicated in column no. 3 of the appended table were inadequate.

16. This complaint is therefore admissible and discloses a breach of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. Regard being had to the documents in its possession and to its case-law (see, in particular, *Rezmiveș and Others*, cited above), the Court considers it reasonable to award the sum indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the inadequate conditions of detention, for the period indicated in the appended table, admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a breach of Article 3 of the Convention concerning the inadequate conditions of detention during the period indicated in the appended table;
3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 16 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina
Acting Deputy Registrar

Branko Lubarda
President

APPENDIX

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

Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Domestic compensation awarded (in days) based on total period calculated by national authorities
Giurgiu Prison 26/10/2016 to 03/02/2017 3 month(s) and 9 day(s)	-	lack of fresh air, mouldy or dirty cell, infestation of cell with insects/rodents, inadequate temperature, no or restricted access to warm water, lack of or restricted access to leisure or educational activities	204 days in compensation for periods spent in inadequate conditions from 28/12/2014 to 30/05/2018 (except for the period mentioned in column no. 3)