

FREEDOM OF THOUGHT, OPINION, AND RELIGIOUS BELIEFS IN THE CASE OF PERSONS DEPRIVED OF THEIR LIBERTY

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Abstract

This paper¹ deals with the issue of freedom of thought, opinion, and religious beliefs in the case of persons deprived of their liberty.

The study has a first part which consists in a presentation of the international standards (United Nations, Council of Europe, European Union), followed by a presentation of the national standards (the freedom of thought, opinion, and religious beliefs being a fundamental freedom, prescribed by the Romanian Constitution).

An analysis is made based on the European Convention of Human Rights and of the European Prison Rules, in relation with national legal framework, touching the essential aspects of the freedom of thought, opinion, and religious beliefs in the case of persons deprived of their liberty: the exercise of the freedom of conscience and opinions, as well as of the freedom of religious beliefs; organization of religious service in prisons; proportionality of the measures ordered by the penitentiary administration; the limits of exercising the freedom of conscience and opinions, as well as the freedom of religious beliefs.

Further, the paper focuses on the main ECtHR judgements dealing with possible infringements of art. 9 from the European Convention, dealing with freedom of thought, opinion, and religious beliefs and then focuses on the national case law in this field.

Concluding, the study attempts to assess the national legislation and case law pleading on taking into consideration the solutions rendered by the ECtHR in its judgments, which can and should be applied at national level, in order to ensure the uniformity of judicial practice.

Keywords: *prison; persons deprived of their liberty; freedom of conscience; religion; ECHR; ECtHR; Romanian legislation*

1. Introduction

Freedom of conscience, fundamental freedom, is traditionally included in the category of social and political rights and freedoms. As claimed by the doctrine¹, it is one of the first freedoms in the human rights catalogue, because especially religious freedom - as part of the freedom of conscience² - has had a long, long history, streaked with intolerance and rushes, with excommunication and prejudice, with many suffering and pain.

Individuals must be free in exercise of this, one of the most fundamental human rights available, to determine his or her own theological or philosophical convictions and to manifest such beliefs free from State interference, at least insofar as the religious practice does not infringe or impede the exercise of the fundamental rights of others.³

This absolute freedom to entertain any thought, moral conviction or religious view is not entirely without practical importance. It is true that thoughts and views, as long as they have not been expressed, are intangible and that valuable for the person concerned if he can express them. But that does not render the (inner) freedom of thought, conscience and religion useless. This guarantee also implies that one cannot be subjected to treatment intended to change the process of thinking ('brain-washing'), that any form of compulsion to express thoughts, to change an opinion, or to divulge a religious conviction is prohibited, and that no sanction may be imposed either on the holding of a view or on the change of a religion or conviction; it protects against indoctrination by the State.⁴

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¹ This paper is based on the research realised in the 3rd Chapter. Analysis of the rules applicable to persons deprived of their liberty, 4th Section. Freedom of thought, opinion, and religious beliefs, R. F. Geamănu, *Mijloace de protecție a persoanelor condamnate la pedeapsă privativă de libertate* (Bucharest: Universul Juridic, 2019).

² I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice [Constitutional law and political institutions]*, 12th edition, volume I (Bucharest: All Beck, 2005), 180.

³ We do not support the opinion expressed in the specialist literature - Ghe. Iancu, A.I. Iancu, *Evoluția unor drepturi fundamentale în contextul social actual [The evolution of fundamental rights in the current social context]* (Bucharest: C.H. Beck, 2017), 6 -, according to which freedom of conscience is also known as "religious freedom", as in our opinion there is no equivalence between the two notions, but a whole - part relationship.

⁴ R. K.M. Smith, *Textbook on International Human Rights*, 5th edition (Oxford: Oxford University Press, 2012), 207.

⁵ P. van Dijk, F. van Hoof, A. van Rijn, L. Zwaak (editors), *Theory and practice of the European Convention on Human Rights*, 4th edition (Antwerpen-Oxford: Intersentia, 2006), 752.

2. Freedom of thought, opinion, and religious beliefs

2.1. International standards

At *international level*, Universal Declaration of Human Rights, in art. 18, sets out the principle according to which, "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

Similar provisions are to be found in art. 9 (freedom of thought, conscience and religion) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and art. 10 (freedom of thought, conscience and religion) of the Charter of Fundamental Rights of the European Union.

The authors of the European Convention understood to protect not only the private and family life of the individual, his correspondence and his domicile, but also his "inner forum", namely the thought, conscience and religion he chooses. In the process of thinking, the individual forms certain beliefs; as a social being, he needs to manifest his beliefs - often attached to the embrace of a certain religion - externally to other fellows or with them.⁵

In the context of international legal instruments, it should be underlined that the freedom of opinion, conscience and religion is also regulated at special level, namely for the persons deprived of their liberty. We take into account the provisions of rules 65 and 66 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the first instrument developed under the auspices of U.N. which protects people deprived of their liberty.

Also, the European Prison Rules, in rule 29 set out the basic principles regarding the freedom of thought, conscience and religion, which shall be respected; as a consequence, inmates "may not be compelled to practice a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief."

This entails two aspects: first, the right of prisoners to manifest their religion or belief and to receive religious or moral support, which is particularly important in the context of deprivation of liberty; and secondly, the right of prisoners not to be compelled to adopt any form of religion or belief.⁶

2.2. Relevant internal legislation

At *national level*, freedom of thought, opinion, and religious beliefs is regulated, as a basic principle, in art. 29 paras. (1) and (2) of the Romanian Constitution, according to which these liberties "shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions. Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect."

From a legal point of view, freedom of conscience, as it is formulated in our Fundamental law, is a single right, a single freedom, which incorporates, as it can be observed, several aspects that need to be considered together.⁷

In detail, the legal framework is established by the provisions of Law no. 489/2006 on religious freedom and the general status of denominations⁸. Thus, according to art. 1 and 2, "the Romanian State observes and guarantees the fundamental right to freedom of thought, conscience and religion for any individual on the territory of Romania, under the Romanian Constitution and the international treaties Romania is a party to. No one shall be prevented from adopting a religious opinion or joining a religious faith, no one shall be coerced into adopting a religious opinion or joining a religious faith, contrary to his/her persuasion, and no one shall be subject to any discrimination, or be harassed or placed in an inferior position on account of their faith, membership or non-membership in a religious group, association or denomination, or for the exercise, within the law, of their freedom of religion.

Freedom of religion includes the right of every individual to have or embrace a religion, to manifest it individually or collectively, in public or in private, through practices and rituals specific to that denomination, including through religious education, as well as the freedom to preserve or change one's religion. The freedom to manifest one's religion cannot be subject to any restrictions other than those required under the law and which are necessary in a democratic society for the protection of the public, of public order, health or morality, or for the protection of fundamental human rights and liberties."

The special rules, which concern the persons deprived of their liberty, are provided by art. 58 of the Law no. 254/2013 on enforcement of custodial penalties and of measures ordered by the judicial bodies during the criminal proceedings⁹ (Law no. 254/2013), art. 124 of the Regulation on implementing the

⁵ C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole. Volume I. Drepturi și libertăți [The European Convention on Human Rights. Comment on articles. Volume I. Rights and freedoms]* (Bucharest: All Beck, 2005), 697.

⁶ D. van Zyl Smit, S. Snacken, *Principles of European prison law and policy. Penology and human rights* (Oxford: Oxford University Press, 2011), 207.

⁷ M. Udroi, O. Predescu, *Protecția europeană a drepturilor omului și procesul penal român [European Human Rights Protection and the Romanian Criminal Procedure]* (C.H. Beck Publishing House, Bucharest, 2008), 231.

⁸ Law no. 489/2006 on religious freedom and the general status of denominations, republished in the *Official Journal of Romania, Part I, no. 201 of March 21, 2014*.

⁹ Law no. 254/2013 on enforcement of penalties and of measures ordered by the judicial bodies during the criminal proceedings, published in the *Official Journal of Romania, Part I, no. 514 of August 14, 2013*.

provisions of the Law no. 254/2013¹⁰ (Regulation) and the Order of the Minister of Justice no. 4000/C/2017 for the approval of the Regulation regarding the religious assistance of the persons deprived of their liberty in the prison system¹¹ (Order of the Minister of Justice no. 4000/C/2017).

2.3. Specific aspects regarding the persons deprived of their liberty

Historically, religion played a large part in shaping prison regimes. In Europe early historical connections between the evolution of the prison and the monasteries are well documented, while attempts to reform prison regimes at the end of the 18th century owed much to the Christian beliefs of moral entrepreneurs, such as John Howard and his successors. Religious groups have continued to focus on prisons and to attempt to influence the spiritual lives of prisoners.¹²

Prison authorities will be expected to recognize the religious needs of those deprived of their liberty by allowing inmates to take part in religious observances.¹³

The special primary legislation has only taken over the principles already enshrined in Romanian Constitution, so that art. 58 paras. (1) and (2) of Law no. 254/2013 states that "freedom of conscience and of opinions, as well as freedom of religious beliefs of the convicted persons cannot be restricted. The convicted persons shall have the right to freedom of religious beliefs, without prejudice to the freedom of religious beliefs of the other convicted persons".

Because of the specific nature of the organization of the penitentiaries, such a legal framework, regulated only in general terms and declarative norms, would have been insufficient, risking generating only formal regulation and not an effective exercise of freedom of conscience, with all its components, especially religious freedom.

As a consequence, it was necessary to create a system of legal provisions that would contain some technical, precise and complete provisions designed to ensure full respect for the freedoms of thought and their effective exercise by persons deprived of their liberty:

- a) The exercise of the freedom of conscience and opinions, as well as of the freedom of religious beliefs in the case of persons convicted of deprivation of liberty. The right of the individual to manifest his beliefs presupposes that any person can manifest his/her own beliefs, individually or collectively, publicly or in a private setting,

manifesting, first of all, through cult and rites - especially in prison -, as well as through "practices".¹⁴

Inmates may declare on their free consent the confession or religious affiliation at the entrance to the place of detention and subsequently during the execution of the punishment [art. 124 para. (3) of the Regulation on implementing the provisions of the Law no. 254/2013].

According to art. 58 para. (3) of the Law no. 254/2013, the convicted persons may attend, based on free will, to sermons or religious meetings organized in penitentiaries, may receive visits from representatives of that denomination and may acquire and hold religious publications, as well as worship objects.

Without prejudice to free consent to the choice of confession or religious affiliation, secondary legislation has established an administrative procedure for the change of religion, as well as some rules on giving inmates the possibility of attending cults or beliefs, as a precondition for changing confession or religious affiliation.

Thus, the change of confession or religious affiliation during the period of detention is proved by a declaration on its own responsibility and by the act of affirmation of belonging to that cult. Where a change of religion is envisaged, inmates are allowed to participate in the meetings of that cult or faith, with the agreement of their representatives and taking into account the specific security measures, the daily schedule and the number of participating inmates. Prisoners are informed that changing religion is a major decision that can affect their relationship with family members, their dependents or others [art. 124 paras. (4) and (8) of the Regulation on implementing the provisions of the Law no. 254/2013].

In applying the constitutional principles on the freedom of religious beliefs, paras. (6) and (7) of art. 124 of the Regulation establish the right of inmates to exercise their religion or belief in a real and effectively manner, by granting them the possibility of requesting confidential discussions with representatives of religious denominations or religious associations recognized by law and, on the other hand, the protection of this category of people against possible constraints on the adherence, change or renunciation of their own religious beliefs in the sense that inmates cannot be compelled to practice any religion or adopt any beliefs, participate in religious meetings, accept the visit of a representative of a cult or religious faith.

¹⁰ Government Decision no. 157/2016 on the approval of the Regulation on implementing the provisions of the Law no. 254/2013 on enforcement of penalties and of measures ordered by the judicial bodies during the criminal proceedings, published in the *Official Journal of Romania, Part I, no. 271 of April 11, 2016*.

¹¹ Order of the Minister of Justice no. 4000/C/2017 for the approval of the Regulation regarding the religious assistance of the persons deprived of their liberty in the prison system, published in the *Official Journal of Romania, Part I, no. 965 of November 29, 2016*.

¹² D. van Zyl Smit, S. Snacken, *Principles of European prison law and policy. Penology and human rights*, 207.

¹³ J. Murdoch, *Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights* (Strasbourg: Council of Europe Publishing, Human Rights Handbooks, 2012), 54.

¹⁴ F. Sudre, *Drept European și internațional al drepturilor omului [European and international human rights law]* (Bucharest: Polirom, 2006), 344.

b) *Organization of religious service in prisons.* The set of regulations on the freedom of religious beliefs and religious assistance is capable to provide a lasting and profound connection between man and God or any other divinity. Practically, without being constrained, persons deprived of liberty can adopt the theism, as a conception of life, which can only help and discipline the person deprived of freedom by contributing to the education in the spirit of respecting religious and social values, with the consequence of successful reintegration into society. The situation is the same with regard to the adoption of atheism.

Of all the components of freedom of conscience, the freedom of religious beliefs required a number of special legal provisions to ensure a full and concrete external manifestation, through the organization of religious service in prisons and the access of persons deprived of liberty to it. In applying the provisions of art. 29 para. (5) of the Romanian Constitution, according to which the religious cults are autonomous to the state and enjoy its support, including through the facilitation of religious assistance in prisons, art. 124 para. (1) of the Regulation establishes the duty of the National Administration of Penitentiaries (N.A.P.) through the subordinated units to grant access to religious organisations and representatives recognized by the law in the penitentiaries in order to respond to the needs of religious assistance of the inmates on the basis of the written approval of the director of the penitentiary.

According to the provisions of art. 2 para. (2) from the Order of the Minister of Justice no. 4000/C/2017, in order to respond to the needs of religious assistance of persons deprived of their liberty, "specific activities in places of detention can be permanently secured by the Chaplain priests employees of N.A.P. or by representatives appointed by religious cults or associations, in compliance with their own canonical statutes or codes and legal provisions."

In order to effectively exercise the freedom of religious beliefs, the units subordinated to N.A.P. provides for "spaces allowing the exercise of the freedom of belief of persons deprived of their liberty in custody, with the assistance of representatives of religious denominations or religious associations recognized by law, whose confession they share" (Article 3 from the Order of the Minister of Justice no. 4000/C/2017).

Such a provision is in line with the regional standards in the field, provided in rule 29.2 of the European Prison Rules: "The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to

have in their possession books or literature relating to their religion or beliefs."; according to the Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, so far as is practicable, places of worship and assembly shall be provided at every prison for prisoners of all religious denominations and persuasions. Also, approved representatives of religions should be allowed to hold regular services and activities and to pay pastoral visits in private to prisoners of their religion. Access to an approved representative of a religion should not be refused to any prisoner.

Also, the national provisions are in line with the provisions of rule 65 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), according to which, "if the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis. A qualified representative appointed or approved in the previous mentioned conditions shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times."

"Representatives of religious denominations or religious associations who have access to the penitentiary may distribute to inmates publications and religious objects that can be kept by the inmates in a reasonable number. The reasonableness is determined by the number and size of publications, books and religious objects in possession of a detainee, without affecting his/her living space or the living space of other inmates, when the accommodation is shared." [art. 124 para. (5) of the Regulation]. Such a provision is in line with the international standards in the field - rule 66 of the Nelson Mandela Rules, according to which, "So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination."

It is forbidden for the prison administration to interfere with the content of religious programs [art. 6 para. (2) from the Order of the Minister of Justice no. 4000/C/2017].

In other words, inmates should be able to receive visits from a religious representative, and such contact should be in private, at least out of hearing of the prison staff.¹⁵

Moreover, from the perspective of the European Convention, the guarantee of freedom of thought, conscience and religion presupposes, first of all, a negative obligation on the part of the State authorities not to take any action or to refute any omission leading to a restriction of the effective exercise of these freedoms; such restraints are allowed only within the

¹⁵ Association for the Prevention of Torture (APT), *Monitoring places of detention. A practical guide* (Geneva: Association for the Prevention of Torture, April 2004), 182.

limits strictly determined by the provisions of art. 9 para. 2 of the Convention and only with regard to freedom of religion and conscience, and not to freedom of thought.¹⁶

Concluding, we consider that the legal provisions in force are able to ensure the protection of inmates against possible abuses by the prison administration or third parties, by ensuring freedom of conscience, opinions and, above all, the freedom of religious beliefs.

c) *Proportionality of the measures ordered by the penitentiary administration.* Regarding the compliance of the penitentiary regulations, it was pointed out in the North American law system that, if the court decides your belief is religious and sincerely held, it will then apply the *Turner test* to the prison regulation or practice that you are challenging by asking whether a prison regulation “is reasonably related to legitimate penological interests,” and therefore does not violate your constitutional rights¹⁷. Specifically, under *Turner*, a court will consider the following four factors:

- Whether there is a valid, rational connection between the prison regulation and the legitimate governmental interest used to justify it;
- Whether there are other ways of exercising the right despite the regulation;
- If, by allowing you to exercise your right, there will be a “ripple effect” on others such as prison personnel, other prisoners, and on the allocation of prison resources; and
- Whether there is a different way for the prison to meet the regulation’s goal without limiting your right in this way.¹⁸

For example, one federal court of appeal used the *Turner test* to rule that prison officials could prohibit religious items like a bear tooth necklace and a medicine bag in cells to protect the safety of other prisoners, prison guards, and the prisoner¹⁹.

Also in the North American law system (*Schreiber v. Ault* case), a free exercise of religion claim failed. A prisoner believed for religious reasons that after his blood was used for routine medical tests it should have been poured on the ground and covered with dust; decontamination and disposal of prisoners’

blood after medical testing was reasonably related to public health and safety concerns.²⁰

We consider that such a test could also be used by national courts or by the judge in charge of the supervision of deprivation of liberty on the occasion of the examination of the violation of the freedom of conscience, opinions and freedom of religious beliefs provided for in art. 58 of the Law no. 254/2013.

d) *The limits of exercising the freedom of conscience and opinions, as well as the freedom of religious beliefs.* The fundamental nature of the rights guaranteed in article 9 para. 1 (art. 9-1) is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of articles 8, 10 and 11 (art. 8-2, art. 10-2, art. 11-2) which cover all the rights mentioned in the first paragraphs of those Articles (art. 8-1, art. 10-1, art. 11-1), that of article 9 (art. 9-1) refers only to “freedom to manifest one’s religion or belief”. In so doing, it recognizes that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected²¹. In fact, there is a generous margin of appreciation from State authorities in this field²².

The closed environment and the constraints inherent in the execution of the custodial sentences imposed the regulation of some normal limits for the exercise of religious freedom, which would enable each prisoner (both individually and collectively, in the prison community), to exercise the effectiveness of this freedom. Thus, according to art. 58 paras. (2) and (3) of the Law no. 254/2013, convicted persons shall have the right to freedom of religious beliefs, without prejudice to the freedom of religious beliefs of the other convicted persons. The convicted persons may attend, based on free will, to sermons or religious meetings organized in penitentiaries, may receive visits from the representatives of that denomination and may acquire and hold religious publications, as well as worship objects.

However, the actual contact of the inmates with the representatives of the cult or religious confession

¹⁶ C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole. Volume I. Drepturi și libertăți [The European Convention on Human Rights. Comment on articles. Volume I. Rights and freedoms]*, 703.

¹⁷ *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987) (“[W]hen a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”), apud Columbia Human Rights Law Review, *A Jailhouse Lawyer’s Manual, Chapter 27: Religious Freedom in Prison*, 819, accessed March 25, 2019, <http://jlm.law.columbia.edu/files/2017/05/39.-Ch.-27.pdf>.

¹⁸ *Turner v. Safley*, 482 U.S. 78, 89-90, 107 S. Ct. 2254, 2261-62, 96 L. Ed. 2d 64, 79-80 (1987), apud Columbia Human Rights Law Review, *A Jailhouse Lawyer’s Manual, Chapter 27: Religious Freedom in Prison*, 828-829.

¹⁹ *Hall v. Bellmon*, 935 F.2d 1106, 1113 (10th Cir. 1991) (upholding a prison policy that prohibited a Native American from wearing a bear tooth necklace and medicine bag on the grounds of prison security); see also *Spies v. Voinovich*, 173 F.3d 398, 405 (6th Cir. 1999) (upholding a prison’s prohibition of certain Buddhist religious materials from a prisoner’s cell and the chapel on the grounds of prison security), apud Columbia Human Rights Law Review, *A Jailhouse Lawyer’s Manual, Chapter 27: Religious Freedom in Prison*, 829.

²⁰ *Schreiber v. Ault*, 280 F.3d 891 (8th Cir. 2002), apud J. W. Palmer, *Constitutional Rights of Prisoners*, 9th Edition (New Providence, New Jersey: Lexis Nexis Anderson, 2010), 126.

²¹ ECtHR, judgment from 25.05.1993, *Kokkinakis v. Greece*, no. 14307/88, § 33. Please note that all judgments of the European Court of Human Rights referred to in this study are accessible on the website of ECtHR, accessed March 25, 2019, <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>.

²² J. Murdoch, *The treatment of prisoners. European standards*, (Strasbourg: Council of Europe Publishing, 2006, reprinted 2008), 248.

they belong to is not absolute, the limitations inherent in the penitentiary regime being accepted as long as they do not affect the very substance of the right or freedom in question. "Religious or moral-religious activities in the penitentiary environment are carried out in compliance with the internal regulations regarding the guarding, supervision and escorting of the persons performing custodial sentences in the places of detention in the penitentiary administration system". [art. 8 para. (1) from the Order of the Minister of Justice no. 4000/C/2017].

From this perspective, the provision in art. 124 par. (2) of the Regulation provides for the possibility of the warden to order the prohibition of the access of representatives of cults or religious associations recognized by law for a period of maximum 6 months, in certain strictly regulated cases (e.g.: discovery of weapons, ammunition, hallucinogenic substances, drugs or other objects forbidden to visitors, which they have not declared before the start of control; visitors that may have a negative influence on the behaviour of inmates; visitors that do not allow the specialized control before entering a prison). The imposition of such obligations on representatives of religious denominations and religious associations, as well as the regulation of the possibility of applying a ban on the access of representatives of religious denominations or religious associations who have breached the legal provisions for a maximum period of 6 months, is fully in line with the requirements of international legal instruments, as such restraints are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others [art. 9 para. (2) of the European Convention; art. 18 para. (3) of the International Covenant on Civil and Political Rights].

Mention should be made that the prohibition concerns only the religious representative, not the cult, so that the right to religious assistance is not affected by the application of such a prohibition on access by religious representatives or religious associations who have breached legal provisions.

e) The European Convention for the Protection of Human Rights and Fundamental Freedoms. The case law of the European Court of Human Rights. At the Council of Europe level, freedom of conscience, opinions and religious beliefs is regulated in art. 9 of the European Convention and read as follows: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his

religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Freedom of thought (conscience, beliefs and religious beliefs), as provided in art. 9 of the European Convention, has two dimensions - the internal, individual dimension ('*forum internum*'), which concerns the right to have opinions and beliefs, independent of its concretisation and expression in public, and an external dimension ('*external forum*'), which concerns the manifestation of these freedoms in public, in society.

The right to have a conscience, belief, in general, protects the inner forum, that is, the field of personal beliefs and religious beliefs, and is not susceptible to limitations, unlike the right to manifest beliefs, which may suffer some limitations, of course in accordance with legal requirements (provided for by law, have a legitimate aim and being necessary for public security, public order, health, public morals, rights and freedoms of others).

Article 9 para. 1 of the European Convention does not only address religious beliefs that can be manifested in certain forms or can be exchanged, but also other beliefs of the individual, expressing his conception of the world and life or of certain social phenomena.²³

Freedom to have beliefs is absolute, the only restriction referred to in art. 9 of the European Convention excluding only the means of exercising that freedom. Affirming this freedom may seem useless, it is that obvious.²⁴

The right to have a conscience presents a triple approach: it is primarily the freedom of every person to have or to adopt a belief or religion, at his free choice; then the right in question is the freedom to have no belief or religion and finally the right to have a belief is the freedom of individuals to change their belief or religion without suffering any constraint or prejudice.²⁵ And it also comprises the right not to be obliged to act in a way that entails the expression of acceptance of a church, a religion or belief that one does not share.²⁶

Conventional regulation recognizes each person's freedom to manifest their religion or belief: through cult, education, practice, and ritual fulfilment.

It should be noted that neither the European Convention nor the case law of its bodies have given a definition of the notion of "religion" or "cult"; they also do not allow the identification of general criteria according to which certain spiritual representations can

²³ C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole. Volume I. Drepturi și libertăți [The European Convention on Human Rights. Comment on articles. Volume I. Rights and freedoms]*, 715.

²⁴ J.-F. Renucci, *Tratat de drept European al drepturilor omului [Treaty on European Human Rights]* (Bucharest: Hamangiu, 2009), 207.

²⁵ F. Sudre, *Drept European și internațional al drepturilor omului [European and international human rights law]* (Bucharest: Polirom, 2006), 344.

²⁶ P. van Dijk, F. van Hoof, A. van Rijn, L. Zwaak, *Theory and practice on the European Convention on Human Rights*, 758.

be qualified as having the meaning of a religion or cult.²⁷

Obviously, a person's membership of major religions or traditional confessions does not raise any problem in exercising control over respect for freedom of religion. But religious beliefs are not limited to Christianity, Islam, Judaism, Hinduism, or Buddhism. The most delicate issues are about minority religions and new religious groups. Therefore, the issue of the sects is inevitable, especially as there is a general mistrust of the sects and their actions at European level.²⁸

In any case, when the criteria of 'cogency, seriousness, cohesion and importance' are fulfilled, the existence of a religion or belief must be assumed. It is not up to the State to withhold protection because this religion or belief is regarded as incorrect, untrue or unacceptable.²⁹

For proper assessment and application of national legal provisions on freedom of conscience, opinion and freedom of religious belief, an analysis of the Strasbourg Court's case law on art. 9 of the European Convention must be put in place.

We believe that the Court's principles in solving the applications can and should be applied at national level; this is the only way to ensure the uniformity of judicial practice, with a conventional application and interpretation of domestic legal provisions.

Occasional complaints have been made concerning interference with religious beliefs or matters of conscience by prison regimes. Few serious issues have yet been found to arise. Claims by Orthodox prisoners that prison food failed to respect dietary requirements was contested strongly by the UK Government and failed for non-exhaustion.³⁰ Also, the inability to obtain a particular item or lack of provision of a preferred item is insufficient. Short of compulsion to breach a strict religious dietary requirement or failure to provide sufficient food compatible with that diet, complaints are likely to fail³¹ as an infringement of the European convention.

As the Court finds in an admissibility decision, prisoners have the right to manifest their religion or beliefs through worship, practice and the fulfilment of religious rites, within the meaning of art. 9 para. 1 of the European Convention³².

Over time, the Strasbourg courts have ruled that art. 9 defends beliefs such as: pacifism, environmental protection, vegetarianism, conception of hunting, etc.³³

In the case of *Vârtic v. Romania (no. 2)*³⁴, the Court found that the authorities failed to strike a fair balance between the interests of the prison authorities and those of the applicant, namely the right to manifest his religion through observance of the rules of the Buddhist religion (the applicant requested a meat-free diet, as prescribed by his religion). The Court concluded that there has been a violation of Article 9 of the Convention.

In this case, the Court noted that the applicant himself provided a coherent account of the manner in which he observed his Buddhist faith, and argued that he asked the prison authorities to provide the diet required by his faith only when, due to a change in legislation, he could no longer rely exclusively on the food provided by his family. It also appears that during the domestic proceedings the courts did not in any way question the genuineness of his faith.

The applicant requested a meat-free diet, as prescribed by his religion. Whilst the Court is prepared to accept that a decision to make special arrangements for one prisoner within the system can have financial implications for the custodial institution and thus indirectly on the quality of treatment of other inmates, it must consider whether the State can be said to have struck a fair balance between the interests of the institution, those of other prisoners and the particular interests of the applicant. The Court noted that the applicant's meals did not have to be prepared, cooked and served in any special way, nor did he require any special foods. The Court was not persuaded that the provision of a vegetarian diet to the applicant would have entailed any disruption to the management of the prison or any decline in the standards of meals served to other prisoners, all the more so as a similar diet free of animal products was already provided for inmates observing the Christian Orthodox fasting requirements.

Finally, the Court pointed out that the recommendation of the Committee of Ministers to the member States, namely Recommendation Rec (2006)2 on the European Prison Rules recommend that prisoners should be provided with food that takes into account their religion. In recent judgments the Court has drawn the authorities' attention to the importance of this recommendation, notwithstanding its non-binding nature.

²⁷ C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole. Volume I. Drepturi și libertăți [The European Convention on Human Rights. Comment on articles. Volume I. Rights and freedoms]*, 709.

²⁸ M. Udriou, O. Predescu, *Protecția europeană a drepturilor omului și procesul penal român [European Human Rights Protection and the Romanian Criminal Procedure]*, 225.

²⁹ P. van Dijk, F. van Hoof, A. van Rijn, L. Zwaak, *Theory and practice on the European Convention on Human Rights*, 760.

³⁰ ECtHR, judgment from 07.03.1990, S. v. UK, no. 13669/88.

³¹ K. Reid, *A practitioner's guide to the European Convention on Human Rights*, 3rd edition (London: Thomson Sweet & Maxwell, 2008), 478.

³² ECtHR, judgment from 06.07.2000, Indelicato v. Italy, no. 31143/96, apud D. Bogdan, *Arestarea preventivă și detenția în jurisprudența CEDO [Preventive arrest and detention in the European Court of Human Rights case law]*, 2nd edition (Bucharest, 2011), 514.

³³ M. Udriou, O. Predescu, *Protecția europeană a drepturilor omului și procesul penal român [European Human Rights Protection and the Romanian Criminal Procedure]*, 223.

³⁴ ECtHR, judgment from 17.12.2013, *Vârtic v. Romania*, no. 14150/08, § 46-55.

In *Poltoratskiy v. Ukraine*³⁵, the Commission was unable to establish with sufficient clarity whether the applicant or his parents requested permission from the national authorities for the applicant to be visited by a priest before 22 December 1998. However, the Commission found it to be established by the oral evidence and documents produced to it that the applicant was not able to participate in the weekly religious service which was available to other prisoners and that he was not in fact visited by a priest until 26 December 1998.

In these circumstances, the Court found that the interference with the applicant's right to manifest his religion or belief was not "in accordance with the law" as required by article 9 § 2 of the Convention. It considered it unnecessary to examine whether the interference was "necessary in a democratic society" for one of the legitimate aims pursued within the meaning of article 9 § 2. Accordingly, there has been a violation of art. 9 of the Convention.

The fundamental question is whether a headscarf, bangle, crucifix, yarmulke, is an expression of faith or an essential tenet of faith. It appears that international human rights will only actively protect the essential tenets of faith, other overt manifestations of faith being regarded as a private matter and thus subject to State control.³⁶

In *Leyla Şahin v. Turkey* case³⁷, the Court argued that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists the various forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance. But, art. 9 does not protect every act motivated or inspired by a religion or belief. By reason of their direct and continuous contact with the education community, the university authorities are in principle better placed than an international court to evaluate local needs and conditions or the requirements of a particular course. Besides, having found that the regulations pursued a legitimate aim, it is not open to the Court to apply the criterion of proportionality in a way that would make the notion of an institution's "internal rules" devoid of purpose. Article 9 does not always guarantee the right

to behave in a manner governed by a religious belief and does not confer on people who do so the right to disregard rules that have proved to be justified. Consequently, the Court held that there has been no breach of art. 9 of the Convention.

Keeping order and safety in penitentiaries allows, in the opinion of the former Commission, a generous margin of appreciation for the authorities. For example, the need to be able to identify prisoners may thus warrant the refusal to allow a prisoner to grow a beard, while security considerations may justify denial of the supply of a prayer-chain.³⁸

However, relatively recently, and by reference to the right to respect for private and family life, the Strasbourg Court (in the *Biržietis v. Lithuania* case)³⁹ noted that the applicant was serving a prison sentence, during which time he was prohibited from growing a beard by the internal rules of the correctional facility. Those rules placed an absolute prohibition on prisoners growing a beard, irrespective of its length, tidiness, or any other considerations, and did not explicitly provide for any exceptions to that prohibition. While the Court accepted that the Contracting States are in principle justified in setting certain requirements related to prisoners' personal appearance, it reiterated that any such restrictions must conform to the requirements of necessity and proportionality within the meaning of art. 8 § 2 of the Convention. In this case, the Court has expressed its reservations as to the existence of a legitimate aim pursued by the impugned restriction on the applicant's art. 8 rights. The Court further considered that the Government did not demonstrate that the absolute prohibition on growing a beard, irrespective of its hygienic, aesthetic or other characteristics, and not allowing for any exceptions, was proportionate. Lastly, it observed that in the applicant's case the prohibition on beards did not seem to affect other types of facial hair, such as moustaches or sideburns, thereby raising concerns of arbitrariness. Taking into account all the circumstances of the case, the Court considered that the applicant's decision on whether or not to grow a beard was related to the expression of his personality and individual identity, protected by art. 8 of the Convention, and that the Government has failed to demonstrate the existence of a pressing social need to justify an absolute prohibition on him growing a beard while he was in prison. There

³⁵ ECtHR, judgment from 29.04.2003, *Poltoratskiy v. Ukraine*, no. 38812/97, § 166-171. See, also, on the same topic, ECtHR, judgment from 29.04.2003, *Kuznetsov v. Ukraine*, no. 39042/97; ECtHR, judgment from 30.11.2006, *Igors Dmitrijevs v. Latvia*, no. 61638/00, § 79-81.

³⁶ R.K.M. Smith, *International Human Rights*, 208.

³⁷ ECtHR (Grand Chamber), judgment from 10.11.2005, *Leyla Şahin v. Turkey*, no. 44774/98, § 105, 121.

³⁸ Commission Decision in the case of *X. v. Austria*, 15th of February 1965, no. 1753/63 apud J. Murdoch, *Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights*, 55.

³⁹ ECtHR, judgment from 14.06.2016, *Biržietis v. Lithuania*, no. 49304/09, § 45-58.

Similarly, The U.N. Human Rights Committee, in the case no. 721/1997, *Boodoo v. Trinidad and Tobago* (74th Session, 18 March-5 April 2002, Communication No. 721/1996, U.N. Doc. CCPR/C/74/D/721/1996, accessed March 25, 2019, http://www.ccpcentre.org/doc/2013/05/CCPR_C_74_D_721_1997.pdf), stated that as to the author's claim that he has been forbidden from wearing a beard and from worshipping at religious services, and that his prayer books were taken from him, the Committee reaffirmed that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts and that the concept of worship extends to ritual and ceremonial acts giving expression to belief, as well as various practices integral to such acts. In the absence of any explanation from the State party concerning the author's allegations, the Committee concluded that there has been a violation of article 18 of the Covenant on Civil and Political Rights.

has accordingly been a violation of art. 8 of the Convention.

From the point of view of public security, the protection of order, the rights and freedoms of others, we can hold the principles affirmed by the European Court in the case of *Phull v. France* as applicable, *mutatis mutandis*, to the penitentiary system as well. The applicant complained under art. 9 of the Convention of a violation of his right to freedom of religion by the airport authorities. He argued that there had been no need for the security staff to make him remove his turban (the applicant was a practising Sikh and was, thus, required by his religion to wear a turban), especially as he had not refused to go through the walk-through scanner or to be checked with a hand-held detector. Given the fact that the Sikh religion requires its male followers to wear a turban, the Court decided to work on the premise that the disputed measure constituted interference with the applicant's freedom to manifest his religion or beliefs. The Court ruled that security checks in airports are undoubtedly necessary in the interests of public safety within the meaning of that provision; also, the arrangements for implementing them in this case fell within the respondent State's margin of appreciation, particularly as the measure was only resorted to occasionally, as this was a necessary safety measure and that any resulting interference with the applicant's freedom of religion was justified.⁴⁰

In *C.W v. UK* case⁴¹, the applicant complained of the policy at H.M. Prison Blundeston whereby he was required to work in the prison print shop. He protested that he did not consider inside work suitable and that also his belief as a Vegan prohibited working with products that are unnecessarily tested on animals.

The Commission recalled that the applicant refused to work in the print shop because as a Vegan he wished to avoid contact with animal products or products which had been tested on animals. The Commission found that the Vegan convictions with regard to animal products fall within the scope of art. 9 para. (1) of the European Convention.

The Commission recalled that all prisoners were generally required to work in the print shop for a period of 13 weeks after which time other employment was available. It noted the factual conflict as to the nature and extent of the connection between the dyes and animals, the fact that it was only one of the applicant's reasons for refusing the work and also the relatively minor nature of the penalties imposed on the applicant for refusing to comply with the normal work regime. In these circumstances, the Commission found that the principle of proportionality has not been infringed and to the extent that there has been an interference, the interference is justified under art. 9 para. (2) of the European Convention.

The importance of religious freedom has been recognized by the Strasbourg Court as one of the factors that may lead to the non-existence of the violation of art. 3 of the European Convention in the case of a person subject to the measure of isolation in a penitentiary. Thus, in *Rhode v. Denmark*⁴², the Court noted that a period of such a length (eleven months and fourteen days) may give rise to concern because of the risk of harmful effects upon mental health, as stated on several occasions by the CPT. However, when assessing whether the length was excessive under art. 3 the Court must also take into account the conditions of the detention including the extent of the social isolation. The applicant was detained in a cell which had an area of about eight square metres and in which there was a television. Also, he had access to newspapers. He was totally excluded from association with other inmates, but during the day he had regular contact with prison staff, e.g. when food was delivered; when he made use of the outdoor exercise option or the fitness room; when he borrowed books in the library or bought goods in the shop. In addition, every week he received lessons in English and French from the prison teacher and he visited the prison chaplain. Also, every week he received a visit from his counsel. Furthermore, during the segregation period in solitary confinement the applicant had contact twelve times with a welfare worker; and he was attended to thirty-two times by a physiotherapist, twenty-seven times by a doctor; and forty-three times by a nurse. Visits from the applicant's family and friends were allowed under supervision. In these circumstances, the Court found that the period of solitary confinement in itself, lasting less than a year, did not amount to treatment contrary to art. 3 of the European Convention.

In *Vincent v. France*⁴³, the applicant, who was unable to move, being immobilized in a wheelchair (he retained normal upper limb mobility, being autonomous in managing his own person), invoked the violation of art. 9 of the Convention, concerning his right to practice religion, since the penitentiaries in which he was accommodated did not have facilities that would allow him to easily access the worship places in these prisons without help. The Court pointed out that art. 9 guarantees to every person the right to freedom of religion, including the freedom to manifest their religion or belief individually or collectively, in public or in particular, through cult, education, practice and the fulfilment of rituals. However, although it was not disputed that the applicant could not reach the places of worship by his own forces, yet the prison administration offered him help to reach them, but the applicant refused. Moreover, he received visits to his room from the chaplain. Consequently, the Court rejected the claimant's claim, in the absence of violation of his religious freedom.

⁴⁰ ECtHR, judgment from 11.01.2005, *Phull v. France*, no. 35753/03.

⁴¹ ECtHR, judgment from 10.02.1993, *C.W v. UK*, no. 18187/91.

⁴² ECtHR, judgment from 12.07.2005, *Rhode v. Denmark*, no. 69332/01, § 97-98.

⁴³ ECtHR, judgment from 24.10.2006, *Vincent v. France*, no. 6253/03, § 8-9, 133, 136-138.

Also, in another case, the Commission declared the application inadmissible for the situation where the applicant (Sikhismist adherent) claimed that retaining a book on religion is contrary to his religious freedom. Although the Commission accepted that the applicant's freedom of religion was limited by the prison authorities, it noted that the refusal to receive the book was not based on philosophical or religious reasons, but because it contained an illustrated section on martial arts and self-defense, which could be dangerous if used against other persons. The passive use of the book (for practicing religion), as the applicant intended to do, was not, for that reason, the decisive factor in the decision of the prison management. The Commission concluded that the interference with the applicant's freedom under art. 9 of the European Convention was justified within the meaning of para. (2) of that article⁴⁴.

Finally, it is important to point out that not all allegations about the violation of freedom of conscience, opinions and freedom of religious beliefs lead to a favourable solution from the Strasbourg Court. In other words, the allegations of the persons held on the violation of religious freedom must be substantiated. From this perspective, ECtHR decided that the provisions of art. 9 of the European Convention because the applicant, complaining of a violation of his right to manifest his religion through religious rituals, has not even demonstrated that he has requested that those rituals be held in the chapel of Cala Reale (where the persons with forced residence were placed), or that he requested permission to go to church at Cala d'Oliva (the main settlement on the island of Asinara, near Sardinia)⁴⁵.

The claimant must provide evidence to substantiate the allegations made and have the capacity to prove, in the view of the court, the violation of the principle that freedom of conscience, opinion and freedom of religious beliefs is ensured, regulated by art. 9 of the European Convention.

Similarly, in the case of *Iorgoiu v. Romania*⁴⁶, the claim for the impairment of religious freedom was dismissed as manifestly groundless because the applicant did not bring any evidence to support the impediment of the free exercise of religion by the penitentiary administration.

The Court considers that the right to manifest one's religion or beliefs also has a negative aspect, namely the right of the person not to be forced to reveal his religion or beliefs and not to be obliged to act in a way that would allow determining whether or not the person share such beliefs. Therefore, the state authorities are not entitled to intervene in the sphere of the person's freedom of conscience and to try to find out

his religious beliefs or to force him to declare his confession. In *Sinan Işik v. Turkey*⁴⁷ the Court held the violation of art. 9 of the European Convention, although the violation in question did not occur by refusing to indicate the applicant's belief on his identity card, but by indicating, whether mandatory or optional, religion on the identity card. This reasoning is supposed to cover all types of documents or registers that serve to identify state-run individuals, including those managed at the level of penitentiary units.

Finally, it should be stressed out that the refusal to allow a prisoner convicted of terrorist offences to travel to her father's funeral was recently analysed by the Strasbourg Court (*Guimon v. France*⁴⁸) in relation with article 8 (right to respect for private and family life) of the European Convention, rather than in relation with a art. 9 (freedom of conscience, opinions and religious beliefs) of the European Convention. The case concerned the refusal to allow the applicant, who was imprisoned in Rennes for terrorist offences, to travel to a funeral parlour in Bayonne to pay her last respects to her deceased father.

The Court held that there had been no violation of art. 8 of the European Convention, noting that the authorities had rejected the request on the grounds, firstly, of the applicant's criminal profile – she was serving several prison sentences for terrorist offences and continued to assert her membership of ETA – and, secondly, because it was impossible to organise a reinforced security escort within the time available. The Court found that the respondent State had not exceeded the margin of appreciation afforded to it in this area and that the refusal to grant the applicant's request had not been disproportionate and had pursued legitimate aims.

f) *National case law*. Regulating freedom of conscience and opinions as well as freedom of religious beliefs in the legislation regarding the execution of criminal penalties would be illusory if it were not accompanied by effective mechanisms to protect the exercise of freedom of thought against possible abuses of the prison administration.

Thus, by decision no. 1153/2011⁴⁹, the delegate judge from Iași Penitentiary admitted the complaint of an inmate complaining about the violation of the freedom of religious beliefs. The petitioner stated that he was Adventist on Day 7 (although in the penitentiary he was registered as an Orthodox Christian) and requested to the warden of the prison to approve his participation in the meetings organized by this cult and to receive the appropriate diet. His request was rejected on the grounds that he was not yet convicted by a final court decision, based on the provisions of art. 40 para.

⁴⁴ Commission Decision, *X. v. UK*, 18.05.1976, no. 6886/75.

⁴⁵ ECtHR, judgment from 06.11.1980, *Guzzardi v. Italy*, no. 7367/76, § 110.

⁴⁶ ECtHR, judgment from 17.07.2012, *Iorgoiu v. Romania*, no. 1831/02, § 95-101. See, also, on the same topic, ECtHR, judgment from 15.04.2014, *Florin Andrei v. Romania*, no. 33228/05, § 50-55; ECtHR, judgment from 15.10.2013, *Ali (no. 2) v. Romania*, no. 30595/09, § 48.

⁴⁷ ECtHR, judgment from 02.02.2010, *Sinan Işik v. Turkey*, no. 21924/05, § 41, 51-53.

⁴⁸ ECtHR, judgment from 11.04.2019, *Guimon v. France*, no. 48798/14.

⁴⁹ The delegated judge, Iași Penitentiary, decision no. 1153/2011, unpublished.

(2) from Law no. 275/2006 [currently, art. 58 para. (3) from Law no. 254/2013], according to which "convicted persons may participate, on the basis of free consent, in religious services or gatherings organized in penitentiaries and can obtain and hold publications of religious character as well as objects of worship". The prison administration argued that the applicant was in preventive detention and not convicted by a final court decision, thus he could only participate in individual activities, counselling or evaluation. Regarding the demand for a diet specific for the Adventist cult, the administration of the penitentiary took into account that the applicant was registered as an Orthodox Christian, and that in order for the application to be admitted it was necessary for him to prove his belonging to the Adventist cult.

The delegated judge solution of admitting the detainee's complaint we consider to be correct because, according to art. 82 para. (5) of the Law no. 275/2006, the provisions of the law contained in Title IV, Chapter. III-VII (including those on religious assistance) apply to both convicted and preventively arrested persons. Thus, it is clear that persons deprived of their liberty may participate, on the basis of free consent, to religious services or assemblies organized in penitentiaries, because only in this way can they acquire the status of member of a certain cult. In other words, when a change of religion is targeted, inmates will be allowed to participate in the meetings of that cult, with the agreement of their representatives, and taking into account the specific security measures of their possession. Therefore, participation in religious services and activities organized by representatives of religious organizations, associations and cults can only be restricted for reasons of security of ownership, the daily schedule and the number of participating inmates.

In fact, as the Strasbourg Court has consistently held, the prison administration's obligation consists in an attitude of neutrality and impartiality, as defined in the ECtHR case-law, which is incompatible with any interference to assess the legitimacy of religious beliefs.⁵⁰

By criminal decision no. 1938/2015, the 5th District Court of Bucharest⁵¹ admitted partly the complaints of the petitioners K.C., M.Y.S. and E.N. against the decision of the judge in charge of the supervision of deprivation of liberty and ordered the prison administration to allow the petitioners to receive *Koser food* daily (on their own expense) in quantities necessary to meet their personal needs (including food requiring heating, baking, boiling or other heat treatments in order to be eaten), ensuring that the food is served under the same conditions as to other inmates, and, also, with the obligation for the prison to provide

conditions for storing the food for the days when it cannot be delivered to the three inmates.

In order to decide this, the court held the following: the right to religious freedom is a constitutional right, guaranteed by the provisions of art. 29 of the Romanian Constitution, as well as a right regulated by art. 9 of the European Convention. In the court's view, the only concrete way in which the applicants could benefit from food according to religious beliefs was to require the prison administration to allow the petitioners to receive *Koser food* daily (bearing the cost thereof), given the fact that if the court were to rule on a general solution such as "obliges the prison administration to provide kosher-type food for the inmates" ", would not solve the complaint, but rather will acknowledge a theoretical and illusory right to receive proper food, according to their religious beliefs, as such a solution would only open the bureaucratic channels for the prison administration in order to allocate budgetary resources and then conducting a public procurement procedure. Under these circumstances, it is clear that the petitioners would be deprived of the right to obtain food according to religious beliefs for a good period of time.

According to the court, the provisions of art. 56 para. (6) letter a) of Law no. 254/2013 allow the court to determine the legal measures required to comply with the law and to oblige the prison administration to respect them. An interpretation according to which the prison administration is the one that establishes the concrete measures for respecting the law would only allow it to replace the power of the courts.

By decision no. 211/2014, the judge in charge of the supervision of deprivation of liberty from București-Rahova Penitentiary⁵² admitted the complaint about the violation of the right to freedom of religious beliefs and ordered the penitentiary to provide complainants with a meat-free diet (for all three meals of the day), as prescribed by their religion, observing the Christian Orthodox fasting requirements. Thus, two Orthodox Christian inmates (recorded as such in the prison administration's records) showed that they had requested in writing to the penitentiary to provide a meat-free diet, during the Christian Orthodox fasting before Easter, but either it was not granted or it was provided only for lunch, not for the other two meals of the day.

While the prison response was general and elusive, without clear references to the situation of the complainants, although the place of detention recognized the right of inmates to receive a meat-free diet, as prescribed by their religion, the judge considered the position of the prison as an implicit acknowledgment of the petitioners' claims and ruled on

⁵⁰ See, for example, ECtHR, judgment from 07.12.2010, *Jakóbski v. Poland*, no. 18429/06, § 48-55, in which case the Court has held that if the religion or belief requires a particular diet, it should be respected by the authorities, provided that it is not unreasonable or burdensome, or the refusal to make available to a person deprived of liberty of Buddhist religion, a diet lacking meat, as his belief requires, was considered to be a violation of the provisions of art. 9.

⁵¹ 5th District Court, Bucharest, criminal decision no. 1938/2015, unpublished.

⁵² The judge in charge of the supervision of deprivation of liberty, București-Rahova Penitentiary, decision no. 211/2014, unpublished.

the violation of art. 58 of the Law no. 254/2013, because according to these legal provisions, freedom of religion must be observed in case of inmates, a component of this freedom being obviously also respecting a specific diet required by the religion.

Conversely, the delegate judge at Codlea Penalty⁵³ has reasonably rejected the complaint of M.I. with regard to the violation of the right to participate in religious activities, with the following reasoning: the petitioner pointed out that he was enrolled in religious activities in August 2008, but the penitentiary employees unjustifiably refused to allow him to participate at the religious activities. Regarding the violation of the freeform of religious beliefs, the delegated judge noted that from the internal documents of the prison regarding the religious activity of the inmates, it can be concluded that the petitioner was included to participate at religious activities both on 10 August 2008 and on 16 August 2008, and on 10 August 2008 it was recorded that he participated in the religious activity, so that the petitioner's assertions are not confirmed, thus the complaint was rejected as ill founded.

3. Conclusions

Religious (or other) beliefs underpin the conduct of the life of an individual. Moreover, religious/moral

precepts designate legal from illegal, right from wrong, in society. Courts, in adjudicating disputes before them, apply the stated beliefs of the society in which they operate.⁵⁴

The fundamental character of the freedoms of thought is fully reflected in the national legislation, the normative provisions specifying precisely the limits within which they can be exercised, mentioning the limitations being of strict interpretation and proportionate to the intended purpose.

We envisage, for example, regulating the possibility of the warden to order the prohibition of the access of representatives of religions or religious associations recognized by law for a period of maximum 6 months, in cases where their behaviour is affecting the safety and stability of the penitentiary.

Obviously, the prison authorities have the obligation to recognize and respect the needs of (external) manifestation of freedom of conscience, opinions and especially of religious freedom, an important aspect being their access to specially designed worship places and the visits of the representatives of recognized religions or religions.

Concluding, one can affirm that the decisions rendered by the European Court can and should also be applied at national level, in order to ensure the uniformity of judicial practice.

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