

FREEDOM OF CONSCIENCE, OPINION AND FREEDOM OF RELIGION BELIEFS - A RIGHT OF PERSONS DEPRIVED OF THEIR LIBERTY

Nicoleta Georgeta VASILE (CONSTANTINESCU)*

Motto: „Man cannot be compelled to act against his conscience, especially on religious matters.”
(Declaration of *Dignitatis Humanae* adopted by the Second Vatican Council on the 5th of December 1965)

Abstract

This article represents an analysis of the manner in which the freedom of conscience, freedom of opinions and freedom of religion of inmates are respected, with a particular analysis made on a Romanian prison. In this study I referred to the jurisprudence of the ECtHR in cases against Romania, the national legislation governing the rights of detainees, the collaboration between religious organizations and prisons in order to respect the right to religious freedom, the impact of respecting this right on behavior, the impact of re-educating inmates.

Keywords: inmates, prisons, religious freedom, opinion, confessions, cult, freedom of conscience, faith.

1. Introduction

Persons deprived of their liberty are those persons who serve a prison sentence applied by a final ruling or minors who serve an educational measure deprived of liberty or those who are in state custody under the power of a temporary measure with deprivation of liberty (pre-trial arrest, temporary medical hospitalisation).

During the communism period, the execution of freedom-deprived punishments was characterized by torture, humiliation, inhumane treatment, forced labour until exhaustion, and inmates' rights were violated. Occasionally they received a package, were able to have telephone conversations with their family members or they received visits. Freedom of conscience, opinion and religious beliefs were non-existent at that time, and even less so for those deprived of their liberty, some of whom were arrested precisely due to their intense Christian experiences, having practiced their Orthodox faith. From a conceptual point of view, faith (in whatever form it may be) enters in conflict with the principles of communism, because while the former wanted the man to be free, to do things out of love and devotion to fellow men, communism wanted the man to be subjugated, easy to manipulate, perverted. The result of this oppressive system was, contrary to religious belief, the opposite of what had been expected, hoped by the representatives of the communist political class, because most of the people who had been sent to communist prisons had a deep Christian morality, were secretly prayed and lived an intense spiritual life in squalid prison cells. Instead of

extinguishing and exterminating the faith of people through lies and violence, the communists contributed to deepening the religious phenomenon, hope and faith in God being the only ones that brought the prisoners a little peace and which, eventually, led to a plenary victory of the Christian phenomenon against communism.

2. Content

After the Romanian Revolution in 1989 and to our present days, Romania has been constantly concerned with humanising detention conditions for people deprived of liberty, both from a legislative standpoint by adapting our legislation to the European one, as well as by adopting internal actions that ensure the fulfilment of rights and legitimate interests of inmates, rights that can only be restricted in expressly provided for situations.

The national legal framework that regulates the execution of sentences and custodial measures ordered by judicial bodies during criminal proceedings is provided by the Romanian Constitution and Law no. 254/2013 on the execution of sentences and custodial measures ordered by judicial bodies during criminal proceedings, published in the Official Gazette of Romania, Part I, as well as other laws, treaties, protocols, decrees on the rights of prisoners.

Among universal sources that regulate the principle of religious freedom we would like to mention the ECHR, the Recommendation of the Committee of Ministers to member states regarding rules in European prisons REC (2006)2, art. 18 of the Universal

* PhD Candidate, Faculty of Law, „Nicolae Titulescu” University of Bucharest; Judge at Braşov Tribunal (e-mail: constantinescu.nicole@yahoo.ro).

Declaration of Human Rights¹, art. 10 of the Charter of Fundamental Rights of the European Union², as well as other treaties, regulations, directives on the rights of prisoners.

We will begin with art. 9 of the ECHR which states “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change one’s religion or belief and freedom, either alone or in community with others, in public or private, to manifest his religion or belief in worship, teaching, practice and observance.

Freedom to manifest one's religion or belief 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.”

I have identified two cases of the ECtHR in which the Court was notified by complainants who were in detention in various prisons in Romania, that they were not receiving kosher meals according to the precepts of their religion: Case of Erlich and Kastro v. Romania³ ruled by the ECtHR – Fourth section, judgement dated 09.06.2020, which became final on 09.09.2020 or that they did not receive meals according to Muslim religious precepts, Case of *Affaire Saran v. Romania*⁴ (text in French), ruled by the ECtHR – Fourth Section, on 10.11.2020, which became final on 10.02.2021.

In the case of *Erlich and Kastro v. Romania*, two Israeli citizens of Jewish religion complained to the ECtHR that during their imprisonment at the Rahova Prison in Bucharest they did not receive kosher meals according to the precepts of their religion, having previously addressed both the custodial judge and the court which had ruled: [“... complainants are allowed to receive daily (bearing the cost) kosher food, in the required quantity that would meet their personal needs (including foods that require heating, baking, boiling or other heat treatments in order to be eaten), to ensure distribution of food under the same conditions as those that are being provided to other prisoners and to ensure food storage facilities on days when these cannot be delivered). Detailing the provisions of domestic law, as well as of relevant international law, in particular the Recommendation Rec (2006)2 of the Committee of Ministers of the Council of Europe to member states on European Prison Rules (adopted on the 11th of January 2006) and the Comment to it, the Court of law observed that the requests of the two (connected) were

admissible under the applicability principle of art. 9 of the Convention.

On the merits of this case, the ECtHR reminded that “as defended in art. 9 of the Convention, the freedom of thought, conscience and religion is one of the foundations of a democratic society according to the meaning set forth in the Convention. This freedom is, in its religious aspect, among the most essential elements of the believers’ identity and of their conception on life” (para. 28). With regard to the right to religious freedom in Romania, the Court of law noted that “the Romanian state has expressly established the right to religious freedom, both at the level of the Constitution and at the legislative level, and the Jewish religion is among officially acknowledged religions” (para. 34 from the aforementioned judgement). Having analysed both the Government's and complainants’ assertions, the Court of law found that the Rahova Prison, through its representatives, had set up a separate kitchen in which kosher food was prepared, who had been approved by a Jewish religious foundation whose representatives came regularly to the prison for religious holidays, and on this occasion they would deliver kosher food and, taking into account the extremely small number of prisoners of Jewish faith in Romanian prisons (at the time of these facts, in 2015, there were only 8), taking into account the margin of appreciation that the state benefits from, which must take into account keeping a balance between general interest and personal interest, the ECtHR ruled that art. 9 of the Convention had not been violated.

On the other side, in the case of *Affaire Saran v. Romania*, the Court of law found a violation of art. 9 of the Convention consisting in the authorities’ refusal to provide to the complainant, in Iași Prison, meals in accordance with the complainant’s religious precepts, who had declared to be a Muslim.

On the merits of this case, the Court of law stated that the complainant’s request concerned the period during which he was imprisoned in the Iasi prison and consisted of two parts: one part was about the fact that he had not received food in accordance with the precepts of the Muslim religion, and the other was about the fact that he had not been provided with a suitable place for prayer. Referring to domestic law, the Court of law noted that it contained provisions which expressly established the right of prisoners to receive meals according to their religious precepts, and the problem raised in this case was that according to the

¹ The Universal Declaration of Human Rights was adopted on the 10th of December 1948 by Resolution 217 (III) of the UN General Assembly. The text of this declaration may be consulted in A. Năstase, B. Aurescu, *Contemporary International Law. Essential Texts*, R.A.M.O Publishing House, Bucharest, 2000, pp. 225 et seq.

² The Charter of Fundamental Rights of the European Union was adopted by the European Council on 07.12.2000 in Nice, integrated in Part II of the Treaty to organize a Constitution for Europe, adopted at the European Council in Athens in 2003 and published in the Official Gazette no. 465/01.06.2005.

³ Case of Erlich and Kastro v. Romania, <http://ier.gov.ro>.

⁴ Case of Saran v. Romania, <https://hudoc.echr.coe.int>.

Decree of the Minister of Justice no. 1072/2013 (currently repealed by the Decree of the Minister of Justice no. 4000/C/2016 of 10.11.2016 for the approval of Regulations on religious assistance of persons deprived of their liberty who are in the custody of the National Administration of Prisons) and which constituted the national law applicable on the matter, prisoners declared their religious affiliation at the time of their incarceration, on their own responsibility and if, during the execution of the sentence, they embraced another religion, a declaration on their own responsibility was not sufficient, but had to be accompanied by a document of “confirmation” issued by the new religion to which he had adhered.

The judge supervising the deprivation of liberty within the Iași Prison rejected, on the 8th of July 2016, the complainant’s request to be provided with food under the Muslim religion on grounds that upon imprisonment the plaintiff had stated that he was a Christian Orthodox, an untruthful statement, because after verifying the complainant's file the Court noted that before his transfer to Iași he had been imprisoned at the Prison in Botoșani, and his record on religious assistance showed that he had been registered as belonging to the Islamic religion. Furthermore, the Romanian State was reprimanded that the complaint of plaintiff *Affaire Saran* formulated against the decision of the judge supervising the deprivation of liberty ruled on 08.07.2016 was settled on 28.03.2017 by the District Court of Iași, while the complainant was transferred to the Codlea Prison from the 6th of December 2016, where he received meals according to the precepts of Muslim religion.

The ECtHR noted that the District Court of Iași had ruled without verifying the documents in the prisoner's personal file, as well as a lack of organization and coordination between state authorities that should have ensured the flow of information to such an extent that there should not be a situation like this. Consequently, the European Contentious Court considered that in this case there was a violation of art. 9 of the Convention which consisted in the authorities’ refusal to provide the complainant, at the Iași Prison, with meals in accordance with the complainants religious precepts as he had declared himself to be a Muslim, and there was no further need to rule on the authorities’ refusal to provide the complainant, at the Iași Prison, with a suitable place for prayer.

In domestic law, as we have shown, the general legislative framework governing the freedom of conscience, opinion and freedom of religious belief is regulated by the Romanian Constitution (art. 29 “Freedom of thought and opinion, as well as the freedom of religious beliefs cannot be restricted. Nobody can be compelled to adopt an opinion or adhere to a religious belief that is contrary to his or her

beliefs”) which is supplemented by the provisions of art. 50, 56, 58 of Law no. 254/2013; with Law no. 489/28.12.2006 Rep. on religious freedom and the regime of religions, Decree no. 4000 C/2016 of 10.11.2016 for the approval of Regulation on religious assistance of persons deprived of liberty found in the custody of the National Administration of Prisons, the Protocol concluded on 26.03.2013 on the provision of Orthodox religious assistance within the System of National Administration of Prisons concluded between the National Administration of Prisons and the Romanian Patriarchate.

In order for this paper to not just be a theoretical analysis of mentioned legal texts, we have obtained actual information from a prison in Romania (Codlea Prison, Brașov county) about the mechanism of observing the right referred to in art. 58 of Law no. 254/2013:

“(1) Freedom of conscience and opinion, as well as the freedom of religious beliefs of convicts cannot be restricted.

(2) Convicts have the right to freedom of religious beliefs, without prejudice to the freedom of religious beliefs of other convicts.

(3) Convicts may attend, based on their free consent, religious services or meetings organised in prisons, may receive visits from representatives of said religion and may obtain and hold religious publications as well as objects of worship”.

Regarding the first component of this right, *freedom of conscience and opinion*, at the Codlea Prison every morning, between 09:00 AM - 11:00 AM, a show created by an inmate is broadcast on TV (each detention room has a TV connected to cable network), and its topics are established by prison agents (as an example, below are the topics broadcast during a day: Information about vaccination; Good to know; Health; Did you know that...; General culture – European geographical curiosities; Entertainment), a show that, occasionally, features interviews with inmates whose behaviour is outstanding.

The Codlea Prison magazine is published quarterly and is entitled “Sheet for mind, heart and soul” in which inmates may express their thoughts, ideas, emotions, literary talents (in the form of interviews, poems, maxims, anecdotes), their artistic talents (drawings, cartoons) all published under their initials. From the prison staff in charge of the publication of this magazine we learned that inmates are interested in the content of this magazine, participate voluntarily in writing it, without being rewarded, as they feel the need to express their thoughts and opinions in various forms (writing, drawing).

As for the second component, *freedom of religion*, we observe that on 09.03.2022 out of the 462 inmates imprisoned at the Codlea Prison, 408 were

Orthodox, 1 belonged to the Seventh-day Adventist Church religion, 1 Christian according to the Gospel, 16 Greek Catholics, 5 Pentecostals, 20 Reformed, 25 Roman Catholics, 1 Unitarian and 2 atheists.

Priest Laurențiu Nistor, an Orthodox chaplain at the Codlea Prison for 14 years, said that inmates are provided with religious services according to their faith (which they declare upon entering the prison). Based on collaboration protocols concluded between the representatives of religions acknowledged in Romania and prison management (according to art. 2 of the Regulation on religious assistance of persons deprived of liberty found in the custody of the National Administration of Prisons), prior to the outbreak of the pandemic caused by the Coronavirus infection (Covid-19), priests, pastors, preachers used to come regularly to the prison where they held religious ceremonies with special prayer rooms, except for Catholic priests who officiated in the Orthodox chapel (*e.g.* the Baptist pastor came weekly, the Catholic priest once a month). Inmates practising their Islamic faith have not been here recently, and some had stated to be Muslims only in order to receive a pork-free diet.

Before the Order of the Minister of Justice no. 1072/C/2013⁵ for the approval of the Regulation on religious assistance of persons deprived of liberty found in the custody of the National Administration of Prisons had entered into force, currently repealed by the Order of the Minister of Justice no. 4000/C/2016 of 10.11.2016 (which includes the provisions regarding the conditions for the acceptance the change of confession in art. 4), persons deprived of liberty would, at a declarative level, “change their religion”, meaning they would become Muslims or Adventists because, according to this religion, you cannot eat pork so they hoped they would get better food, the priest pointing out that this type of persons were not, in fact, believers.

The inmates’ religious life, as told by the priest Laurențiu Nistor, is, in general, like that of any other person, in the sense that some persons deprived of liberty, based on a request, attend services organized in the prison on Sundays and during church holidays, request individual conversations with the priest, but a small number of them confess (10% maximum), and on this occasion only a few of them prove real penance. The priest tries to enlighten them on the benefits of confession, tries to convince them about the liberation of their conscience from committing sins, saying that even if they do not receive the Sacrament of Holy Communion, he does not give them any canon, because he believes that their punishment is the canon itself, and before getting released from prison he shares Holy

Communion with those who had an outstanding behaviour and had been in an open regime of execution.

In general, inmates do not practice the religion to which they claim to belong, but some of them actively attend religious activities inside the prison, doing so voluntarily and “for free,” in the sense that they do not receive any rewards, such as: before the Covid 19 pandemic hit, in December, the priest would prepare a choir of carollers and they would go to the House of Culture in Codlea where concerts with several groups of carollers from Brașov as well as soloists from other counties used to be organized. One year they also went to the Students’ House of Culture in Brașov (2010). In other years they went to some churches in Codlea where they would attend the service and sing carols at the end. The priest says that in when they went out in the community, the reward consisted in going out in the community and “the guys enjoyed it very much because they had the opportunity to leave the prison.” At religious services, singing in the pew is also supported by inmates who are specially trained by the priest. Some of them even learned musical notation and continued to play a musical instrument after they were released from prison. We would like to highlight that these persons deprived of their liberty attend these activities voluntarily and without receiving any credits (credits are granted for attending moral and religious educational programs or thematic competitions).

Also, as an expression of the freedom of religious beliefs in the prison, the priest recalled that a prisoner was baptised in the Christian-Orthodox religion while he was serving a custodial sentence (he had not been baptised at all when he was a child because his father was an atheist). The fact that persons deprived of liberty ask the priest to officiate memorial services, they obtained, as a reward, permits to leave the prison in order to officiate their religious wedding, they attend the Sacrament of Anointing of the Sick, a service that the priest organizes together with colleagues from the community during the two major fasts (Easter and Christmas), they attend various conferences organized on Christian topics, they go on pilgrimages to monasteries, visits to memorial houses, museums and other outings on this topic organized by the priest Laurențiu Nistor.

An aspect that should not be omitted is the fact that Christian inmates who hold long-term or one-day positions, on a weekly basis (an extremely small number, approx. 5%) receive food from home, at their own expense or extract from the food received in prison (Case of Erlich and Kastro v. Romania, cited above).

Having talked to five inmates, with ages between 22 and 47, including one Adventist, one Catholic, two

⁵ Order 1072/C/2013 of the Minister of Justice provided that, during the execution of the custodial sentence, the persons in custody of the National Administration of Prisons may change their confession, which was to be proved by a declaration on their own responsibility and by a document of confirmation of belonging to said cult.

Orthodox and one Reformed, they said that while they were incarcerated at the Codlea Prison, in Braşov county, their religious freedom was observed. They have very good relationships with one another, regardless of the religion that they belong to and, in addition, regardless of the religion that these five inmates practice, they said that they feel the need to talk to a priest ("I feel great talking to my Orthodox priest, we have nice discussions, I appreciate it. He mentioned that he does not attend Orthodox services, but he watches shows of his religion broadcast on certain channels on TV", C.M.M. - Adventist; "This priest is helpful, he talks to us, tells us stories, makes himself useful to inmates. A lot of people come to church and talk to the priest" - H.A.I., Orthodox; "There is only one God, I attend Orthodox services, I was not denied to attend the religious ceremony organized by the Reformed pastor; the discussions that I have with the priest are very useful, and he keeps us close to God" - B.L.M., Reformed).

Last but not least, we would like to state that inmates receive religious-themed materials such as prayer books, the Bible, crosses provided by the Metropolitan Church of Transylvania, and they are not forbidden to receive such materials from any other religious cult.

Therefore, currently, the activity of religious denominations in prisons is one of the methods used to empower, re-educate, help convicts re-socialise, as mentioned by prof. Ioan Chiş: "Including religious assistance in treatment and re-socialisation programs also ensures the right of those who have minority religions, who can and must be protected so as not to change the attitude they have had since childhood or which they acquired as a result of conversion due to newer beliefs. It is very important that all those who attend religious re-socialisation projects are allowed and encouraged to work with convicts individually, in order to uproot violent conceptions, some even in the

name of religious or mystical beliefs (Satanists). This would be the first step towards inoculating unanimously accepted moral values and therefore towards the observance of laws and leading a normal life."⁶

Freedom of conscience, opinion and freedom of religious belief is a fundamental right of any human being and, implicitly, of persons serving a custodial sentence but which is exercised under the conditions of legal provisions that ensure specific functioning of prisons and whose violation attracts the legal liability of those responsible for said actions. If the administration of a prison disregards or violates this right, convicts may lodge a complaint with the judge supervising the deprivation of liberty who will settle it after a mandatory hearing of the complainant, and if the complaint is not settled favourably, the inmate may address a court of law with an appeal within five days after the decision of the judge supervising the deprivation of liberty was ruled. The complaint is settled during a public hearing, with the summons of the appellant and administration of the prison, the inmate's presence is not mandatory, and with the participation of the prosecutor. The court of law rules a final sentence, in a public hearing, and the solution is then communicated.

3. Conclusions

Finally, we believe that the Romanian legislation and the way it is applied in places of detention comply with international standards on prison rules. Authorities are aware of the importance of the freedom of conscience, opinion and religion for the re-education of convicts, social reintegration, behaviour change, and finding as diverse solutions as possible in order to implement all of the inmates' rights will positively affect those who are in custody.

References

- The Universal Declaration of Human Rights, adopted on the 10th of December 1948 by Resolution 217 (III) of the UN General Assembly. The text of this declaration may be consulted in A. Năstase, B. Aurescu, *Contemporary International Law. Essential Texts*, R.A.M.O Publishing House, Bucharest, 2000;
- The Charter of Fundamental Rights of the European Union, adopted by the European Council on 07.12.2000 in Nice, integrated in Part II of the Treaty to organize a Constitution for Europe, adopted at the European Council in Athens in 2003 and published in the Official Gazette of Romania no. 465/01.06.2005;
- Case of Erlich and Kastro v. Romania, <http://ier.gov.ro>;
- Case of Saran v. Romania, <https://hudoc.echr.coe.int>;
- Order 1072/C/2013 of the Minister of Justice provided that, during the execution of the custodial sentence, the persons in custody of the National Administration of Prisons may change their confession, which was to be proved by a declaration on their own responsibility and by a document of confirmation of belonging to said cult;
- Ioan Chiş, Alexandru Bogdan Chiş, *Executing criminal sanctions*, Universul Juridic Publishing House, Bucharest, 2021.

⁶ I. Chiş, Al.B. Chiş, *Executing criminal sanctions*, Universul Juridic Publishing House, Bucharest, 2021, p. 445.