



## Romanian authorities provided sufficient resources for kosher meals to meet the needs of two Jewish prisoners

In today's **Chamber judgment**<sup>1</sup> in the case of [Erich and Kastro v. Romania](#) (application nos. 23735/16 and 23740/16) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights.**

The case concerned the provision of kosher meals to two Israeli prisoners of Jewish faith detained in a Romanian prison. The applicants complained of the failure of the Rahova Prison authorities to provide them with meals complying with the precepts of their religion.

In the light of the case file and the margin of appreciation enjoyed by States in this sphere, the Court found that the domestic authorities had reasonably fulfilled their positive obligations under Article 9 of the Convention. The Court noted, among other things, that the Bucharest Court of First Instance had come down in favour of a customised solution tailored to the applicants' specific needs. They had been able to obtain the products required for preparing meals *in situ*, in the prison kitchens, which had been fitted out with facilities approved by a Jewish religious foundation. It also noted that the applicants had not applied to the relevant civil courts to seek reimbursement of the expenses which they had incurred in obtaining foodstuffs by their own means.

### Principal facts

The applicants, Nehemia Erlich and Charli Kastro, are two Israeli nationals who were born in 1965. They are detained in Giurgiu (Romania). The events of which they complained took place during their detention in Rahova Prison.

On unspecified dates each applicant complained of the absence of kosher meals complying with the precepts of their religion in Rahova Prison. In July 2015 the judge responsible for supervising custodial penalties dismissed the applicants' complaints on the grounds that they had received foodstuffs from their respective families, and that they could have purchased kosher products via the prison shop but had not asked to do so. The applicants disputed that decision.

In October 2015 the Bucharest Court of First Instance allowed their challenges, noting that Rahova Prison lacked the necessary facilities for preparing kosher meals and that the purchase of such meals from an outside supplier required a specific budget and a procurement procedure. Considering that such new measures would take time to implement, the court ordered Rahova Prison to allow the applicants to receive kosher meals on a daily basis, in return for payment and in sufficient quantity to meet their personal needs.

The court also pointed out that the Prison should ensure the distribution of the meals under the same conditions as for other prisoners, and facilitate their storage for days on which they could not be delivered. As regards the cost of the meals, the court stated that the applicants could seek their reimbursement within the limits laid down in the catering rules applicable to prisoners, by applying

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

to the ordinary civil courts, which were competent for such matters. It transpired from the case file that the applicants had not sought reimbursement from the civil courts.

### Complaints, procedure and composition of the Court

Relying on various Articles of the Convention, the applicants complained of the Rahova Prison authorities' failure to provide them with kosher meals. The Court decided to consider their complaint under Article 9 (right to freedom of thought, conscience and religion).

The applications were lodged with the European Court of Human Rights on 20 April 2016.

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

Yonko **Grozev** (Bulgaria), *President*,  
Iulia Antoanella **Motoc** (Romania),  
Branko **Lubarda** (Serbia),  
Stéphanie **Mourou-Vikström** (Monaco),  
Georges **Ravarani** (Luxembourg),  
Jolien **Schukking** (the Netherlands),  
Péter **Paczolay** (Hungary),

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

### Decision of the Court

#### [Article 9 \(freedom of thought, conscience and religion\)](#)

The Court observed that the Romanian State had explicitly enshrined the right to freedom of religion both in the Constitution and in legislation, and that the Jewish religion was among the officially recognised faiths. It also noted that a piece of legislation (Law No. 254/2013 and its implementing regulations) set out a general prescriptive framework which was sufficiently foreseeable and detailed on the matter of exercising the right to freedom of religion in prison.

The Court also considered that the decision to adopt detailed regulations on the practical exercise of a given religion in prison fell within the margin of discretion available to the State authorities, which were best placed to pronounce on local situations and needs. It noted in that connection that according to the applicants, at the relevant time only eight persons of Jewish faith had been detained in Romanian prisons.

The Court then noted the following.

The Bucharest Court of First Instance had come down in favour of a customised solution tailored to the applicants' specific needs. It had thus offset the lack of a specific statutory framework for prisoners of Jewish faith and provided a solution that could be implemented immediately. Such an approach sits well with the principle of subsidiarity, inasmuch as the court had adopted a practical solution which had had the advantage that the Rahova Prison authorities were able to implement it immediately. Those authorities had fitted out a separate kitchen for cooking kosher meals, the conditions for whose preparation had been approved by a Jewish religious foundation which had been consulted during the process and had supplied the applicants with specific foodstuffs.

The Court of First Instance had also permitted the applicants to obtain, by derogation from the applicable rules, products which could be cooked and prepared on the spot. The Court had regard to the fact that the applicants had obtained those products by their own means. It specified that an arrangement whereby a prisoner was authorised to obtain by his own means foodstuffs which

complied with the precepts of his religion should not impose an objectively intolerable financial burden on him.

In that connection, the Court noted that the Court of First Instance had informed the applicants that they could apply for reimbursement of any expenses they had incurred by lodging a separate civil action. However, they had not applied to the competent courts. Nor had they claimed before the Court that there had been any objective reasons preventing them from bringing such action. Also, they had at no stage claimed that they had presented the prison authorities with a specific detailed request for reimbursement of the costs of the foodstuffs which they had obtained by their own means and had had their request turned down. The Court was always careful to respect the subsidiarity principle, and was therefore unable to speculate as to the amount actually disbursed by the applicants in order to obtain kosher food, in the absence of any relevant decision by the domestic authorities.

In the light of all these factors, and having regard to the margin of appreciation available to the respondent State in that area, the Court held that in the present case the domestic authorities had honoured, to a reasonable degree, their positive obligations under Article 9 of the Convention. There had therefore been no violation of Article 9 of the Convention.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.