



## Requiring a prisoner to prove a change of religion in order to be allowed to practise that religion in prison breached the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [Neagu v. Romania](#) (application no. 21969/15) the European Court of Human Rights held, by a majority, that there had been:

**a violation of Article 9 (right to freedom of thought, conscience and religion)** of the European Convention on Human Rights.

The case concerned a prisoner who had converted to Islam while in detention. He complained of the refusal of the Romanian authorities to provide him with pork-free meals, in accordance with the precepts of his religion, unless he furnished proof that he was an adherent of that religion.

The Court found that, bearing in mind the provisions introduced by the order of the Ministry of Justice requiring, among other things, written proof of a change of religion occurring in the course of detention, the national authorities had upset the fair balance to be struck between the interests of the prison, those of the other prisoners, and the individual interests of the prisoner concerned (Mr Neagu).

The Court also made clear that it was not persuaded that Mr Neagu's requests to be provided with meals compatible with his religion would have caused problems in running the prison or have had a negative impact on the diet offered to other prisoners.

### Principal facts

The applicant, Dănuț Neagu, is a Romanian national who was born in 1987 and lives in Gropeni (Romania).

In 2009 Mr Neagu was remanded in custody and declared that he was an Orthodox Christian. He subsequently received a prison sentence and was detained between 2009 and 2017 in various Romanian prisons.

In the proceedings before the Court Mr Neagu explained that during the first three years of his detention he had made the acquaintance of some Muslim prisoners and had converted to Islam.

In 2012, while he was being detained in Galați Prison, he informed the prison management that he had converted to Islam and requested pork-free meals. His request was refused.

Mr Neagu was subsequently transferred to Brăila Prison, where he made repeated requests to be provided with pork-free meals. His requests were refused on the grounds that he had not produced any documentary proof of his conversion.

Mr Neagu appealed to the judge responsible for reviewing detention and later to the first-instance court, without success.

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).

## Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion) of the Convention, Mr Neagu complained of the Romanian authorities' refusal to recognise his conversion to Islam.

Under Article 3 (prohibition of inhuman or degrading treatment), he complained of the fact that the Romanian authorities had continued to serve him meals containing pork, contrary to the precepts of his religion.

The Court decided to examine Mr Neagu's complaints from the standpoint of Article 9 of the Convention alone.

The application was lodged with the European Court of Human Rights on 5 June 2015.

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

Yonko **Grozev** (Bulgaria), *President*,  
Iulia Antoanella **Motoc** (Romania),  
Branko **Lubarda** (Serbia),  
Carlo **Ranzoni** (Liechtenstein),  
Georges **Ravarani** (Luxembourg),  
Jolien **Schukking** (the Netherlands),  
Péter **Paczolay** (Hungary),

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

## Decision of the Court

### Article 9 (right to freedom of thought, conscience and religion)

The court noted that Law no. 254/2013 and the secondary legislation implementing it made express provision for the right of prisoners to receive meals compatible with the precepts of their religion. There had therefore been an overall legislative framework that had been sufficiently foreseeable and detailed regarding the exercise of the right to freedom of religion in a prison setting. The European Prison Rules, in force at the relevant time and read in the light of the commentary thereto, contained similar provisions.

In addition, Order no. 1072/2013, which constituted the applicable national law in this sphere, provided that prisoners could solemnly declare their religious affiliation when they were admitted to prison and, if they converted while in detention, could produce a solemn declaration at that juncture and a document confirming their new religious affiliation.

In that connection the Court observed that Mr Neagu had had access to the order in question and that its content had been foreseeable. It also noted that the applicant had not raised any arguments before the domestic courts alleging that Order no. 1072/2013 had been unlawful, and had not given them an opportunity to assess its lawfulness. Nor had he contended that the order had previously been found to be unlawful or that there existed settled case-law of the domestic courts to that effect.

In these circumstances, and in the absence of any examination by the domestic courts, the Court could not accept Mr Neagu's argument that the requirement to furnish written proof of his conversion had lacked any legal basis, as it had stemmed from a law of lower rank than a statute.

It remained for the Court to ascertain whether the requirement laid down by Order no. 1072/2013 for the individuals concerned to furnish documentary proof of their religious conversion in order to be allowed to practise their religion was consistent with the national authorities' positive obligations.

The Court noted that the requirement referred to in Order no. 1072/2013 concerned only prisoners who converted in the course of their detention, as in all other cases prisoners could declare their religious affiliation simply by means of a solemn declaration. Moreover, the order in question had introduced a distinction between the initial declaration of religion, which the prisoner could make freely and without particular formalities when he or she was admitted to prison, and a change of religion in the course of detention, which the prisoner had to prove by means of a document issued by representatives of his or her new faith.

In the Court's view such a regulation, entailing a strict requirement to provide documentary proof of adhering to a specific faith, went beyond the level of substantiation of genuine belief that could be required. This was especially true in a situation where prisoners were initially free to declare their religion without furnishing any proof.

Furthermore, in considering Mr Neagu's complaint concerning Brăila Prison, both the judge reviewing the detention and the first-instance court had dismissed the applicant's appeal without examining the factual background to his request, on the grounds that he had not furnished the written proof required by the regulations. Likewise, they had not ascertained whether Mr Neagu would have a genuine opportunity to obtain written proof or some other confirmation that he was a follower of the faith in question, particularly bearing in mind the restrictions to which he was subject as a prisoner.

The Court reiterated that, save in very exceptional cases, the right to freedom of religion under the Convention was incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs were expressed. In view of the importance of ensuring that a religious conversion was serious and sincere, the national authorities' duty of neutrality did not preclude examination of the factual aspects of the manifestation of a person's religion. However, it did not appear from the decisions given in the present case that the national courts had sought to establish how the applicant manifested or intended to manifest his new religion.

The Court took note of the Government's argument that the obligation arising out of Order no. 1072/2013 was designed to prevent an abuse of rights, and of the fact that Mr Neagu had changed religion a second time and had requested meals compatible with the specific dietary rules of the Adventist faith. It noted in that regard that the domestic courts which had examined the applicant's request had not deemed it to amount to an abuse on his part.

The Court therefore considered that, bearing in mind the provisions introduced by the order of the Ministry of Justice requiring, among other things, written proof of a change of religion occurring in the course of detention, the national authorities had upset the fair balance to be struck between the interests of the prison, those of the other prisoners, and the individual interests of the prisoner concerned. In that regard it was not persuaded that Mr Neagu's requests to be provided with meals compatible with his religion would have caused problems in running the prison or have had a negative impact on the diet offered to other prisoners.

Accordingly, and notwithstanding the margin of appreciation left to the respondent State in the matter, the Court held that the national authorities had not complied, to a degree that was reasonable in the circumstances of the case, with their positive obligations under Article 9 regarding the meals served to Mr Neagu in Brăila Prison. There had therefore been a violation of Article 9 of the Convention.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Romania was to pay Mr Neagu 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 215 in respect of costs and expenses.

## Separate opinion

Judge Paczolay expressed a dissenting opinion joined by judge Grozev which is annexed to the judgment.

*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.