



Denial of permission for prisoner to attend religious services outside prison during COVID-19 pandemic did not violate Convention

In today's **Chamber** judgment¹ in the case of [Constantin-Lucian Spînu v. Romania](#) (application no. 29443/20) 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 a refusal by the national authorities, on grounds of measures taken during the COVID-19 pandemic, to let a prisoner attend religious services outside Jilava Prison.

The Court concluded that the decision of the prison authorities to deny the applicant leave to attend his church's religious services outside the prison had not been taken without considering his individual situation and the changing circumstances of the public health crisis. Having regard to the leeway ("margin of appreciation") that was to be afforded to the national authorities under the specific and novel circumstances of the crisis, the Court determined that the applicant's right to manifest his religion had not been infringed.

A legal summary of this case will be available in the Court's HUDOC database ([link](#)).

Principal facts

The applicant, Constantin-Lucian Spînu, is a Romanian national who was born in 1973. He has been a prisoner at Jilava Prison in Romania since June 2019.

Mr Spînu identifies as a member of the Seventh-Day Adventist Church. From June 2019 to February 2020 he was allowed to leave the prison to attend Adventist Church services. In July 2020 he applied to the prison authorities for permission to attend a Sabbath service every Saturday at an Adventist church in Sector 6 of Bucharest. The prison governor denied his request. The applicant challenged that decision in the national courts, where his claim was dismissed on the basis of the COVID-19 Pandemic Prevention and Response Act (Law no. 55/2020). The courts reasoned that the permitted scope for extramural activities was limited by the public health situation arising from the COVID-19 pandemic.

Complaints, procedure and composition of the Court

The applicant relied on his freedom of religion under Article 9 (right to freedom of thought, conscience and religion).

The application was lodged with the European Court of Human Rights on 20 August 2020.

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

Gabriele Kucsko-Stadlmayer (Austria), *President*,
Tim Eicke (the United Kingdom),

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.

Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Yonko **Grozev** (Bulgaria),
Armen **Harutyunyan** (Armenia),
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

Article 9

The Court noted that before the start of the public health crisis the prison authorities had granted the applicant leave to attend church under the regulations in force. The Court therefore accepted that the matters complained of by the applicant had amounted to an interference with his right under Article 9 of the Convention.

Regarding the grounds of the interference, the Court noted that it had been prescribed by Law no. 55/2020, whose section 61 contained provisions allowing restrictions to be placed on day release arrangements for prisoners because of the COVID-19 pandemic.

Regarding the legitimate aims relied on by the Government, the Court accepted that the measure in issue had been taken to protect the health and safety of prisoners and anyone who might come into contact with them, and to protect public health in general. It pointed out that the protection of public health was one of the aims listed in Article 9 of the Convention as capable of warranting a limitation on the freedom to manifest one's religion.

As to whether the interference had been necessary in a democratic society, the Court noted that the limitation on the applicant's right to freedom of religion had been directed only at a single dimension of the exercise of that right in that it had concerned only his participation in religious worship at his church outside the prison. It was not the applicant's case that he had been prevented from practising his religion in any other way while in prison or that he had made other requests that had been denied. The Court also observed that the church's activities had been affected by the public health crisis during the relevant period, since attendance at religious services had been made subject to certain requirements, or suspended outright, for all members of the applicant's religious community and representatives of the faith.

Furthermore the Court felt that the changing and unforeseeable nature of the public health situation must have posed a number of challenges to the prison authorities in relation to the organisation and supervision of prisoners' religious activities. Accordingly it took the view that those authorities had to be afforded a wide margin of appreciation, especially as the applicant in this case had been seeking permission to leave the prison and interact with people who were not themselves inmates or staff of the prison. Specifically, the value of the principle of social solidarity had to be considered in the particular context of the prison setting. For instance, the risk of the applicant's being infected outside the prison and bringing the virus back into that closed environment must surely have carried considerable weight in the prison authorities' assessment, at a time when the preventive measures in place were centred on contact restrictions, isolation and quarantining, among other strategies. The Court accepted that the authorities had been in a difficult position to respond instantaneously to the public health situation, let alone to each new development the moment it arose.

In addition, the Court took into account the alternatives that had been offered and the fact that Jilava Prison had introduced the use of video-conferencing for Adventist worship. That solution, introduced by the prison authorities, was consistent with the practices that had developed generally

during the health crisis; the recommendation by the CPT² that any restrictions on contact with the outside world should be compensated for by increased access to alternative means of communication was along the same lines. The Court noted the applicant's refusal to take part in the online activities and his failure to explain the reasons for that refusal in his submissions to the Court. While it was true that such measures could not entirely take the place of unmediated participation in religious services, the Court found that the national authorities had exercised reasonable efforts to counterbalance the restrictions imposed during the pandemic.

Lastly, the Court noted that the applicant's complaint concerned a situation at a particular juncture rather than a continuing situation which would have exempted him from the requirement to pursue the legal avenues open to him under domestic law or at least to resubmit his requests in the light of the shifting course of the pandemic. In the Court's view, the unforeseeable and unprecedented nature of the health crisis entitled the prison authorities to considerable leeway and would have made it hard for them to establish an immediate response protocol on their own initiative. It further noted that the applicant had not provided any concrete details concerning his situation post-July 2020, including the manner in which he had thereafter exercised his freedom of religion.

Consequently the Court concluded that the prison authorities' decision to deny the applicant leave to attend his church's religious services outside the prison had not been taken without considering his individual situation and the changing circumstances of the public health crisis. Having regard to the margin of appreciation that was to be afforded to the national authorities under the specific, novel circumstances of the crisis, the Court determined that the applicant's right to manifest his religion had not been infringed.

Accordingly, there had been no violation of Article 9 of the Convention.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

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.

² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.