EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF G.K. and A.S. v. SWITZERLAND

*(Applications nos. 55299/20 and 31515/22)*

JUDGMENT

Art 9 • Positive obligations • Freedom of thought and conscience • Art 13 (+ Art 9) • Effective remedy • Domestic authorities' failure to provide the applicants, in pre-trial detention and involuntary psychiatric care respectively, a substantive examination of their arguable grievances regarding access to a vegan diet in accordance with their ethical beliefs • Veganism considered by Council of Europe member States as a non-religious belief • Sincerity and consistency of the applicants' beliefs • Existence of a sufficiently close connection between those beliefs and the applicants' abstaining from the consumption of food derived from animal sources • Applicants' beliefs had met the required level of cogency, seriousness, cohesion and importance to fall within the scope of Art 9 • Art 13 applicable • Practical impossibility for the applicants to obtain the administrative "decisions" necessary for their claims under Art 9 to be examined on the merits • Applicants considered to lack a sufficient legal interest within the meaning of the relevant law • Excessively formalistic approach of administrative and judicial authorities • Ineffective remedy in practice due to the way in which the domestic authorities had applied domestic law • Positive obligation stemming from Art 9 to address the applicants' requests in substance • Failure to strike a fair balance between the competing interests at stake

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 July 2026

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of G.K. and A.S. v. Switzerland,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Kateřina Šimáčková*, President*,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy,
Vahe Grigoryan,
Sébastien Biancheri*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 55299/20 and 31515/22) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Swiss nationals, Mr G.K. ("the first applicant") and A.S. ("the second applicant"), on 11 December 2020 and 21 June 2022, respectively;

the decision to give notice to the Swiss Government ("the Government") of the complaints under Articles 6, 8, 9, 13 and 14 of the Convention concerning the domestic authorities' failure to provide the applicants, the first of whom was in pre-trial detention in prison, and the second of whom was confined in the psychiatric unit of a cantonal hospital, with fully vegan diets, and to declare inadmissible the remainder of application no. 55299/20;

the decision not to have the applicants' names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Vegan Society, Vegan Australia and the Criminal Law Research Center of the Free University of Brussels, who were granted leave by the President of the Section to intervene in the written procedure;

Having deliberated in private on 27 January and 16 June 2026,

Delivers the following judgment, which was adopted on the latter date:

# INTRODUCTION

1. The applications concern the failure of the domestic authorities to provide the applicants, the first of whom was in pre-trial detention and the second of whom was confined in a psychiatric hospital, with fully vegan diets (that is to say, diets excluding all foods of animal origin) in accordance with their ethical beliefs. They also concern the alleged lack of effective domestic remedies for those complaints.

# THE FACTS

2. The first applicant was born in 1991, lives in Vernier (Châtelaine) and was represented by Mr O. Peter, a lawyer practising in Geneva. The second applicant was born in 1988, lives in Lausanne and was represented by Mr G.Y. Genton, a lawyer practising in Lausanne.

3. The Government were represented by Mr Xavier-Baptiste Ruedin, Representative of Switzerland to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

## I. APPLICATION NO. 55299/20 (G.K. V. SWITZERLAND)

5. Between 30 November 2018 and 24 October 2019 the first applicant was held in pre-trial detention at Champ-Dollon Prison in Geneva. He was mainly accused of acts of damage to property committed in the context of his support for an anti-speciesism movement. Anti-speciesism is the ethical concept that it is immoral to exploit or harm animals just because they belong to a different species.

6. The Government submitted that during his detention the first applicant had been provided with vegetarian food that was compatible with a vegan diet, with the exception of two dishes (polenta and mashed potatoes). As meals were served on a self-service basis, the first applicant had been free to help himself to as many servings of vegetables, fruit and starchy foods as he wanted. The first applicant had subsequently also been provided with additional portions of fruit, raw vegetables and starchy foods.

7. In addition, the first applicant had been free to purchase any of the vegan products available at the prison grocery store, which he regularly did (cereal bars, almonds, raisins, corn salad, dark chocolate, fruit, vegetables, vitamins, olives, apple juice, Mexican salad, roasted peanuts, chips, roasted pistachios, mixed dried fruit, sugar, iced tea, chocolate powder drinks). During his stay in prison the applicant had also received 11 food parcels from his relatives, which contained various vegan foods.

8. The first applicant, in contrast, submitted that the food that had been provided to him by the prison on the basis of the vegetarian menu had been, with very few exceptions, incompatible with his vegan diet, since it had contained products of animal origin. On the days when non-vegan polenta was served the other food options proposed had not been suitable for a vegan diet (for example, meat (*cevapcici*) and cream sauce on 3 December 2018; fish, cream sauce and pasta with butter on 7 December 2018; lasagna with ricotta cheese on 9 December 2018; and a chicken sausage and cauliflower au gratin with cheese on 29 December 2018). The only items that the applicant, as a vegan, had been able to eat were beans (which could, however, contain butter or cream), steamed zucchini and mixed salad. During the week of 18 February 2019, that is before the applicant started receiving additional

fruit portions, the Monday menu had consisted of fish filet and creamed spinach, the Tuesday menu had consisted of beef meatballs and polenta, and the Wednesday menu – of *bouchées à la reine* (containing veal). Those dishes had been accompanied by rice, carrot and cucumber salads, all of which could contain animal products or sauces based on them.

9. On 14 December 2018 the first applicant consulted the prison medical service of Geneva University Hospitals (*Hôpitaux Universitaires de Genève*). According to the resulting medical report, the first applicant had mentioned that his incarceration was difficult for him because of the occasional lack of food suitable for his vegan diet. The doctor had advised the first applicant to raise the issue with the floor manager and the head of the prison. The first applicant had further requested a screening test including a check for deficiencies, which had been carried out.

10. On 1 January 2019 the first applicant wrote a letter to the head of Champ-Dollon Prison in which he had explained that he had been having difficulties following his vegan diet in prison. He had also complained that the vitamin B12 supplement distributed by the prison medical service contained components of animal origin, which prevented him from taking it.

11. On 3 January 2019 the prison administration replied that, with regard to the vitamin B12 supplement, he should contact the prison medical service directly.

12. On 24 January 2019 the applicant again complained to the prison head that, whereas the issue with vegan B12 vitamin had been resolved, the problem concerning the meals remained, as they were not 100% vegan, which sometimes prevented him from eating them. However, according to the Government, no complaints had been made by the first applicant on those days to prison staff, and staff had not noted or reported that the first applicant was refusing food.

13. On 31 January 2019 the prison administration replied to the first applicant saying that the food included in the vegetarian menus was compatible with his vegan diet, except for the mashed potatoes and polenta. In addition, he had the option of purchasing vegan products from the prison grocery store.

14. On 1 February 2019 the first applicant refused to attend a medical consultation, during which the issue of a vegan substitute for the vitamin B12 that had been prescribed to him was to be discussed again. A medical report written at that time also mentioned the results of the screening, which had not revealed any health problems or deficiencies related to the first applicant's diet in detention.

15. On 11 March 2019 the first applicant complained to the prison administration that the vegetarian diet was not suitable for veganism as it contained milk, cheese and eggs. He further argued that the choice of vegan products at the prison's grocery was limited, and insisted on receiving vegan meals.

16. On 14 March 2019 the prison administration organised a meeting between the first applicant and the deputy head of the kitchen in order to find a solution.

17. On 13 May 2019 the first applicant, through his lawyer, addressed the prison administration, deploring the fact that the meeting with the kitchen manager had taken place only after he had been in detention for several months, and that, despite the meeting, the prison still failed to offer the option of a vegan diet, with the only vegan foods available being cookies and dry snacks. He requested that at least one vegan meal per day be provided.

18. On 22 May 2019 the prison administration responded to the first applicant's counsel, stating that the applicant had on several occasions had the opportunity to speak with prison officials and had been informed that the prison's vegetarian meals, with the exception of mashed potatoes and polenta, were suitable for vegans; that, in recognition of that, instead of products derived from animals or their exploitation, the first applicant had been provided with additional portions of fruit, vegetables (raw and cooked) and starchy foods; that vegan products had also been available at the prison grocery store, and that every effort was made by the prison administration to cater to the prisoners' dietary practices. The reply further noted that prisoners received health monitoring and advice from the prison medical service. Lastly, it noted that on 14 March 2019 the first applicant had had a meeting with the deputy head of the kitchen of the prison to provide him with additional information, but that the applicant had been uncooperative.

19. On 12 August 2019 the first applicant, through his lawyer, sent another letter to the prison administration complaining about the lack of entirely vegan diet. He stated that the offer of vegan products in the prison's grocery and the possibility of receiving packages from outside were not sufficient, that leaving him to rely on those food sources for a balanced diet was not compatible with the prisoners' right to adequate food, and that he had health issues related to the lack of a balanced and completely vegan diet, which he requested to be made available to him.

20. In a letter of 15 August 2019 the prison administration referred to its response of 22 May 2019 and reiterated that several measures had been put in place to ensure that the first applicant could benefit from a diet which accorded as closely as possible with his beliefs.

21. On 20 August 2019 the applicant's lawyer requested that the administration of Champ-Dollon Prison issue a "decision to change the diet", "given the health problems of [his] client resulting from the unsuitable nature of the food provided".

22. On 22 August 2019 the prison administration replied as follows:

> "All the measures we have taken are described in our aforementioned letters, and we have adapted to [the first applicant's] diet since the beginning of his stay in our facility.
>
> We understand that you are concerned with [the first applicant's] health. We assure you that this is also important to us and would like to explain that he is being monitored

by the medical service at Champ-Dollon Prison. A copy of your letter has been forwarded to them for information."

23. Meanwhile, on 21 August 2019 the first applicant, through his lawyer, lodged an appeal with the Administrative Chamber of the Court of Justice of the Canton of Geneva against the "decision to refuse to provide a vegan diet" issued on 15 August 2019.

24. On 8 November 2019 the first applicant was convicted in the criminal proceedings against him and left Champ-Dollon Prison.

25. On 3 December 2019 the Court of Justice declared the applicant's appeal inadmissible owing to the lack of a decision that could be challenged within the meaning of section 4 of the Geneva Administrative Procedure Act (see paragraph 45 below) and to its lack of ongoing relevance since the first applicant was by then no longer detained in Champ-Dollon Prison. The Court of Justice found, in particular, that the letter of 15 August 2019 had not constituted a refusal to provide the first applicant with a vegan diet, but had instead been intended to remind him of the information already provided in May 2019 regarding the efforts made by the prison to facilitate his dietary requirements. It also found that the first applicant himself had not considered the letter to have been a decision since in a letter dated 20 August 2019 he had requested that the prison issue a "decision refusing to change his diet".

26. On 21 December 2019 the first applicant challenged the above-mentioned decision before the Federal Supreme Court, requesting that a violation of his right to an effective remedy and his right to freedom of belief and opinion be found (Articles 9 and 13 of the Convention).

27. On 11 June 2020 the Federal Supreme Court dismissed the appeal, having found no arbitrariness or unlawfulness in the application of cantonal law by the Court of Justice. The Federal Supreme Court noted that the notion of a "decision" contained in section 4 of the Geneva Administrative Procedure Act implied an obligatory and binding legal relationship between an authority and those subject to it. It reiterated that simple declarations, such as opinions, communications, positions, recommendations and information, did not fall into the category of "decisions" owing to their lack of a binding legal character. To determine whether or not it was a "decision" it was necessary to consider the material characteristics of a document. A document could thus be qualified as a (material) "decision" if its content had the character of one, even if it was not titled as such and did not present certain formal elements typical of a "decision", such as an indication of legal remedies. Turning to the circumstances of the first applicant's case, the Federal Supreme Court noted that the letter from the prison administration of 15 August 2019 had merely been a reminder to the first applicant of the information already provided in May 2019 regarding the efforts made by the administration to accommodate his vegan diet. It did not constitute a refusal to provide the first applicant with a vegan diet and, therefore, did not create any binding legal relationship between him and the prison administration. It

also did not apply any public law standards. The Federal Supreme Court further noted that the first applicant seemed to have been aware of the fact that the above-mentioned communication of 15 August 2019 did not constitute a "decision" within the meaning of section 4(1) of the Geneva Administrative Procedure Act, since on 20 August 2019 he had requested that the prison administration issue a "decision refusing to change his diet". As to the alleged violation of Article 13 of the Convention, the Federal Supreme Court considered that that complaint was absorbed by Article 6 § 1 of the Convention (access to court), which did not prevent an authority hearing an appeal from refusing to examine it if it did not comply with the formal admissibility requirements.

## II. APPLICATION NO. 31515/22 (A.S. V. SWITZERLAND)

28. Between 16 February and 27 April 2021 the second applicant was subjected to involuntary hospitalisation in the Cery Psychiatric Hospital of the University Hospital of Lausanne (*Centre hospitalier universitaire vaudois* – "the CHUV")[1] pursuant to a decision of 16 February 2021 on his "placement for the purposes of providing care" (formerly "deprivation of liberty for the purposes of providing care" in Swiss law). Until 3 March 2021 he was placed in isolation in an intensive care unit owing to his clinical condition. Upon admission he informed the nursing staff that his beliefs required him to follow a vegan diet. His request was taken into consideration.

29. The Government submitted that during the second applicant's hospitalisation in the intensive care unit between 16 February and 3 March 2021, the existing menus had been adapted by the hospital dietitian. From 4 March 2021 special vegan dishes had been ordered for the applicant. Furthermore, vegan products had been available on the hospital's website, including snacks, cereal bars, fruit and yogurt.

30. The second applicant submitted that at least 11 meals containing products of animal origin and 16 meals lacking a vegan protein source had been served to him between 16 February and 3 March 2021. The Government acknowledged that on 17 February, 21 February, 22 February (noon), 23 February (noon), 25 February (evening), 27 February, 28 February (noon) and 3 March 2021 (evening) non-vegan meals had mistakenly been served to him. Regarding the alleged lack of vegan sources of protein, they submitted that four meals had been served with nuts and five meals – with a soy dessert to ensure protein intake.

31. On 17 February 2021 a nurse contacted the hospital dietitian with a request that vegan meals be planned for the applicant. The dietitian suggested

[1] Placement for the purposes of providing care (formerly deprivation of liberty for the purposes of providing care) under Article 426 of the Swiss Civil Code

meeting the second applicant in order to discuss the matter, but that had not been possible because of the latter's condition at that time.

32. On 19 February 2021 the second applicant sent a letter to the head of the CHUV Department of Psychiatry entitled "Request for a declaratory decision (*Demande de decision constatatoire*)", which read as follows:

> "I have been vegan for 16 years. Male chicks are killed in the egg industry. Calves are separated from their mothers in dairy production. Chickens and cows are killed as soon as they are no longer profitable. In the light of this, I am opposed to those practices. Therefore, I request that you acknowledge my right to receive [nutritionally] balanced vegan meals."

At the material time the second applicant had no representative and wrote his request by hand.

33. On 21 February 2021 the second applicant complained to the nursing staff about the non-vegan meal that had been served to him. The dietetics department was notified of the incident.

34. On 22 February 2021 the second applicant's sister wrote to the administration of the CHUV Department of Psychiatry asking them to respect her brother's vegan diet, pointing out that she had already on several occasions intervened on that subject during the second applicant's previous hospitalisation.

35. In a letter of 24 February 2021 the head of the CHUV Department of Psychiatry replied as follows:

> "Dear Sir,
>
> We hereby acknowledge receipt of your letters regarding your vegan lifestyle, which have received our full attention.
>
> We would like to inform you that we are forwarding your request to the head of your care unit, who will get back to you to find a solution."

36. On 25 February 2021 the second applicant wrote a letter to the head of the CHUV Department of Psychiatry requesting a formal decision in response to his letter of 19 February 2021.

37. On 2 March 2021 the second applicant challenged the letter of 24 February 2021 before the Administrative and Public Law Court of the Canton of Vaud ("the Vaud Cantonal Court"). Referring to the freedom of conscience, he complained that the head of the CHUV Department of Psychiatry had refused to recognise his right to obtain "[nutritionally] balanced vegan meals".

38. Meanwhile, on 14 April 2021 the second applicant was seen by a dietary consultant regarding the special vegan dishes and menus he had been receiving since 4 March 2021. He was informed, in particular, that vegan menus were based on the available vegetarian menu, that the meals were suitable for people with egg allergies as they contained only a small amount of egg, and that it was not possible to choose menus, as was the case for all special diets at the CHUV. The second applicant subsequently requested

vegan bircher muesli, vegan desserts (such as "apple pie"), vegan cheese, plant-based milks and foods enriched with vitamin B12, which were not available at the CHUV at the material time. The measures proposed were to maintain the special menu (vegan meals) based on the vegetarian menu and the available options, with the addition of three nuts per day and Italian dressing, in accordance with the applicant's wishes.

39. On 28 April 2021 the CHUV responded to the second applicant's letter of 25 February 2021 (see paragraph 36 above). It noted that a patient could at any time refer such a matter to the Commission for the Examination of Complaints from Patients and Residents or Users of Healthcare Facilities and Socio-Educational Institutions ("the Complaints Review Commission"), which was responsible in the canton of Vaud for ensuring that patients' rights were respected, as well as for the handling the complaints relating to care and involving alleged violations of human rights.

40. On 20 May 2021 the Vaud Cantonal Court declared the second applicant's appeal of 2 March 2021 inadmissible, finding that the letter of 24 February 2021 did not qualify as a "decision" that could be appealed against within the meaning of section 3(1) of the Vaud Administrative Procedure Act (see paragraph 46 below). Specifically, the letter in question had been simply to inform the second applicant that his request for "[nutritionally] balanced vegan meals" had been forwarded to the head of his care unit, who would contact him to find a solution. Admittedly, there had been a few errors in the meals served to the second applicant, but they had been related to the implementation of the new menus and not to the non-recognition of a right.

41. The second applicant appealed against that decision to the Federal Supreme Court, requesting the acknowledgment of his right to receive nutritionally balanced vegan meals during his stay in the hospital, claiming that his right to freedom of conscience had been violated and that he had suffered discrimination with regard to the exercise of his freedom of conscience. In that complaint he relied on Article 9 of the Convention, as well as on Articles 13 and 14 of the Convention taken in conjunction with Article 9.

42. On 9 February 2022 the Federal Supreme Court dismissed the appeal. Basing its decision on the same criteria as in the case of the first applicant (see paragraph 27 above), the Federal Supreme Court considered that the letter of 24 February 2021 had been merely informative, that it had not rejected the second applicant's request for a balanced vegan diet, and had not created any binding legal relationship between him and the hospital. It concluded, therefore, that it had been reasonable of the Vaud Cantonal Court to hold that the letter in question had not constituted a decision subject to appeal within the meaning of section 3(1) of the Vaud Administrative Procedure Act. The Federal Supreme Court further noted that, although the second applicant had expressly requested a declaratory decision in his letter

of 19 February 2021, he had not relied before the court upon the cantonal provisions allowing for an appeal in the absence of such a decision when the authority delayed or refused to issue a ruling, nor had he complained of a denial of justice – a grievance which the Federal Supreme Court could not examine *ex officio*. In any event, the CHUV had responded to the second applicant's request within five days of the lodging of the request by informing him of the course of action chosen to find a solution. As to the alleged violation of Article 13 of the Convention, the Federal Supreme Court considered that that complaint was absorbed by Article 6 § 1 of the Convention (access to court), which did not prevent an authority hearing an appeal from refusing to examine it if it did not comply with the relevant formal admissibility requirements.

43. On 21 February 2022 the second applicant received a copy of the Federal Court's decision of 9 February 2022.

# RELEVANT LEGAL FRAMEWORK

## I. RELEVANT DOMESTIC LAW

44. The Organisation of the Judiciary Act of the Canton of Geneva of 26 September 2010 provides as follows:

**Section 132 – Jurisdiction**

"1. The Administrative Chamber is the ordinary higher authority for appeals in administrative matters. ...

2. Appeals may be lodged with the Administrative Chamber against decisions of administrative authorities and courts within the meaning of sections 4, 4A, ... of the Administrative Procedure Act of 12 September 1985.

..."

45. The Administrative Procedure Act of the Canton of Geneva of 12 September 1985 provides as follows, in so far as relevant:

**Section 4 – Decisions**

"1. Individual and specific measures taken by [an] authority in individual cases based on federal, cantonal or municipal public law and having the following objectives are considered decisions within the meaning of section 1:

(a) creating, modifying or cancelling rights and obligations;

(b) determining the existence, non-existence or scope of rights, obligations or facts;

(c) rejecting or declaring inadmissible claims seeking to create, modify, cancel or establish rights or obligations.

2. Incidental decisions, decisions on claims or appeals and decisions on review and interpretation are also considered to be decisions.

3. Where an authority rejects or invokes claims to be asserted by way of legal action, its statement shall not be considered a decision.

4. When an authority that has been given formal notice refused without legal grounds to rule [on an issue], or delays in doing so, its silence is considered a decision."

**Section 4A – Right to a challengeable act**

"1. Any person with an interest worthy of protection may require that the authority competent to perform [administrative] acts based on federal, cantonal or municipal law and affecting rights and obligations:

(a) refrain from unlawful acts, cease to perform them, or revoke them;

(b) eliminate the consequences of unlawful acts;

(c) declare such acts unlawful.

2. The authority shall rule by decision."

46. The Administrative Procedure Act of the Canton of Vaud provides as follows, in so far as relevant:

**Section 3 – Decision**

"1. A decision is any measure taken by an authority in a specific case, in application of public law and having as its purpose:

(a) the creation, modification or cancellation of rights and obligations;

(b) the determination of the existence, non-existence, or scope of rights and obligations;

(c) the rejection or declaring inadmissible requests seeking to create, modify, cancel or establish rights and obligations.

2. Incidental decisions, decisions on claims or appeals and decisions on interpretation or review are also considered to be decisions.

3. A decision within the meaning of subsection 1 (b) may only be rendered if a decision within the meaning of subsection 1 (a) or (c) cannot be rendered."

**Section 74 – Decisions subject to appeal**

"The absence of a decision may also be appealed against if the authority delays or refuses to rule."

**Section 92 – Jurisdiction in administrative law**

"The Cantonal Court shall examine appeals against decisions and decisions on appeals made by administrative authorities, unless the law provides for another authority to examine them."

47. The Public Health Act of the Canton of Vaud of 29 May 1985 provides as follows, in so far as relevant:

**Section 15 d – Complaints Review Commission: duties**

"1. A Commission for the Examination of Complaints from Patients and Residents or Users of Healthcare Facilities and Socio-Educational Institutions (hereinafter: the Complaints Review Commission) ... is hereby established.

2. The Complaints Review Commission shall be responsible for ensuring respect for the rights of patients and residents as enshrined in this Act and for dealing with complaints relating to the care provided by health professionals and health establishments or institutions concerning violations of human rights."

**Section 15 g – Organisation**

"In urgent cases ... or when deciding on provisional measures, a subcommittee composed of the chair of the Complaints Review Commission and at least two members chosen by him [or her] shall rule."

48. The Regulations of the Republic and the Canton of Geneva on prison rules and the status of prisoners read as follows, in so far as relevant:

**Chapter III Food**

**Regulation 19 – Meals**

"1. Meals are prepared by the prison kitchen.

2. It is forbidden to bring in meals from outside or to cook in cells."

**Regulation 21 – Diet**

"A doctor shall prescribe, where necessary, the diet of sick prisoners."

**Regulation 59 – Petitions, complaints and reports**

"At any time prisoners may submit a sealed petition, complaint or report to the Director General of the Cantonal Detention Office, the prison director, the magistrate to whom [he or she] reports, the public prosecutor's office, the head of the department, or the Grand Council's official visitors' commission."

**Regulation 60 – Appeals**

"An appeal may be lodged with the Administrative Chamber of the Court of Justice against any sanction imposed by the Director General of the Cantonal Detention Office or the prison director."

## II. RELEVANT COUCIL OF EUROPE MATERIAL

49. The Recommendation of the Committee of Ministers to member States on the European Prison Rules (Rec(2006)2) ("the European Prison Rules") is quoted in *Jakóbski v. Poland* (no. 18429/06, § 26, 7 December 2010). In particular, Rule 22 provides that prisoners shall be offered a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

50. Rule 29 further provides that prisoners' freedom of thought, conscience and religion shall be respected and that the prison regime shall be organised so far as is practicable to allow prisoners to practice their religion and follow their beliefs.

51. In its 27th General Report published in April 2018, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("the CPT") stated that complaints mechanisms constituted a fundamental safeguard against torture and inhuman or degrading treatment of persons deprived of their liberty by a public authority, including those detained in prisons and psychiatric hospitals. Such mechanisms could not

only allay tensions between persons deprived of their liberty and staff, but also, by ensuring that the complaints were taken seriously, contribute to building positive relationships. For the purposes of the report at issue, the term “complaints” referred to all formal complaints lodged by, or on behalf of, persons deprived of their liberty about decisions, actions or lack of official action on a variety of issues.

52. The CPT noted that the major shortcomings observed across the Council of Europe Member States in this area included an insufficient legal basis for a complaints procedure, the lack of, or inadequate provision of information about complaints bodies or procedures, undue delays in initiating the examination or investigation of complaints, and the lack of thoroughness in the examination or investigation of complaints.

53. The CPT considered it crucially important that, in each place of deprivation of liberty, there was an effective internal complaints mechanism. Such a mechanism should be immediately accessible. Complaint could initially be made orally, and recorded by a member of staff on duty to whom it was made. Such a complaint should be responded to quickly, i.e. within a narrowly defined time span. If not resolved, the complaint should be formulated in writing by the complainant and taken to the next hierarchical level of staff who should also respond in writing. All decisions should indicate the subsequent steps to be taken if the complainant was not satisfied. More sensitive and/or serious complaints should be submitted, by a separate internal procedure, directly to the person in charge of the establishment. It was also advisable that the external complaints bodies maintained oversight on internal complaints mechanisms.

54. The proper handling of complaints made by persons deprived of their liberty required the observance of certain basic principles, such as availability, accessibility, confidentiality/safety, effectiveness and traceability.

## III. COMPARATIVE LAW MATERIAL

55. The Court conducted a comparative law research examining the extent to which persons deprived of their liberty, particularly prisoners and involuntary psychiatric patients, were entitled to diets reflecting their religious or other beliefs, and the remedies available where such diets were not provided. It examined the domestic legislation, case-law and practices in forty-one Council of Europe member States other than Switzerland, namely Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San

Marino, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Türkiye, Ukraine and the United Kingdom.

56. With regard to detention in the context of criminal proceedings or convictions, the study revealed significant diversity in both law and practice. While in a quarter of States the provision of diets compatible with religious beliefs was expressly required by statutory law or binding administrative frameworks (Andorra, Bosnia and Herzegovina, Hungary, Montenegro, Norway, Portugal, Romania, San Marino, Slovenia (convicted persons), Sweden and the United Kingdom) and in substance (Albania), the majority of States operated systems based on obligations of reasonable accommodation (Austria, Belgium, Croatia, Cyprus (concerning convicted prisoners), the Czech Republic, Denmark (in some cases), Estonia, France, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, the Netherlands, North Macedonia (concerning convicted prisoners), Poland, Serbia, Spain, Türkiye and the United Kingdom (Scotland)), administrative discretion (Finland, Georgia, Greece and the Slovak Republic), accommodation of non-religious based special diets (Latvia) or self-provision mechanisms (Germany, Denmark and Iceland). No legislative, policy-based or *de facto* requirement to accommodate religious diets was identified in Ukraine, or for remand detainees in Cyprus and North Macedonia.

57. With regard to diets based on non-religious beliefs, such as vegetarianism or veganism, explicit legal recognition existed in relatively few States (Bosnia and Herzegovina, Denmark (in specific circumstances), Latvia, Portugal, Norway, Slovenia (convicted prisoners), Sweden and the United Kingdom). In other States the provision of such diets was based on obligations of reasonable accommodation (Belgium, the Czech Republic, Estonia, France, Ireland, Lithuania, the Netherlands, Poland, the Slovak Republic, Spain, Türkiye and the United Kingdom (Scotland)), administrative discretion (Albania, Finland, Greece and Republic of Moldova) or self-provision mechanisms (Germany, Denmark and Iceland). No right to a special diet based on non-religious beliefs was identified in Ukraine, nor in those States whose legal frameworks explicitly limited accommodation to religious grounds (Austria, Croatia, Cyprus, Hungary, Italy, Liechtenstein, Luxembourg, Romania and Serbia) or to the accommodation of religion and culture (Andorra, Malta, Montenegro, North Macedonia and San Marino) without further clarification or relevant judicial interpretation.

58. The legal position of involuntary psychiatric patients was generally less developed and more fragmented than that of prisoners. Only a small number of States recognised an explicit right to a diet reflecting religious and/or other beliefs in the context of involuntary psychiatric care, either through statutory law or binding regulations (Croatia, Estonia, Malta, Poland, Portugal, the Slovak Republic, Türkiye and the United Kingdom) or a

mechanism of reasonable accommodation with respect to religious and non-religious beliefs (Belgium and France) or religious beliefs (Austria and Hungary). Elsewhere, dietary accommodation derived indirectly from broader obligations to respect freedom of religion, human dignity, cultural rights or non-discrimination, without constituting a freestanding right.

59. A variety of mechanisms existed to challenge the non-provision of a special diet in prison. In many States, remedies were governed by legislation on the execution of prison sentences or pre-trial detention and allowed challenges to detention conditions or to decisions, acts or omissions of the prison administration. These remedies ranged from specialised judicial complaints addressing detention conditions in general (Croatia, Germany, Ireland, Italy, Republic of Moldova, Portugal, Slovenia and Spain), detention conditions undermining human dignity (France, Greece, Republic of Moldova and Slovenia) or any decision, act and/or omission of the prison administration (Albania, Austria, Belgium, Croatia, Greece, Liechtenstein, Lithuania, Luxembourg, Republic of Moldova, Montenegro, the Netherlands, Portugal, Serbia, and Türkiye) to internal administrative procedures (Cyprus, the Czech Republic, Denmark, Hungary, Iceland, Malta, Poland, Portugal, the Slovak Republic, Ukraine and the United Kingdom), general administrative or civil actions (Cyprus, the Czech Republic, Georgia, France, Hungary, Ireland, Latvia, Lithuania, Norway, Poland, Ukraine and the United Kingdom), constitutional litigation (Bosnia and Herzegovina, the Czech Republic, Spain and Türkiye), and oversight by ombudsmen or other authorities. However, the effectiveness, accessibility and scope of these remedies varied considerably.

60. The remedies available to involuntary psychiatric patients to challenge the non-provision of a special diet were less developed and more fragmented than those applicable to prisoners. Some Contracting States appeared to provide access to judicial remedies allowing challenges to conditions of accommodation (Croatia, North Macedonia, San Marino, Slovenia and Spain).

61. Domestic courts across the Contracting States have increasingly been asked to rule on prisoners' requests for vegetarian and vegan diets. While approaches varied, the case-law revealed common patterns. Courts typically distinguished between diets grounded in religious beliefs and those based on ethical or philosophical convictions, although several jurisdictions have progressively extended protection to ethical veganism. Many courts applied a proportionality or reasonableness test, assessing whether accommodating the requested diet was feasible in light of organisational, financial and nutritional constraints. Some legal systems emphasised the State's positive obligations to respect freedom of religion or belief and human dignity in detention, while others limited the State's role to facilitating self-provision.

# THE LAW

## I. JOINDER OF THE APPLICATIONS

62. Having regard to the similarity of the applicants' grievances, the Court is of the view that, in the interests of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

## II. ALLEGED VIOLATION OF ARTICLES 9 AND 13 OF THE CONVENTION

63. The applicants complained under Articles 9 and 13 of the Convention that during their stays in prison and the psychiatric unit of the cantonal hospital the domestic authorities had failed to provide them with entirely vegan diets in accordance with their ethical beliefs and that they had not been afforded an effective domestic remedy in that respect. Relying on the same factual circumstances, the second applicant further complained of a violation of his right of access to a court under Article 6 of the Convention and of his right not to be subjected to discriminatory treatment on the ground of his vegan beliefs under Article 14 of the Convention, in conjunction with Article 9 thereof. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), finds it appropriate to examine the applicants' complaints under Articles 9 and 13 of the Convention only (see *Saran v. Romania*, no. 65993/16, § 20, 10 November 2020). The relevant provisions read as follows:

**Article 9**

> "1. 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.
>
> 2. 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."

**Article 13**

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

## A. Admissibility

64. The Government submitted that the applicants had not exhausted the domestic remedies since the documents they had challenged before the national authorities had not constituted "decisions" within the meaning of the relevant procedural provisions, thereby preventing the domestic courts from examining the merits of the alleged violations of Article 9 of the Convention.

65. The Court considers that the issue of exhaustion of domestic remedies raised by the Government is closely linked to the merits of the applicants' complaints that they did not have at their disposal an effective remedy to complain about the failures of the prison and the psychiatric hospital to provide them with vegan diets in accordance with their ethical beliefs during their stays in those facilities. Thus, the Court finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 70, 10 January 2012).

66. The Government further argued that the applications were manifestly ill-founded for the reasons set out below (see paragraphs 71-73 and 99-102 below).

67. The Court does not consider that the applications are manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or that they are inadmissible on any other grounds.

## B. Merits

### *1. Article 13 of the Convention*

#### (a) Submissions by the parties

##### *(i) The applicants*

68. The first applicant submitted that he had repeatedly requested that the prison provide him with a diet compatible with his beliefs, yet the prison administration had deliberately chosen to avoid delivering a decision within the meaning of the Administrative Procedure Act that could be appealed against. Namely, in reply to the first applicant's complaint of 12 August 2019 expressly requesting that the prison administration make a nutritionally balanced and completely vegan diet available to him, on 15 August 2019 the administration had refused to acknowledge the violation of his rights or to change his diet. The first applicant considered, therefore, that the administration's reply had constituted a substantive decision within the meaning of section 4 of the Geneva Administrative Procedure Act. In his opinion, the Government's argument that he should have explicitly requested the prison administration to issue a decision within the meaning of the above provision was excessively formalistic. In any event, in the proceedings before the Cantonal Court of Justice the administration of Champ-Dollon Prison had

indicated to the Administrative Chamber that it considered that the first applicant had not been entitled to obtain a formal decision within the meaning of section 4. The first applicant acknowledged that he could have lodged an application with the Administrative Chamber of the Court of Justice on the ground of denial of justice (section 62(6) of the Geneva Administrative Procedure Act) in order to oblige the prison administration to issue a formal decision. However, those proceedings would have lasted several months, leaving him in detention with an inadequate diet affecting his health, for which reason he had opted instead to lodge an appeal against the letter of 15 August 2019.

69. In his additional observations the first applicant submitted documents from unrelated administrative proceedings brought by another inmate at Champ-Dollon Prison challenging before the prison administration the lawfulness of a search of his cell conducted by the prison guards and the seizure of his personal notes. In particular, in a letter dated 1 June 2023 the inmate in question, represented by the same lawyer as the first applicant in the proceedings before the Court and explicitly relying on section 4 of the Geneva Administrative Procedure Act, requested that the prison administration issue a decision finding the above-mentioned actions unlawful. Having received no response, on 19 June 2023 the inmate in question contacted the prison administration again requesting "to be issued with a formal decision pursuant to section 4 of [the Geneva Administrative Procedure Act]". In a letter dated 28 June 2023 the prison administration replied that there had been no misconduct on the part of prison staff or any violation of the prisoner's fundamental rights. The letter ended with the following sentence: "Finally, I would like to draw your attention to the fact that this letter is purely informative and does not constitute a decision within the meaning of section 4 of [the Geneva Administrative Procedure Act]". Those documents, in the first applicant's opinion, refuted the Government's contention that he would have obtained a formal decision that could subsequently have been appealed against if he had explicitly asked for a decision within the meaning of section 4. Furthermore, they confirmed the existence of an unfortunate practice on the part of the cantonal authorities of refusing to respond with formal decisions to requests for findings of a violation of the fundamental rights of persons detained at Champ-Dollon Prison even when such a decision was required and when section 4 was explicitly relied upon. That refusal to rule constituted a major obstacle to the right to an effective remedy for persons in detention in Geneva.

70. The second applicant argued that he had repeatedly requested that the CHUV provide him with a diet compatible with his beliefs. On 19 February 2021 he had explicitly requested a "declaratory decision" ruling that he had "the right to a [nutritionally] balanced vegan diet". However, on 24 February 2021 the hospital management had essentially refused to acknowledge the second applicant's right to a balanced vegan diet or to issue

a formal decision that could be appealed against, with the result that the institution had continued to serve him food that was contrary to his ethical beliefs. In order to afford the domestic authorities an opportunity to remedy those violations, the second applicant had lodged an appeal against the letter of 24 February 2021 with the Vaud Cantonal Court and subsequently with the Federal Supreme Court, thereby complying with the requirement to exhaust domestic remedies. The second applicant argued that the Vaud Cantonal Court, which had had the power to quash or modify the decision of the administrative authority, was the ordinary legal remedy against a decision of an administrative authority. The Complaints Review Commission was not competent to do so and, therefore, contrary to the Government's assertion, was not an effective remedy that the second applicant should have had recourse to instead. Alternatively, if the Cantonal Court did not consider itself competent to examine the second applicant's appeal, it should have referred the case to the authority it considered had jurisdiction. Being subject to forced hospitalisation and finding himself in an intensive therapy unit at the material time, the second applicant had had no other accessible and effective remedy available to him that he could have realistically been expected to exhaust. Therefore, the hospital's failure to issue a formal decision in reply to the second applicant's request of 19 February 2021 for a change in his diet, followed by inadmissibility decisions by the cantonal and federal appeal authorities, had resulted in a violation of his right to an effective remedy.

*(ii) The Government*

71. The Government submitted, as regards the first applicant, that the prison administration had at no time refused to serve him vegan meals and had, on the contrary, reiterated in the disputed letter of 15 August 2019 that a solution had been found to enable him to have a vegan diet. The letter in question had not, therefore, created any binding legal relationship between the first applicant and the prison authority and could not qualify as a "decision" that could be challenged in the administrative procedure. Had the first applicant expressly requested the prison administration to issue a "decision" within the meaning of section 4 of the Geneva Administrative Procedure Act, he could have benefited from an effective remedy before a national authority within the meaning of Article 13 of the Convention. Furthermore, the first applicant could have raised his complaint with the Administrative Chamber of the Court of Justice with reference to regulation 59 of the Regulations of the Republic and the Canton of Geneva on prison rules and the status of prisoners (see paragraph 48 above). However, he had not made use of that remedy either.

72. In reply to the first applicant's additional submissions (see paragraph 69 above), the Government strongly objected to his contention that there was a "practice" on the part of the cantonal authorities of refusing to respond with formal decisions to requests for findings of violations of the

fundamental rights of persons detained at Champ-Dollon Prison. The Government explained that section 4 of the Geneva Administrative Procedure Act was a means enabling citizens to guarantee their right of access to the courts. The right of access to the courts as provided by that provision was not intended to create new substantive rights without a legal basis, but to grant procedural protection to recognised rights. Therefore, citizens were required to submit a request for a decision within the meaning of section 4 to the authority that they believed was violating their rights. Such a request was admissible provided that the subjective and objective conditions for it were met. The subjective conditions included the existence of an interest (direct, concrete and current) worthy of protection. The objective conditions were that the citizen's rights and obligation were affected by the material act. Consequently, Genevans with an interest worthy of protection whose rights and obligations were affected by a material act could request a decision within the meaning of section 4 of the Geneva Administrative Procedure Act. As regards the case referred to by the applicant, cell searches were common in detention settings and had a legal basis in domestic law (the Swiss Criminal Code and the Prison Regulations), and therefore did not require a formal decision to be carried out. The seizure of personal notes had been authorised *ex post facto* by the public prosecutor's office. For that reason the cantonal authorities had no longer been competent to determine whether or not the seizure had been unlawful. The issue should have been brought before the Criminal Appeals Chamber of the Court of Justice. Therefore, when seeking a formal decision the inmate in question had not demonstrated a plausible infringement of his fundamental rights or an interest worthy of protection. The conditions of section 4 of the General Administrative Procedure Act had not, therefore, been met, since he had had a means of appeal at the criminal level.

73. As regards the second applicant, the Government submitted that the CHUV had never refused to serve him vegan meals, which made it doubtful that the conditions for requiring a declaratory judgment, which the second applicant had explicitly requested, had been met. A declaratory decision could only have been rendered if the second applicant had had a sufficient legal interest which could not be protected by any other means. The second applicant, however, had had no sufficient legal interest in challenging the letter of 24 February 2021, which had merely informed him that his request would be dealt with by the persons in charge. Furthermore, it had been open to him to complain about the alleged lack of a vegan diet in hospital to the Complaints Review Commission dealing with complaints relating to the care provided by healthcare facilities and concerning violations of human rights (see paragraphs 39 and 47 above), or to challenge the actions of State agents through legal remedies based on personality rights (Article 28a of the Swiss Civil Code) or through State liability actions (the Law of 16 May 1961 on the liability of the State, municipalities and their agents) under the usual

conditions applicable to those proceedings. However, the second applicant had not pursued any of those remedies.

*(iii) Third-party intervener*

74. The Criminal Law Research Center of the Free University of Brussels submitted that, for a preventive appeal against conditions of detention brought before an administrative body to be effective, that body had to (a) be independent of the authorities responsible for the prison system; (b) ensure the effective participation of prisoners in the examination of their complaints; (c) ensure the prompt and diligent handling of such complaints; (d) have at its disposal a wide range of legal instruments to remedy the problems giving rise to the complaints; and (e) be capable of issuing binding and enforceable decisions (they referred to *Ananyev and Others*, cited above, §§ 214-16 and 219). Any such remedy had to also allow for redress within a reasonable time (*Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, § 97, 8 January 2013).

75. The third-party intervener submitted that an appeal on the ground of a violation of a prisoner's conditions of detention had to be effective in the sense of being capable of remedying the situation complained of. The Court had therefore to take into account in a realistic manner not only the remedies provided for in theory, but also the legal and political context in which they operated, as well as the personal circumstances of the applicants.

**(b) The Court's assessment**

*(i) General principles*

76. Under Article 1 of the Convention, which provides: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention", the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Article 13 and Article 35 § 1 of the Convention (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 38, ECHR 2006-V, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 140, ECHR 2006-V; see also *De Souza Ribeiro v. France* [GC], no. 22689/07, § 77, ECHR 2012). The object of Article 13 is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

77. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic

legal order (see *Rotaru v. Romania* [GC], no. 28341/95, § 67, ECHR 2000-V, and *Mugemangango v. Belgium* [GC], no. 310/15, § 130, 10 July 2020).

78. Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of all supposed grievances under the Convention that individuals may have, no matter how unmeritorious their complaint may be: the grievance must be an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131; see also *Gagliano Giorgi v. Italy*, no. 23563/07, § 78, ECHR 2012 (extracts)). The Court reiterates that a complaint may be considered arguable where it is not manifestly ill-founded and requires an examination on the merits (see *Roth v. Switzerland*, no. 69444/17, § 83, 8 February 2022).

79. The effect of Article 13 is thus to require the provision of a domestic remedy allowing the competent "national authority" both to deal with the substance of an "arguable complaint" concerning a violation of a Convention right and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 148, ECHR 2014; see also *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 217, 25 June 2019). The "authority" referred to in Article 13 may not necessarily in all instances be a judicial authority in the strict sense. Nevertheless, the powers that an authority possesses and the procedural safeguards that it secures are relevant in determining whether the remedy before it is effective (see *Rotaru*, cited above, § 69; *Mugemangango*, cited above, § 131; and *Klass and Others v. Germany*, 6 September 1978, § 67, Series A no. 28).

80. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII; see also *Nicolae Virgiliu Tănase*, cited above, § 218).

81. The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. In addition, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, cited above, § 157, and *Mugemangango*, cited above, § 131). It is therefore necessary to determine in each case whether the means available to litigants in domestic law are "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII; see also, for example, *Mugemangango*, cited above, § 133).

82. In the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose, for the purpose of fulfilling the requirement of exhaustion of domestic remedies, a remedy which addresses his or her essential grievance. In other words, when one remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Nicolae Virgiliu Tănase*, cited above, § 177, with further references).

83. Where an applicant relies on the argument that an existing domestic remedy is ineffective, it is incumbent on the Government to adduce evidence of the implementation and practical effectiveness of the remedy that they have suggested, in the particular circumstances of the case, providing relevant examples of case-law from national courts or pointing to the decisions of administrative authorities in a similar case (see *Efstratiou v. Greece*, 18 December 1996, § 49, *Reports of Judgments and Decisions* 1996-VI; *Kudła*, cited above, § 159; *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, § 120, ECHR 2006-VII; *Ananyev and Others*, cited above, § 110; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 219, ECHR 2012). The Court will consider whether a given remedy has acquired a sufficient degree of certainty in its implementation (see *Čonka v. Belgium*, no. 51564/99, § 83, ECHR 2002-I, and *Krasuski v. Poland*, no. 61444/00, § 68, ECHR 2005-V (extracts)). The Government must demonstrate the effectiveness of all the remedies on which they rely, failing which the Court may find a violation of Article 13 (see *Wille v. Liechtenstein* [GC], no. 28396/95, §§ 74-78, ECHR 1999-VII, and *Yarashonen v. Turkey*, no. 72710/11, §§ 64-66, 24 June 2014).

*(ii) Application of these principles to the present case*

(α) Whether there has been an arguable claim under Article 9 of the Convention

84. In order to determine whether Article 13 of the Convention is applicable to the present case, the Court must first establish whether the applicants have made an arguable claim under Article 9.

85. The Court observes that the terms "freedom of thought, conscience and religion" are not defined in Article 9 of the Convention or in the Court's case-law. While it has previously found that observance of dietary rules dictated by a religion fell within the scope of religious practice protected by Article 9 of the Convention, it has not yet been called upon to examine whether compliance with dietary rules linked to a belief such as veganism was also protected by the above-mentioned Convention provision. It is therefore not the applicants' religious freedom that is potentially at stake, but their freedom of thought and conscience.

86. The Court reiterates in this connection that not all opinions or convictions constitute beliefs in the sense protected by Article 9 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 82,

ECHR 2002-III). If a personal or collective conviction or belief is to benefit from the right to "freedom of thought, conscience and religion" under Article 9 of the Convention, it must attain a certain level of cogency, seriousness, cohesion and importance. In order to count as a "manifestation" within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. The existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case (see *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, §§ 81-82, ECHR 2013 (extracts), with further references). It is not the Court's task to question the validity or relative merits of interpretation of particular aspects of beliefs or practices. This does not, nevertheless, prevent the Court from making factual findings as to whether an applicant's religious claims are genuine and sincerely held (see *Abdullah Yalçın v. Turkey (no. 2)*, no. 34417/10, § 27, 14 June 2022, with further references).

87. The Court and the former European Commission of Human Rights ("the Commission") have previously acknowledged that the safeguards of Article 9 § 1 of the Convention applied, along with religions (see *Jakóbski v. Poland*, no. 18429/06, §§ 42-45, 7 December 2010, and *Vartic v. Romania (no. 2)*, no. 14150/08, §§ 33-36, 17 December 2013), to various coherent and sincerely-held philosophical convictions, such as, for example, pacifism (see *Kanatli v. Türkiye*, no. 18382/15, § 45, 12 March 2024, and *Arrowsmith v. the United Kingdom*, Commission report of 12 October 1978, § 69), conscientious objection to military service (see *Bayatyan v. Armenia* [GC], no. 23459/03, § 110, ECHR 2011), opposition to abortion (see *Knudsen v. Norway*, no. 11045/84, Commission decision of 8 March 1985; *Van Schijndel and Others v. the Netherlands*, no. 30936/96, Commission decision of 10 September 1997); a doctor's opinions on alternative medicine, constituting a form of manifestation of medical philosophy (see *Nyyssönen v. Finland*, no. 30406/96, Commission decision of 15 January 1998), the conviction that marriage is a lifelong union between a man and a woman and rejection of homosexual unions (*Eweida and Others*, cited above, §§ 103 and 108); and attachment to secularism (see *Lautsi and Others v. Italy* [GC], no. 30814/06, § 58, ECHR 2011 (extracts); *Hamidović v. Bosnia and Herzegovina*, no. 57792/15, § 35, 5 December 2017).

88. The Court further reiterates that the former Commission has previously acknowledged that the safeguards of Article 9 of the Convention applied to vegan convictions in the context of an applicant's opposition to the manipulation of products of animal origin or tested on animals (see *W. v. the United Kingdom,* no. 18187/91, Commission decision of 10 February 1993, Decisions and Reports (DR) 37, p. 142). Additionally, the Court has previously held that, in practice, observing dietary rules can be considered a direct manifestation of religion or belief in the sense of Article 9 (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, §§ 73-74,

ECHR 2000-VII). It also follows from the comparative law research that Council of Europe member States consider veganism as a non-religious belief (see paragraphs 57-58 above).

89. In the light of the foregoing, and in the absence of any submissions from the Government challenging the sincerity and consistency of the applicants' vegan beliefs or the existence of a sufficiently close direct connection between those beliefs and the applicants' abstaining from the consumption of food derived from animal sources, the Court considers that those beliefs met the required level of cogency, seriousness, cohesion and importance to fall within the scope of Article 9 of the Convention. There has accordingly been an arguable claim under Article 9 and, consequently, Article 13 is applicable.

(β) Whether there existed an effective domestic remedy for the applicants' complaints under Article 9

90. As to the existence of an effective remedy for the applicants' complaints under Article 9, as required by Article 13 of the Convention, the Court observes at the outset that, regardless of the apparent differences in the applicants' personal circumstances – with the first applicant having been detained pending trial and the second having undergone involuntary psychiatric treatment – the domestic administrative-procedure law provided for the same procedure to challenge the alleged failure of the administrative authorities – the prison and hospital authorities, respectively, – to accommodate the applicants' special dietary needs. The Court notes, in particular, that the relevant cantonal administrative procedure acts provided that decisions of administrative authorities could be appealed against to the ordinary higher authorities for appeal in administrative matters – the Administrative Chamber for the canton of Geneva and the Cantonal Court for the canton of Vaud (see paragraphs 44-46 above).

91. The Court further notes that both applicants complained to the administrations of their respective facilities about the lack of access to nutritionally balanced and entirely vegan diets. In both cases the administrations replied to the applicants' complaints not with formal decisions, but with letters. Specifically, by the letter of 15 August 2019 the prison administration replied to the first applicant that several measures had been put in place to ensure that he could benefit from a diet which accommodated his beliefs as well as possible (see paragraph 20 above). By the letter of 24 February 2021 the Head of the CHUV Department of Psychiatry replied to the second applicant that his complaint had been forwarded to the head of the care unit who would contact him in order to find a solution (see paragraph 35 above). The first and second applicants' attempts to challenge those letters before the Administrative Chamber and the Cantonal Court, respectively, failed. Both applicants' appeals were declared inadmissible owing to the lack of a "decision", within the meaning of the

relevant provisions of the Acts on administrative procedure in each canton, that could be appealed against (see paragraphs 25 and 40 above). Their attempts to challenge those decisions before the Federal Supreme Court were also unsuccessful (see paragraphs 27 and 42 above).

92. The Government contended that the first applicant could have benefited from an effective remedy before a national authority within the meaning of Article 13 of the Convention if he had explicitly requested the prison administration to issue a "decision" within the meaning of section 4 of the Geneva Administrative Procedure Act. The Court notes, however, that when the first applicant did explicitly request that the prison administration issue a "decision" to change his diet, the reply was again given to him in the form of a letter (see paragraphs 21-22 above). The Court is mindful of the fact that the first applicant did not challenge that second letter before the domestic authorities. It considers, however, that such an appeal would have been obviously futile. It follows from the case file that in the proceedings before the Cantonal Court of Justice the administration of Champ-Dollon Prison indicated that it considered that the first applicant did not have a sufficient legal interest to obtain a formal decision within the meaning of section 4 (see paragraph 68 above). The Court observes in this connection that the second applicant did explicitly request a "declaratory decision" acknowledging his right to receive nutritionally balanced vegan meals (see paragraph 32 above). Nevertheless, like the first applicant he never received such a decision, on the basis that he lacked a sufficient legal interest for him to challenge the letter of 24 February 2021.

93. The Government asserted that it had been open to the first applicant to raise his complaint under Article 9 of the Convention with the Administrative Chamber of the Court of Justice with reference to regulation 59 of the Regulations of the Republic and the Canton of Geneva on prison rules and the status of prisoners, and that the second applicant could have complained about the alleged lack of a vegan diet at the hospital to the Complaints Review Commission or challenged the actions of State agents through legal remedies based on personality rights or through State liability actions (see paragraphs 71 and 73 above). The Government, however, did not adduce evidence of the implementation and practical effectiveness, in the particular circumstances of the present applications, of the various remedies that they suggested, nor did they provide relevant examples of case-law from national courts or point to the decisions of administrative authorities in a similar case.

94. In such circumstances, the Court considers that the way in which the domestic authorities applied the domestic law in the present case – starting with the practical impossibility for the applicants to obtain the administrative "decisions" necessary for their claims to be examined on the merits – rendered the remedy pursued by both applicants ineffective in practice, with the result that their claims concerning the accommodation of their vegan

dietary needs when in the care and control of the State authorities in the context of Article 9 of the Convention were never examined on the merits at the national level. The approach of the domestic authorities, both administrative and judicial, was therefore excessively formalistic and showed that the applicants' complaints were not taken seriously.

95. In the light of the above considerations, the Court holds that the Government's objection on grounds of non-exhaustion of domestic remedies must be dismissed and, recalling its finding in § 67 above, that the applications must be declared admissible.

96. It further holds that there has been a violation of Article 13 of the Convention in the present case.

### 2. *Article 9 of the Convention*

#### (a) Submissions by the parties

##### *(i) The applicants*

97. The first applicant submitted that the food provided to him in prison had not been compatible with a vegan diet. It had been impossible to know whether the vegetarian dishes offered to him had been cooked with animal fats or seasoned with sauces containing animal products. The first applicant alleged that, as a result, on certain days he had been unable to eat (see paragraph 8 above). The products that he could have obtained from the prison shop or via food parcels would not have allowed him to have a nutritionally balanced diet in accordance with his beliefs. The food that could be purchased in the prison shop was not fresh and did not contain sufficient protein or other essential nutrients. Food parcels were subjected to strict regulations and could not contain any non-animal protein sources (such as tofu or seitan). The first applicant had been detained pending the outcome of his trial for more than 300 days, which should have been more than enough time for the authorities to have taken the necessary measures to adapt his dietary regime. The long duration of his detention at the prison had further increased the health risks associated with an inadequate diet. Indeed, the first applicant had suffered from digestive problems and nutritional deficiencies during that time, of which the domestic authorities had been aware. With regard to the Government's argument that the first applicant had not explained why the food served at the prison did not respect his beliefs, he submitted that vegans could not be required to explain how a diet containing products derived from animals or their exploitation would be incompatible with their beliefs, in the same way that vegetarians were not required to explain how a diet containing meat would be incompatible with their beliefs. The measures that could have been taken by the prison authorities would have involved replacing animal products with plant-based alternatives when preparing meals – for example, replacing butter with vegetable oil or margarine, meat and fish with tofu or seitan, and cow's milk and cream with soy milk. Those foods were readily

available and regularly used in cooking. They were not "special" products that could be contrasted with "normal" animal products, just as chicken or beef were not "special" products that could be contrasted with pork. If such a procedure were to involve a disproportionate amount of effort, it was also possible for the prison administration to have food delivered from the outside. The only meeting organised between the applicant and a member of the kitchen staff, which had not been arranged until the former had been detained for more than three months, had not been followed by any change in the first applicant's diet. The fact that the prison administration took *ad hoc* measures, following multiple reminders and requests, by occasionally providing an extra portion of fruit and vegetables, or by replacing particular food items with a non-animal-based substitute, could not be considered sufficient to comply with Article 9 of the Convention. The Government had not argued that providing the first applicant with a vegan diet during his detention at Champ-Dollon Prison would have had significant consequences for the institution that could have indirectly affected the quality of treatment of other detainees. Therefore, the Geneva authorities had failed to take all the necessary measures to enable the first applicant to benefit from a diet in accordance with his beliefs. Their failure to take action was not justified by any objective impossibility, any other sufficient reason or any overriding interests.

98. The second applicant stressed at the outset that he had been subjected to involuntary hospitalisation, which meant in practice that he had been under the full control of the State in a condition of great vulnerability and helplessness (see paragraph 28 above). He further submitted that he was a fervent advocate of the philosophy developed by Steve Sapontzis, which opposed speciesism (the ideology that allowed the life and interests of animals to be neglected simply because they were of another species), held the view that it was necessary to prohibit the killing of animals for mere dietary habits and refused to consume products of animal origin. The second applicant's beliefs in that regard were based on a serious and consistent philosophy. The CHUV had refused to recognise his right to a vegan diet both in fact – as numerous meals served to him during his hospitalisation had contained products of animal origin or lacked a vegan protein source (see paragraph 30 above) – and in law – as the domestic authorities had refused to recognise his right to a vegan diet in accordance with his ethical convictions by failing to issue a decision that could be appealed against, or to examine the merits of his complaint under Article 9 of the Convention. That had aggravated his psychological distress and vulnerability. When the second applicant had received his meals the list of all the ingredients in them had not been made available to him, meaning that each time he had had to ask the nurses to call the kitchen to find out the exact composition of the dishes. That had caused him stress, and as he could not start eating until the nurses had obtained a reply from the kitchen his meals had often grown cold. The

applicant had been told that the meals were suitable for people with egg allergies because they contained only a small amount of egg. However, even a small amount of egg was problematic for the applicant, who had been vegan since 2004. The food items that could be purchased on the CHUV's website were not fresh, nor did they contain sufficient amount of protein and other essential nutrients. In any event, from 16 February to 3 March 2021 the second applicant had found himself isolated in an intensive care unit and had had, therefore, no practical possibility to buy himself any food compliant with his beliefs. The second applicant went on to argue that the CHUV could have prepared meals by replacing animal products with plant-based alternatives and ensuring that protein-rich dishes were available. He referred in that respect to the practice in Beirut Hospital, in Lebanon, where entirely vegan meals were offered to all patients for ecological and health reasons (lower cholesterol), and New York hospitals, in the United States of America, where the dishes served by default to all patients were completely vegan. The Government had not referred to any objective reasons, any other sufficient reasons or any overriding interests that could have prevented the CHUV from providing the second applicant with an entirely vegan diet compatible with his beliefs.

99. The Government argued that neither of the applicants had been refused vegan meals at any point: bar a few exceptions, they had been afforded food in accordance with their beliefs. The national authorities had therefore done everything that could reasonably have been expected of them to respect the applicants' beliefs.

100. As regards the first applicant, the Government submitted that, even though Champ-Dollon Prison did not offer a fully vegan diet, the applicant's wish to receive vegan food had been taken into consideration from the outset. The first applicant had been provided with a vegetarian diet that had been nearly entirely compatible with vegan beliefs. He had received additional rations of fruit, vegetables and starchy foods, had been able to purchase vegan products from the prison grocery store and had received food parcels from relatives (see paragraphs 6-7 above). Although prison regulations did not allow the sending of any food that needed to be cooked (such as seitan) in such parcels, vegan cheeses, cold cuts and terrines in the original packaging were always permitted. At no point had the first applicant explained how the food served had not complied with his beliefs, indicated how often he did not receive food that was in accordance with his beliefs or outlined what specific changes should have been put in place by the prison authorities to his diet in order for it to be in accordance with his beliefs (see paragraph 16 above). In the light of the above, the meals served by Champ-Dollon Prison, the purchases made by the first applicant in the prison grocery store and the parcels received by him from relatives had enabled him to enjoy a nutritionally balanced diet in accordance with his beliefs. In addition, the first applicant had received regular medical check-ups and had regularly been

provided with dietary supplements to prevent any risk of nutritional deficiency.

101. The Government further submitted that vegan meals, other than those served to the first applicant, required special products to prepare, while requests for vegan menus in Swiss prisons at the time of the events in question had been very rare. Specifically, in September 2018 various Swiss prison authorities reported that they had never received a request for vegan meals, and in 2020 the Cantonal Justice Department of the Canton of Zurich noted that expanding the vegan offering would not be worthwhile owing to the extremely limited demand for it: with nearly 400 inmates at Pöschwies Prison and five external prisons to supply there were on average only two or three requests per year.

102. As regards the second applicant, although the Government conceded that his forced hospitalisation had been a measure depriving him of liberty, they argued that that measure could not be considered similar to detention on remand and that the scope of Article 9 of the Convention could not be extended further for a hospital patient than for a prisoner with regard to his or her right to a diet based on a belief such as veganism. The second applicant's request for a vegan diet had been taken into consideration upon his admission. During his stay in the intensive care unit between 16 February and 3 March 2021 the dishes on the vegetarian menu had been adapted to meet the second applicant's preferences as closely as possible, and from 4 March 2021 special, nutritionally balanced vegan dishes had been ordered for his meals. In addition, vegan products had been available on the CHUV's website (see paragraph 29 above). The Government conceded that on several occasions non-vegan meals and meals lacking the required range of nutrients had been mistakenly served to the second applicant (see paragraph 30 above). It was impossible to determine the precise number of occasions when that had happened because the case had never been examined by the domestic authorities on the merits. In any event, those had been errors related to the implementation of the applicant's vegan diet, rather than any failure to recognise his right to such a diet. After 22 February 2021 the caregivers had reported no further complaints regarding the meals served. Article 9 of the Convention did not give hospitalised patients the right to choose specific vegan menus, such as those requested by the second applicant (which included vegan bircher muesli, vegan apple pie, vegan cheese, plant-based milks and foods enriched with vitamin B12).

103. The Government further submitted that the CHUV menu offerings sought to meet patients' nutritional and therapeutic needs while adapting as closely as possible to their personal values. They consisted of a standard diet with eight menus, therapeutic diets which excluded or restricted certain types of ingredients and therapeutic diets with modified texture. In addition, individualised meals known as "special meals" were prepared by dietetic chefs according to prescriptions issued by dietitians. The CHUV was aware

of the need to continue its efforts to improve the quality of its menu offerings in order to meet the specific needs of its hospitalised patients, including with regard to the vegan diet. In 2022 the CHUV chefs participated in a training course in Zurich on vegan food. Out of 55,422 patients hospitalised in the CHUV facilities in 2022, 22 received vegan meals at their request, and in 2023 there were 17 such patients.

*(ii) Third-party interveners*

104. The Criminal Law Research Center of the Free University of Brussels submitted that the present case would allow the Court to find that a vegan diet is part of a practice closely linked to a coherent and sincerely held philosophical belief protected by Article 9 of the Convention, particularly if this type of diet does not place an excessive burden on the domestic authorities. It went on to say that the Court could not be insensitive to the international trend towards an increase in vegan diets in connection with the protection of life, animal welfare and ecology.

105. The Vegan Society submitted that veganism was a serious belief, a long-standing philosophical tradition and a weighty and substantial aspect of human life and behaviour. They explained that vegans lived according to the moral belief that it was wrong to exploit and kill living beings and made choices and decisions to avoid participating in the exploitation of non-human animals on a daily basis and in all areas of their lives – decisions about what they ate and wore, the suitability of various home products and furnishings, and the entertainment venues they visited. One could adopt a vegan diet and begin living as a vegan in recognition of his or her compassion for non-human animals, religious or spiritual beliefs, or important beliefs and convictions about human health or the benefits of a healthy environment. Veganism was reported to be identity-forming and had been described as a daily lived expression of ethical commitment. In 2018 the average global prevalence of vegan diets had been estimated at approximately 3%. The Vegan Society further submitted that veganism had been accepted as a protected characteristic in European human rights law and recognised in European equality law in a number of jurisdictions, in the context of education, employment and in the provision of services. It had also gained recognition in jurisdictions such as Canada, as well as in Irish courts long before the enactment of legislation.

106. Vegan Australia submitted that for most ethical vegans their beliefs were matters of deep personal conviction. Most applied those principles across all aspects of their life, including diet, clothing and entertainment. Ethical veganism was therefore a belief or matter of conscience as entitled as any other to the protection afforded by Article 18 of the International Covenant on Civil and Political Rights, which mirrored Article 9 of the Convention. Although the question had not been considered by an Australian court or tribunal, there were several judgments from other countries

supporting such a finding (see, for example, paragraph 108 below). While some Australian jurisdictions clearly stated that vegan meals were to be provided to prisoners, others were unclear or appeared not to make provision for ethical vegans, and religious beliefs were given primacy over non-religious beliefs when it came to the provision of special menus to inmates. The situation in relation to hospitals appeared to be more positive, with most Australian jurisdictions adopting explicit policies including the provision of vegan meals to inpatients who requested them. However, it often depended on the hospital in question, with some vegans reporting being served nutritious and substantial vegan meals, while others reporting (at least initially) being served beef, cheese and other animal products despite advising that they were vegans, or meals consisting only of salad or fruit. The non-provision of vegan meals appeared to be caused, at least in part, by the lack of awareness of the right of ethical vegans to manifest their beliefs, erroneous views as to the nutritional adequacy of vegan diets, and the general lack of understanding of what vegans did and did not consume.

107. The third-party interveners further submitted the following comparative information.

108. In a ruling of 3 January 2020 in the case of *Jordi Casamitjana v The League Against Cruel Sports*, the Norwich Employment Tribunal in Eastern England considered ethical veganism to qualify as a philosophical belief under the Equality Act 2010, on the same basis as religious beliefs, by satisfying several tests – including that it is worthy of respect in a democratic society, not incompatible with human dignity and not conflicting with the fundamental rights of others.

109. Portugal has enacted Law no. 11/2017, stipulating that vegetarian options must be available on the menus of public canteens and cafeterias, including prisons. “Vegetarian option” was specified to mean a meal not containing any products of animal origin.

110. In 2020 the Court of Bologna in Italy found that the vegan diet was determined by beliefs of a philosophical or religious nature and was, therefore, deserving of protection under the right of freedom of thought under the Italian Constitution (judgment no. 2359/2020 of 9 April 2020).

111. In Germany a claimant’s vegan diet was declared an expression of a solidified, consistent and ethically justified comprehensive vegan way of life within the scope of freedom of thought, conscience and belief protected under Article 4 §§ 1 and 2 of the German Basic Law (judgment no. Az. 5 K2576/20 of 9 February 2022 by Münster Administrative Court).

112. In 2016 the Irish Prison service reassessed its provision of food and started catering for specialised diets, including vegetarian ones. The list of dishes includes a wide variety of vegan options.

113. The Canadian law on correctional service (Directive No. 880-4, “Diets of Conscience”, 28 June 2019) defines a diet of conscience as a diet that an individual chooses to eat based on their strongly held moral beliefs.

Diets of conscience are not limited to vegetarian diets and need to be assessed for accommodation on an individual basis.

114. Section 2084 of the Penal Code of the State of California relating to nutrition provides, in particular, that the department shall provide each prisoner with sufficient plain and wholesome food of such variety as may be most conducive to good health and that shall include the availability of plant-based meals (entire meals that contain no animal products or byproducts, including meat, poultry, fish, dairy or eggs).

**(b) The Court's assessment**

*(i) General principles*

115. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; *S.A.S. v. France* [GC], no. 43835/11, § 124, ECHR 2014; and *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 103, 26 April 2016).

116. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on the freedom to manifest one's religion or belief in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis*, cited above, § 33). This follows both from paragraph 2 of Article 9 and from the State's positive obligations under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined therein (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 106, ECHR 2005-XI; *S.A.S. v. France*, cited above, § 126; and *İzzettin Doğan and Others*, cited above, § 106).

117. The Court reiterates the fundamentally subsidiary role of the Convention mechanism. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight. This is the case, in particular, where questions concerning the relationship between State and religions are at stake. As regards Article 9 of the Convention, the State should thus, in principle, be afforded a wide margin of appreciation in deciding whether and to what extent a limitation of the right to manifest one's religion or beliefs is "necessary". That being said, in delimiting the extent of the margin of

appreciation in a given case, the Court must also have regard to what is at stake therein (see *S.A.S. v. France*, cited above, § 129, and the references therein).

118. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 9 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 9, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see *Jakóbski v. Poland*, cited above, § 47, and *Eweida and Others*, cited above, § 84).

119. The positive obligations under Article 9 may involve the provision of an effective and accessible means of protecting the rights guaranteed under that provision, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (see *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, §§ 86 and 104, 10 January 2017).

*(ii) Application of these principles to the present case*

120. The Court reiterates at the outset its finding above that the applicant's complaint under Article 9 was arguable. On the basis of the considerations set out above in that regard, the Court considers that, similarly to the observance of dietary rules dictated by a religion, the observance of dietary rules dictated by genuine and consistently held vegan beliefs is a practice protected by Article 9 § 1 of the Convention (see paragraphs 85-89 above).

121. It follows from the case file that, during his detention pending trial, the first applicant was served with a vegetarian diet that the Government argued had been, with a few exceptions, compatible with a vegan diet. He was provided with additional portions of fruit, raw vegetables and starchy foods, and, after he complained, with a vegan vitamin B12 supplement. Furthermore, he regularly made purchases from a limited choice of vegan snacks at the prison grocery store and received food parcels from his relatives, which excluded, however, certain non-animal protein sources (such as tofu or seitan) as they were prohibited by prison regulations. However, despite the efforts made by the prison administration, including the organisation of a meeting between the first applicant and the deputy head of the kitchen in order to find a solution, the first applicant continued, with a few exceptions, to be served food containing products of animal origin which was compatible with

a vegetarian diet but unsuitable for a vegan one. In particular, it was impossible for the first applicant to know whether the proposed vegetarian dishes had been cooked with animal fats or seasoned with sauces containing animal products, for which reasons on certain days he was unable to eat (see paragraphs 6-8, 12, 16, 97 and 99 above).

122. As regards the second applicant, during his stay in the intensive care unit between 16 February and 3 March 2021 he was served meals that were adapted by the hospital dietitian from dishes available on the existing menus. On several occasions during that time, however, he was served non-vegan meals or meals which were devoid of any protein source and, therefore, nutrient-poor. From 4 March 2021 special dishes were ordered for the second applicant based on the available vegetarian menu. The list of the ingredients used for the preparation of the second applicant's dishes was not made available to him, which meant that he often had to ask nurses to call the kitchen to find out the exact composition of the dishes before he could start eating. It further follows from the case file that vegan items were available on the hospital's website, but that that option remained unavailable to the second applicant during his stay in the intensive care unit (see paragraphs 29-30, 38 and 98 above).

123. The Court notes that the applicants, who were both dependent on the domestic authorities for the provision of food over lengthy periods of time, repeatedly asked the domestic authorities – in Champ-Dollon Prison in Geneva, where the first applicant was detained on remand, and the Cery Psychiatric Hospital of the CHUV, where the second applicant was subject to involuntary hospitalisation – to provide them with meals consistent with a vegan diet, in accordance with their vegan beliefs. The administrations of the above facilities did not explicitly refuse the applicants' requests and made certain efforts. While the parties are in dispute about the extent to which the applicants' dietary requirements were accommodated in practice, it is clear (see the preceding two paragraphs) that the latter were not provided on a systematic basis with meals that corresponded entirely to the requirements of a vegan diet.

124. The parties are in dispute about the nature and scope of any possible positive State obligations that may flow from Article 9 of the Convention in the above context. While the Government did not consider that the authorities were under a duty to secure vegan food without exception and in full conformity with the dietary preferences of the applicants, they appear to have recognised that the applicants' vegan beliefs were to be taken seriously and relevant measures to accommodate them, with due regard to possible difficulties, were to be taken.

125. The Court observes that the comparative law research showed the existence of divergent approaches among the Member States of the Council of Europe regarding the issue of entitlement of prisoners and involuntary psychiatric patients to diets based on non-religious beliefs (such as

veganism), ranging between explicit legal recognition, obligations of reasonable accommodation, administrative discretion, self-provision mechanisms, and absence of any legal or administrative regulation (see paragraphs 55-58 above). Despite these divergences, the majority of the Member States agreed, however, on the necessity to take requests for such diets into account. The research showed further that many courts applied a proportionality or reasonableness test, assessing whether accommodating the requested diet was feasible in light of organisational, financial and nutritional constraints; that some legal systems emphasised the State's positive obligations to respect freedom of religion or belief and human dignity in detention, while others limited the State's role to facilitating self-provision (see paragraph 61 above).

126. In the circumstances of the present case, and having regard to the above comparative research, the Court considers that, faced with the applicants' consistent and genuine vegan beliefs and their requests for a vegan diet while deprived of liberty, the authorities were under a positive obligation stemming from Article 9 to address those requests in substance and within a clear domestic legal framework. Failing this, it is difficult to consider that the authorities have done what was necessary to strike a fair balance between the competing interests at stake, having regard to the aims mentioned in the second paragraph of Article 9 (see paragraph 118 above). As to the factors to be taken into consideration when examining such requests, they include the applicants' interest but also any possible organisational, financial or practical constraints for the authorities.

127. In the light of the above, it remains to be determined whether the national authorities satisfied, to a degree reasonable in the circumstances of the case at hand, the above-mentioned positive obligation under Article 9 of the Convention.

128. The Court observes that, in paragraphs 90-96 above, in dealing with the complaints lodged by the applicants regarding the lack of an effective remedy against their claims concerning the accommodation of their vegan dietary needs when in the care and control of the State authorities in the context of Article 9 of the Convention, the Court has established that the way in which the domestic authorities applied the domestic law in the present case rendered the remedy pursued by both applicants ineffective in practice in breach of Article 13 of the Convention.

129. The Court notes that due to the practical impossibility for the applicants to obtain the administrative "decisions" necessary for their claims under Article 9 of the Convention to be examined on the merits, the domestic courts' findings concerned technical matters only, and there have thus been no domestic findings on the substance of the applicants' claims (see paragraphs 25, 27, 40 and 42 above).

130. In this regard, the Court recalls that the monitoring mechanism established by the Convention has a fundamentally subsidiary role and that,

by reason of their direct and constant contact with the vital forces of their country, the national authorities are in principle better placed than an international judge to evaluate local needs and conditions and to give an opinion on how best to secure the respect for human rights within the domestic legal order (see, for example, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 160, 27 November 2023, and *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 175, 15 November 2016, with further references).

131. In the light of the foregoing, the Court considers that the failure of the domestic authorities to provide a substantive examination of the applicants' serious and arguable grievances regarding their access to a vegan diet in accordance with their ethical beliefs while in the care and control of the State authorities, amounted to a violation of Article 9 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

133. In respect of non-pecuniary damage, the first applicant claimed 20,000 euros (EUR) and the second applicant – 10,000 Swiss Francs (CHF).

134. The Government submitted that it would be appropriate to award the first applicant and the second applicant amounts not exceeding EUR 2,000 and EUR 1,000, respectively, in respect of non-pecuniary damage, in view of the Court's case-law (they referred to the cases of *Jakóbski*, cited above, § 61, and *Vartic*, cited above, § 73) and taking into account the length of the first applicant's detention and the second applicant's stay in the CHUV, the absence of any effect on their health, and the fact that the diet they had been given had largely corresponded to their wishes.

135. Making its assessment on an equitable basis, the Court awards the first applicant EUR 12,000 and the second applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

### B. Costs and expenses

136. The first applicant did not claim any costs and expenses.

137. The second applicant claimed CHF 2,000 for legal costs charged to him by the Vaud Cantonal Court and the Federal Supreme Courts. He further requested CHF 1,770 in respect of costs relating to the cantonal proceedings

and CHF 8,360 in respect of the cumulative costs relating to the proceedings before the Federal Supreme Court and the Court.

138. The Government did not contest the claim in the amount of CHF 2,000. They considered, however, that since the grounds for the arguments before the Federal Supreme Court and the Court had been largely similar and several grievances had been declared inadmissible, the remaining claims should be slightly reduced, and that it would be appropriate, if the Court were to find a violation, to award the second applicant a total of EUR 10,000 in respect of the costs and expenses incurred in the domestic proceedings and the proceedings before the Court.

139. The Court reiterates that, under Article 41 of the Convention, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part (see, for example, *A, B and C v. Ireland* [GC], no. 25579/05, § 281, ECHR 2010, and *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 234, 10 September 2019).

140. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the second applicant the sum of EUR 10,000 covering costs under all heads, plus any tax that may be chargeable to him.

## FOR THESE REASONS, THE COURT,

1. *Decides,* unanimously, to join the applications;

2. *Joins to the merits,* unanimously, the Government's preliminary objection concerning the exhaustion of domestic remedies and *dismisses* it;

3. *Declares*, by a majority, the applications admissible;

4. *Holds*, by 6 votes to 1, that there has been a violation of Article 13 of the Convention;

5. *Holds*, by 6 votes to 1, that there has been a violation of Article 9 of the Convention;

6. *Holds*, by 6 votes to 1,

   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted

into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,000 (twelve thousand euros) to the first applicant and EUR 4,000 (four thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros) to the second applicant, plus any tax that may be chargeable to him, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

7. *Dismisses*, unanimously, the remainder of the second applicant's claims for just satisfaction.

Done in English, and notified in writing on 16 July 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Victor Soloveytchik<br>Registrar | Kateřina Šimáčková<br>President |
|---|---|

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the declaration of dissent of Judge Grigoryan is annexed to this judgment.

# DECLARATION OF DISSENT OF JUDGE GRIGORYAN

I do not agree with the majority's view that the applications were admissible and, even assuming that they were, I do not agree that there have been violations of Articles 9 and 13 of the Convention.