



Refusal to register a trade union for priests on account of the autonomy of religious communities is not unreasonable

In today's Grand Chamber judgment in the case of [Sindicatul "Păstorul cel Bun" v. Romania](#) (application no. 2330/09), which is final,¹ the European Court of Human Rights held, by a majority, that there had been:

no violation of **Article 11 (freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned the refusal by the Romanian State of an application for registration of a trade union formed by priests of the Romanian Orthodox Church.

Whereas the Court had held in its Chamber judgment that the Dolj County Court had not taken sufficient account of all the relevant arguments and had justified its refusal to register the union on purely religious grounds based on the provisions of the Church's Statute, the Grand Chamber took the view that the County Court's decision had simply applied the principle of the autonomy of religious communities. The court's refusal to register the union for failure to comply with the requirement of obtaining the archbishop's permission was a direct consequence of the right of the religious community concerned to make its own organisational arrangements and to operate in accordance with the provisions of its own Statute.

The Court held that in refusing to register the applicant union, the State had simply declined to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing its duty of denominational neutrality under Article 9 of the Convention.

Principal facts

The applicant is a trade union, Păstorul cel Bun ("The Good Shepherd"), which was founded at a general meeting on 4 April 2008 by thirty-two Romanian Orthodox priests, most of them under the jurisdiction of the Archdiocese of Craiova, and three lay employees.

In accordance with the Trade Unions Act (Law no. 54/2003), the union's elected president applied to the Craiova Court of First Instance for the union to be granted legal personality and entered in the register of trade unions. The public prosecutor's office supported the application. The Archdiocese of Craiova argued that the establishment of the union without the archbishop's consent and blessing was prohibited by the Statute of the Romanian Orthodox Church.

In a judgment of 22 May 2008 the court allowed the union's application and ordered its entry in the register, thereby granting it legal personality. The Archdiocese challenged the judgment, arguing that the provisions of domestic and international law on which it was based were not applicable to the case at hand. Relying on Article 29 of the Constitution, which guarantees religious freedom and the autonomy of religious communities, it contended that the principle of religious freedom could not be overridden

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

by other constitutional principles such as freedom of association, including trade-union freedom.

In a final judgment of 11 July 2008 the Dolj County Court allowed the appeal by the Archdiocese and revoked the trade union's registration.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the applicant union complained that in refusing its application for registration, the Dolj County Court had infringed its trade-union freedom as guaranteed by that Article.

The application was lodged with the European Court of Human Rights on 30 December 2008. In a judgment of 31 January 2012 the Court held, by a majority of five votes to two, that there had been a violation of Article 11 of the Convention.

On 27 April 2012 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber). On 9 July 2012 the panel of the Grand Chamber accepted that request. A hearing was held on 7 November 2012.

Leave to intervene in the proceedings was granted to the non-governmental organisation European Centre for Law and Justice and the Orthodox Archdiocese of Craiova, both of which had already intervened as third parties before the Chamber, and also to the Moscow Patriarchate, the non-governmental organisations Becket Fund and International Center for Law and Religion Studies, and the Governments of the Republic of Moldova, Poland, Georgia and Greece.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Guido **Raimondi** (Italy),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Boštjan M. **Zupančič** (Slovenia),
Elisabeth **Steiner** (Austria),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain),
Ledi **Bianku** (Albania),
Vincent A. **de Gaetano** (Malta),
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Helena **Jäderblom** (Sweden),
Krzysztof **Wojtyczek** (Poland),

and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

Article 11

The Court set out to ascertain whether, in view of their status as members of the clergy, the applicant union's members were entitled to rely on Article 11 of the Convention and

whether the refusal to register the union had impaired the very essence of their freedom of association.

It addressed the question whether the duties performed by the union's members, notwithstanding their special nature, amounted to an employment relationship rendering applicable the right to form or join a trade union within the meaning of Article 11.

The Court observed that the duties discharged by the union's members entailed many of the characteristic features of an employment relationship. Under the bishop's leadership and supervision, they carried out the tasks assigned to them, namely performing liturgical rites, maintaining contact with parishioners, teaching, managing parish assets and selling liturgical items. Domestic law provided for a specific number of posts for members of the clergy and laity which were largely funded from the State and local authority budgets, and the post-holders' wages were set with reference to the salaries of Ministry of Education employees. The Romanian Orthodox Church paid employer's contributions in respect of the wages paid to its clergy, and priests paid income tax, contributed to the national social-security scheme and were entitled to all the welfare benefits available to ordinary employees: health insurance, a pension on reaching the statutory retirement age, and unemployment insurance.

However, a particular feature of the work of members of the clergy was that it also pursued a spiritual purpose and was carried out within a church enjoying a certain degree of autonomy. The question was therefore whether such particularities were sufficient to remove the relationship between members of the clergy and their church from the ambit of Article 11.

While acknowledging their special circumstances, the Court considered that members of the clergy fulfilled their mission in the context of an employment relationship falling within the scope of Article 11 of the Convention. Accordingly, the refusal to register the applicant union amounted to interference by the respondent State with the exercise of the rights enshrined in that Article. Such interference had to be "prescribed by law", to pursue one or more legitimate aims and to be "necessary in a democratic society".

The Court agreed with the parties that the interference complained had had a basis in the provisions of the Statute of the Romanian Orthodox Church and had pursued a legitimate aim under Article 11 § 2, namely the protection of the rights of others, specifically those of the Romanian Orthodox Church. Having regard to the arguments put forward before the domestic courts by the representatives of the Archdiocese of Craiova, the Court considered that it was reasonable for the County Court to take the view that a decision to allow the registration of the trade union would create a real risk to the Church's autonomy. In Romania, the principle of the autonomy of religious communities was the cornerstone of relations between the State and recognised religious denominations. Members of the Romanian Orthodox clergy performed their duties by virtue of their ministry and their undertaking towards the bishop. Having regard to the aims set forth by the union in its constitution, the Court considered that the judicial decision refusing to register the union with a view to respecting the autonomy of religious denominations did not appear unreasonable, particularly in view of the State's role in preserving such autonomy.

The Court noted that it had frequently emphasised the State's role as the neutral and impartial organiser of the practice of religions, faiths and beliefs, and had stated that this role was conducive to public order, religious harmony and tolerance in a democratic society, particularly between opposing groups. Respect for the autonomy of religious communities recognised by the State implied that the State should accept the right of such communities to govern themselves in accordance with their own rules and interests. It was not the national authorities' task to act as the arbiter between religious communities and the various dissident factions that existed or might emerge within

them. In refusing to register the applicant union, the State had simply declined to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing its duty of neutrality under Article 9 of the Convention.

Nevertheless, the Court observed that a mere allegation by a religious community that there was an actual or potential threat to its autonomy was not sufficient to render any interference with its members' trade-union rights compatible with the requirements of Article 11 of the Convention. The community in question also had to show, in the light of the circumstances of the individual case, that the risk alleged was real and substantial and that the interference in question with freedom of association did not go beyond what was necessary to eliminate that risk and did not serve any other purpose unrelated to the exercise of the religious community's autonomy. It was the national courts' task to ensure that these conditions were satisfied.

In its judgment of 31 January 2012 the Chamber had found, by a majority, that the refusal to register the trade union had not been necessary in a democratic society. It had held that the County Court had not taken sufficient account of all the relevant arguments and had justified its refusal on purely religious grounds based on the provisions of the Church's Statute.

The Grand Chamber did not agree with that conclusion and observed that the County Court had refused to register the union after noting that its application did not satisfy the requirements of the Church's Statute because its members had not complied with the special procedure in place for setting up an association. The County Court's refusal to register the union for failure to comply with the requirement of obtaining the archbishop's permission had been a direct consequence of the right of the religious community concerned to make its own organisational arrangements and to operate in accordance with the provisions of its Statute. Furthermore, the union had not put forward any reasons to justify its failure to seek the necessary permission from the archbishop.

The County Court had concluded that if it were to authorise the establishment of the trade union, the consultative and deliberative bodies provided for by the Church's Statute would be profoundly changed or would be obliged to work together with a body not bound by the traditions of the Church and the rules of canon law. The court's review of the reasons put forward by the Archdiocese of Craiova had confirmed that the risk alleged by the Church authorities was plausible and substantial.

The Court further noted that the Statute of the Romanian Orthodox Church did not provide for an absolute ban on members of its clergy forming trade unions to protect their legitimate rights and interests. Accordingly, there was nothing to stop the applicant union's members from forming an association of this kind that pursued aims compatible with the Church's Statute and did not call into question the Church's traditional hierarchical structure and decision-making procedures. The Court noted that the applicant union's members were free to join any of the various associations currently existing within the Romanian Orthodox Church.

The Court took note of the wide variety of constitutional models governing relations between States and religious denominations in Europe. Having regard to the lack of a European consensus on this matter, it considered that the State enjoyed a wider margin of appreciation in this sphere, encompassing the right to decide whether or not to recognise trade unions that operated within religious communities and pursued aims that might hinder the exercise of such communities' autonomy.

The County Court's refusal to register the applicant union had not overstepped the margin of appreciation afforded to the national authorities and had not been disproportionate. There had therefore been no violation of Article 11 of the Convention.

Separate opinions

Judge Wojtyczek expressed a concurring opinion and Judges Spielmann, Villiger, López Guerra, Bianku, Møse and Jäderblom expressed a joint partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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