



Conviction of two dismissed ministers who had continued exercising their pastoral duties is in breach of freedom of religion

In its **committee** judgment in the case of [Tothpal and Szabo v. Romania](#) (application nos. 28617/13 and 50919/13) the European Court of Human Rights unanimously held that there had been:

a violation of Article 9 (right to freedom of religion) of the European Convention on Human Rights.

The case concerned a conviction for unlawful exercise of pastoral duties.

State measures in favour of the leader of a divided religious community or geared to forcing that community to combine under a single leader amounted to an infringement of freedom of religion. In a democratic society the State should not adopt measures to ensure that religious communities are placed or remain under the responsibility of a single authority.

The judgment is final.

Principal facts

The applicants, Mr Bela Tothpal and Mr Csongor Szabo, are Romanian nationals who were born in 1966 and 1971 and live in Arad and Gherla, respectively.

The case concerns their conviction for unlawfully exercising pastoral duties.

Mr Tothpal was the pastor of the Lutheran evangelical community of the town of Arad. Following disciplinary proceedings, the Lutheran Church dismissed him and appointed a new pastor. Mr Tothpal continued to conduct services in the presence of some of the members of the community.

On 3 March 2010 the Lutheran Church and the parish, represented by the new pastor, lodged a criminal complaint against Mr Tothpal for the unlawful exercise of pastoral duties. The public prosecutor's office gave a discontinuance decision, but nonetheless noted that pastoral duties could only be performed with the agreement of the relevant religious organisations, and that in the instant case that agreement had been withdrawn from Mr Tothpal. It consequently gave him an administrative fine of 1,000 Romanian lei (RON - some 235 euros (EUR)). The complainants challenged that order, whereupon the Arad Court of First Instance imposed a criminal fine of 4,000 RON (some EUR 900) on Mr Tothpal. The court of appeal upheld that judgment on the grounds that Mr Tothpal had conducted specific Lutheran religious ceremonies despite the legal obstacle erected by his dismissal to his continued work as a minister in the Arad Lutheran parish.

In 1995 Mr Szabo was appointed as a pastor in the village of Băița. In 2008, following a dispute, the Reformed Church terminated his contract of employment, dismissed him from the ministry and banned him from conducting religious services. A new minister was appointed to the parish.

In February 2009 the Reformed Church lodged a criminal complaint against Mr Szabo for unlawful exercise of pastoral duties. The public prosecutor's office dismissed the complaint, noting that the Băița Reformed community had been split since 2008, and that some of the congregation had deliberately followed Mr Szabo and attended his religious meetings, which differed from the usual Reformed Church service. The Reformed Church appealed.

The Gherla Court of First Instance convicted Mr Szabo of unlawfully exercising pastoral duties. It found that he had acted in a manner incompatible with Christian teachings and had fomented controversy within the Băița Reformed community. The court sentenced him to an immediate two-month custodial sentence on the grounds that only imprisonment could induce him to think about

his conduct and mend his ways by fasting and praying for at least 40 days, after which he could be released on licence. Mr Szabo appealed, and the Cluj Court of Appeal ruled that having regard to the rifts in the Băița Reformed community, imprisoning Mr Szabo would be liable to exacerbate the conflict.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 1 April 2013.

The applicants alleged that their criminal conviction for the unlawful exercise of pastoral duties had amounted to a violation of their right to freedom of religion as secured under Article 9 of the European Convention on Human Rights.

Judgment was given by a Committee of three judges, composed as follows:

Paulo **Pinto de Albuquerque** (Portugal), *President*,
Egidijus **Kūris** (Lithuania),
Iulia Antoanella **Motoc** (Romania),

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

Decision of the Court

Article 9

The Court noted that the two applicants had been convicted of having illicitly exercised pastoral duties. The Court accepted that the interference, as prescribed by law, had pursued the legitimate aim of protecting the rights of the churches in question and their congregations.

The impugned acts forming the basis of the applicants' convictions had fallen within the ambit of religious affairs. Mr Tothpal and Mr Szabo had been accused of conducting religious services and celebrating weddings, christenings and funeral services after having been officially dismissed from their pastoral duties. However, they had not been accused of having conducted acts liable to produce legal effects.

The applicants had consistently asserted that they had acted with the support of sections of their respective communities. The Court reiterated that it had previously found that punishing a person for merely acting as the religious leader of a group that willingly followed him was incompatible with the demands of religious pluralism in a democratic society.

The Court observed that even if the alleged facts had resulted from the splits in their respective communities, it had not been established that the said splits had caused tension or confrontations requiring intervention by the State authorities.

In the present case, the Romanian judicial authorities had placed sections of the religious communities of the towns of Arad and Băița under the authority of the Lutheran and Reformed Churches, preventing any members of those communities who so wished from attending religious services conducted by the applicants.

Therefore, the Court considered that the applicants' convictions had not been justified by a "pressing social need" and that the interference in their right, in community with others and in public, to manifest their religion in worship and teaching, had not been "necessary in a democratic society".

The decision is available only in French.

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Press contacts

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

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

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

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

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.