

July 2013

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## ***Sindicatul "Păstorul cel Bun" v. Romania [GC] - 2330/09***

Judgment 9.7.2013 [GC]

### **Article 11**

#### **Article 11-1**

#### **Freedom of association**

Refusal to register a trade union for priests on account of the autonomy of religious communities: *no violation*

*Facts* – In April 2008 thirty-five clergy members and lay employees of the Romanian Orthodox Church decided to form a trade union. The elected president applied to the court of first instance for the union to be granted legal personality and entered in the register of trade unions. However, the representative of the archdiocese lodged an objection. The union's representative maintained the application, which was supported by the public prosecutor's office. In May 2008 the court allowed the union's application and ordered its entry in the register, thereby granting it legal personality. The archdiocese appealed against that judgment. In a final judgment of July 2008 the county court allowed the appeal, quashed the first-instance judgment and, on the merits, refused the application for the union to be granted legal personality and entered in the register of trade unions.

In a judgment of 31 January 2012 (see [Information Note 148](#)) a Chamber of the Court held by five votes to two that there had been a violation of Article 11, finding that in the absence of a "pressing social need" and of sufficient reasons, a measure as drastic as the refusal to register the applicant union had been disproportionate to the aim pursued and therefore unnecessary in a democratic society.

#### *Law* – Article 11

(a) *Applicability* – The duties performed by the members of the trade union and the manner of their remuneration entailed many of the typical features of an employment relationship. However, the work of members of the clergy had certain special characteristics, such as its spiritual purpose, the fact that it was carried out within a church enjoying a certain degree of autonomy, and the heightened duty of loyalty towards the Church. It could therefore be a delicate task to make a precise distinction between strictly religious activities and activities of a more financial nature. However, notwithstanding their special circumstances, members of the clergy fulfilled their mission in the context of an employment relationship falling within the scope of Article 11, which was therefore applicable to the facts of the case.

(b) *Merits* – The refusal to register the applicant union amounted to interference, which had been based on the provisions of the Statute of the Romanian Orthodox Church. The domestic courts had inferred from the Statute that the establishment of Church associations and foundations was the prerogative of the Holy Synod and the archbishop's permission was required for members of the clergy to take

part in any form of association whatsoever. The interference had pursued the legitimate aim of protecting the rights of others, and specifically those of the Romanian Orthodox Church.

Bearing in mind the arguments put forward by the archdiocese before the domestic courts in support of its objection to recognising the trade union, it had been reasonable for the county court to take the view that a decision to allow the union's registration would create a real risk to the autonomy of the religious community in question. In Romania, all religious denominations were entitled to adopt their own internal regulations and were thus free to make their own decisions concerning their operations, recruitment of staff and relations with their clergy. The principle of the autonomy of religious communities was the cornerstone of relations between the Romanian State and the religious communities recognised within its territory. The Romanian Orthodox Church had chosen not to incorporate into its Statute the labour law provisions which were relevant in this regard, a choice that had been approved by a Government ordinance in accordance with the principle of the autonomy of religious communities. Having regard to the aims set forth by the applicant union in its constitution – in particular those of promoting initiative, competition and freedom of expression among its members, ensuring that one of its members took part in the Holy Synod, requesting an annual financial report from the archbishop and using strikes as a means of defending its members' interests – the judicial decision refusing to register the union with a view to respecting the autonomy of religious denominations did not appear unreasonable, particularly given the State's role in preserving such autonomy. 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.

The county court had refused to register the applicant 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 court had thus simply applied the principle of the autonomy of religious communities. It had concluded, endorsing the reasons put forward by the archdiocese, 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 replaced by or obliged to work together with a new body – the trade union – not bound by the traditions of the Church and the rules of canon law governing consultation and decision-making. The review undertaken by the court had thus confirmed that the risk alleged by the Church authorities was plausible and substantial, that the reasons they had put forward did not serve any other purpose unrelated to the exercise of the autonomy of the religious community in question, and that the refusal to register the applicant union did not go beyond what was necessary to eliminate that risk.

More generally, 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 availing themselves of their right under Article 11 of the Convention by forming such an association 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. Moreover, the applicant union's members were free to join any of the associations currently existing within the Romanian Orthodox Church which had been authorised by the national courts and operated in accordance with the requirements of the Church's Statute.

Lastly, there was a wide variety of constitutional models governing relations between States and religious denominations in Europe. In view of the lack of a European consensus on this matter, 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. In conclusion, the county court's refusal to register the applicant union had not overstepped the margin of appreciation afforded to the national authorities in this sphere, and accordingly was not disproportionate.

*Conclusion:* no violation (eleven votes to six).

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