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### **Refusal to register an Orthodox clergy trade union breached right to freedom of association**

European Court (31.01.2012) - In today's Chamber judgment in the case *Sindicatul "Pastorul cel Bun" v. Romania* (application no. 2330/09), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been: ***A violation of Article 11 (freedom of assembly and association)*** of the European Convention on Human Rights. The case concerned a union set up by members of the clergy and lay members of the Orthodox Church, and its entry in the trade unions register.

#### ***Principal facts***

The applicant union, *Păstorul cel Bun*, was established on 4 April 2008 by 35 clerics and lay members of the Romanian Orthodox Church, the majority of them Orthodox priests in parishes of the Metropolis of Oltenia (a region in south-western Romania). The aim of the union, as set forth in its statutes, is to defend the professional, economic, social and cultural interests of its members, both clerics and lay members, in their dealings with the Church hierarchy and the Ministry of Cultural and Religious Affairs.

The union made an application to the district court to be granted legal personality and to be entered in the official register of trade unions. The representative of the Archdiocese objected to the application, arguing that the internal regulations of the Orthodox Church prohibited the creation of any kind of association without the prior consent of the Archbishop. The public prosecutor supported the application, arguing that the establishment of the union was compatible with the law and that the Church's internal regulations could not prohibit it, as the priests and lay persons concerned were all employed by the Church and as such were entitled to form an association to defend their rights.

In a judgment of 22 May 2008 the court ordered the entry of *Păstorul cel Bun* in the register of trade unions, thereby granting it legal personality. The court found that, since the members of the union carried out their duties on the basis of an employment contract, their right to organise could not be made subject to the prior consent of their employer, in the absence of compelling reasons relating to public safety or the protection of the rights and freedoms of others.

The Archdiocese appealed against this judgment, submitting that the constitutional principles of freedom of religion and the autonomy of religious communities could not be made subordinate to freedom of association. In a judgment of 11 July 2008 the county court set aside the first-instance judgment and rejected the application for *Păstorul cel Bun* to be granted legal personality and to be entered in the trade unions register. It noted that no reference to trade unions was contained in the Statute of the Orthodox Church, according to which the establishment and management of religious associations had to receive the blessing of the Church Synod. If a union were to be set up, the Church hierarchy would be obliged to work together with a new body which operated outside the rules and traditions of canon law governing decision-making.

#### ***Complaints, procedure and composition of the Court***

Relying on Article 11 (freedom of assembly and association), the applicant union complained that the refusal of its application for registration had infringed its members' right to organise.

The application was lodged with the European Court of Human Rights on 30 December. Judgment was given by a Chamber of seven. The Archdiocese of Craiova and the non-governmental organisation the European Centre for Law and Justice submitted observations in their capacity as third-party interveners (Article 36 § 2 of the Convention).

### ***Decision of the Court***

#### ***Article 11***

The Court pointed out that Article 11 permitted States to impose restrictions on the right to organise only in the case of members of the armed forces, the police or the administration of the State, and then only provided the restrictions were legitimate. In Romania, priests and laypersons carried out their duties within the Orthodox Church on the basis of individual employment contracts. Their salaries were financed mainly by the State and they were covered by the general social insurance scheme. The Court considered that a relationship based on an employment contract could not be "clericalised" to the point of being exempted from all rules of civil law. Members of the clergy, and to a still greater extent lay employees of the Church, could not be excluded from the scope of protection of Article 11. The Court therefore had to ascertain whether the restriction imposed by the State on the applicant union's freedom of association had responded to a "pressing social need".

The refusal to register the union had been based on the laws on freedom of association and religious freedom, interpreted in the light of the Statute of the Orthodox Church, and had therefore had a legal basis. The Court was prepared to accept that the refusal had pursued the legitimate aim of protecting public order by seeking to prevent a disparity between law and practice concerning the establishment of unions for Church employees. However, the county court had not established that the union's programme was incompatible with a "democratic society", still less that it represented a threat to democracy. The criteria defining a "pressing social need" had therefore not been met.

In examining the Archdiocese's appeal the court, referring only to the need to preserve the Church's traditional hierarchy, had not considered the repercussions of the employment contract on the employer-employee relationship, the distinction between members of the clergy and lay employees of the Church or the issue whether the ecclesiastical rules prohibiting union membership were compatible with the domestic and international regulations enshrining the right in question; these issues, however, had been of crucial importance in balancing the various interests at stake.

The Court observed that the refusal to register the applicant union had not been based on the clauses of the employment contracts but on the provisions of the Church's Statute. The latter had entered into force in 2008, that is to say, after the employees in question had taken up their duties within the Orthodox Church. The particular position occupied by the Orthodox religion in Romania, of which the Court was aware, could not in itself justify the refusal to register the union, particularly since the right of employees of the Orthodox Church to join a union had already been recognised by the Romanian courts. While that recognition had pre-dated the entry into force of the Statute of the Orthodox Church, the fact remained that two unions had been set up within the Orthodox clergy without this having been found to be unlawful or incompatible with democracy.

Accordingly, in the absence of a “pressing social need” or of sufficient grounds, a measure as radical as the refusal to register the applicant union had been disproportionate to the aim pursued and therefore not necessary in a democratic society, in breach of Article 11.

### ***Article 41***

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay the applicant union 10,000 euros (EUR) to cover all heads of damage.

### ***Separate opinion***

Judges Ziemele and Tsotsoria expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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