



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

GRAND CHAMBER

**CASE OF SINDICATUL “PĂSTORUL CEL BUN” v. ROMANIA**

*(Application no. 2330/09)*

JUDGMENT

STRASBOURG

9 July 2013



**In the case of Sindicatul “Păstorul cel Bun” v. Romania,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President*,

Guido Raimondi,

Mark Villiger,

Isabelle Berro-Lefèvre,

Boštjan M. Zupančič,

Elisabeth Steiner,

Danutė Jočienė,

Dragoljub Popović,

George Nicolaou,

Luis López Guerra,

Ledi Bianku,

Vincent A. De Gaetano,

Angelika Nußberger,

Linos-Alexandre Sicilianos,

Erik Møse,

Helena Jäderblom,

Krzysztof Wojtyczek, *judges*,

and Michael O’Boyle, *Deputy Registrar*,

Having deliberated in private on 7 November 2012 and on 5 June 2013,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case originated in an application (no. 2330/09) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a trade union, Păstorul cel Bun (“The Good Shepherd” – “the applicant union”), on 30 December 2008. The President of the Grand Chamber acceded to a request by the members of the applicant union not to have their identity disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant union, which had been granted legal aid, was represented by Mr R. Chiriță, a lawyer practising in Cluj Napoca. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant union alleged that the refusal of its application for registration as a trade union had infringed its members’ right to form a trade union, as guaranteed by Article 11 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1). On 31 January 2012 a Chamber of that Section, composed of Josep Casadevall, Egbert Myjer, Ján Šikuta, Ineta Ziemele, Nona Tsotsoria, Mihai Poalelungi and Kristina Pardalos, judges, and Santiago Quesada, Section Registrar, delivered a judgment in which it unanimously declared the application admissible and held, by five votes to two, that there had been a violation of Article 11 of the Convention.

5. On 9 July 2012, following a request submitted by the Government on 27 April 2012, a panel of the Grand Chamber decided to refer the case to the Grand Chamber in accordance with Article 43 of the Convention.

6. The composition of the Grand Chamber was determined in accordance with the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. Corneliu Bîrsan, the judge elected in respect of Romania, withdrew from sitting in the case (Rule 28). The President of the Grand Chamber accordingly appointed Angelika Nußberger to sit as an *ad hoc* judge in his place (Article 26 § 4 of the Convention and Rule 29 § 1).

7. The applicant union and the Government each filed further observations (Rule 59 § 1).

8. Leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2) was granted to the non-governmental organisation (NGO) European Centre for Law and Justice and the Orthodox Archdiocese of Craiova, both of which had already intervened as third parties in the proceedings before the Chamber, and also to the Moscow Patriarchate, the NGOs Becket Fund and International Center for Law and Religion Studies, and the Governments of the Republic of Moldova, Poland, Georgia and Greece.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 7 November 2012 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms C. BRUMAR,	<i>Agent,</i>
Ms I. CAMBREA,	<i>Co-Agent,</i>
Mr D. DUMITRACHE,	
Ms A. NEAGU,	<i>Advisers;</i>

(b) *for the applicant union*

Mr R. CHIRIȚĂ,	
Mr I. GRUIA,	<i>Counsel,</i>
Ms O. CHIRIȚĂ,	<i>Adviser.</i>

The Court heard addresses by Mr Chiriță, Ms Brumar and Ms Neagu.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

10. On 4 April 2008 thirty-two Orthodox priests from parishes of the Metropolis of Oltenia, most of which were within the jurisdiction of the Archdiocese of Craiova (a region of south-western Romania), and three lay employees of the same archdiocese held a general meeting at which they decided to form the Păstorul cel Bun trade union. The relevant parts of the union's constitution, as adopted at the meeting, read as follows:

"The aim of the union of clergy and lay persons working in parishes or other ecclesiastical bodies within the administrative and territorial jurisdiction of the Metropolis of Oltenia has been freely defined. It shall consist in representing and protecting the professional, economic, social and cultural rights and interests of its members, both clergy and laity, in their dealings with the Church hierarchy and the Ministry of Culture and Religious Affairs.

In order to achieve the above aim, the union shall:

- (a) ensure respect for the fundamental rights of its members to work, dignity, social protection, safety at work, rest, social insurance, unemployment benefits, pension entitlements and other entitlements laid down in the legislation in force;
- (b) ensure that each of its members is able to carry out work corresponding to his professional training and skills;
- (c) ensure compliance with the statutory provisions concerning the duration of leave and days of rest;
- (d) promote initiative, competition and freedom of expression among its members;
- (e) ensure the implementation and strict observance of the statutory provisions concerning protection of employment and the rights deriving therefrom;
- (f) ensure the full application of the provisions of Law no. 489/2006 on religious freedom and the legal status of religious denominations, the Statute of the Romanian Orthodox Church and the Holy Canons of the Romanian Orthodox Church;
- (g) negotiate collective agreements and contracts of employment with the Archdiocese and the Metropolis expressly setting out all the rights and duties of the clergy and laity;
- (h) afford protection to its president and representatives, both during and after their terms of office;
- (i) ensure that it is represented at all levels and on all decision-making bodies, in accordance with the statutory provisions in force;
- (j) use petitions, demonstrations and strikes as means of defending its members' interests and protecting their dignity and fundamental rights;
- (k) take legal action against any individuals or other entities acting in breach of employment legislation, trade-union law, the provisions of the collective agreement signed within the Metropolis or employment contracts, if it has proved impossible to resolve the disputes in question by means of negotiation;

- (l) ensure the observance and implementation of statutory provisions relating to remuneration and guarantees of decent living conditions;
- (m) strive to secure to the clergy and laity the benefit of all the rights enjoyed by other sectors of society;
- (n) set up mutual-aid funds;
- (o) produce and issue publications providing information to its members and defending their interests;
- (p) establish and operate cultural, educational and research organisations in the trade-union sphere, as well as social and socio-economic institutions, in accordance with the relevant statutory provisions and in the interests of its members;
- (r) raise funds to support its members;
- (s) organise and fund religious activities;
- (ş) make proposals for elections to local Church bodies and put forward a priest from among its members to take part in the Holy Synod of the Romanian Orthodox Church;
- (t) ask the Archdiocese to submit a report on its revenues and expenditure to the Assembly of Priests; and
- (t) ask the Archdiocesan Council to notify it, on a quarterly or annual basis, of any decisions relating to appointments, transfers and allocation of budgetary resources."

11. 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, submitting that the application for registration was in conformity with that Act and that the formation of a trade union was not prohibited by the Religious Freedom Act (Law no. 489/2006).

12. The public prosecutor's office, representing the State in the proceedings, supported the application for registration, submitting that the establishment of a trade union for members of the clergy and lay staff was not in breach of any provision of the law. It added that since the union's members were employees working under contracts of employment, they were entitled, like any other employees, to join together as part of a trade union to defend their rights.

13. The Archdiocese of Craiova, intervening in the proceedings as a third party, confirmed that the union's members were employed by the Archdiocese but argued that the establishment of the union, without the Archbishop's consent and blessing ("permission"), was prohibited by the Statute of the Romanian Orthodox Church, as approved by Government Ordinance no. 53/2008. It added that the Statute barred priests from taking part in proceedings in the civil courts, even in connection with personal disputes, without the archbishop's prior written permission. Pointing out that priests chaired parish assemblies and governing bodies, the Archdiocese submitted that they were thus unable to form trade unions since the Trade Unions Act prohibited anyone performing management functions from

doing so. Lastly, it produced written statements from eight members of the union indicating that they no longer wished to be part of it.

14. Having observed that the application for registration satisfied the formal requirements of the Trade Unions Act, the court decided that the application should be examined in the light of Articles 2 and 3 of that Act, Article 39 of the Labour Code, Article 40 of the Constitution, Article 22 of the International Covenant on Civil and Political Rights and Article 11 of the European Convention on Human Rights.

15. In a judgment of 22 May 2008, the court allowed the union's application and ordered its entry in the register of trade unions, thereby granting it legal personality.

16. The relevant passages of the judgment read as follows:

"The third party submits that the application to form the trade union infringes both the special legislation on religious freedom and the legal status of religious denominations and also, in the absence of any blessing from the Archbishop or of any prior written permission to take part in court proceedings (a requirement that applies even to personal disputes), the Statute of the Romanian Orthodox Church.

Having regard to the provisions of the Church's Statute and of the Religious Freedom Act (Law no. 489/2006), the court dismisses the third party's arguments as unfounded for the reasons set out below.

The court notes that, pursuant to section 5(4) of Law no. 489/2006, religious communities, associations and groups are required to observe the Constitution and their activities must not threaten national security, public order, public health and morals or fundamental rights and freedoms.

The court further observes that the Statute of the Church, as approved by Government Ordinance no. 53/2008, does not expressly forbid the establishment of a trade union for clergy and lay staff in accordance with labour legislation. The third party, which contends that the right to form a trade union is subject to receiving the archbishop's blessing, has not disputed that the union's founding members are contractual employees.

The third party's arguments have been analysed in the light of both sections 7 to 10 of the Religious Freedom Act, which acknowledges the important role of the Romanian Orthodox Church and its organisational and operational autonomy, and section 1(2) of the same Act, which provides that 'no one shall be prevented from or coerced into embracing a religious opinion or faith contrary to his or her beliefs' and that 'no one shall suffer discrimination or persecution or be placed in an inferior position on account of his or her faith, membership or non-membership of a religious denomination, group or association, or for exercising freedom of religion in accordance with the law'.

In so far as members of the clergy and laity are recognised as employees, they have the statutory right to form a trade union. This right cannot be subject to any restrictions based on religious affiliation or to prior consent from the hierarchy.

In the court's opinion, the principle of hierarchical subordination and obedience set forth in the Statute cannot be used as a basis for restricting the right to form a trade union; the only permissible restrictions in this sphere must be prescribed by law and necessary in a democratic society in the interests of national security, public safety,

the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.

The third party's argument that the applicants did not obtain the archbishop's permission to take part in proceedings in the civil courts must likewise be dismissed, given that Article 21 of the Constitution provides: 'Everyone shall be entitled to apply to the courts for protection of his rights, freedoms or legitimate interests. The exercise of this right shall not be restricted by any statute.'

The establishment of a trade union does not necessarily indicate the existence of a dissident strand within the Romanian Orthodox Church with a disregard for hierarchy and the rules imposed by the Church; on the contrary, it is likely to contribute to employer-employee dialogue on such matters as negotiation of employment contracts, observance of working and non-working hours and the rules on remuneration, protection of health and safety at work, vocational training, medical cover and the opportunity to elect representatives and stand for election to decision-making bodies, with due regard for the special characteristics of the Church and its religious, spiritual, cultural, educational, social and charitable purpose.

Having regard to the foregoing, in accordance with section 15 of Law no. 54/2003, the court allows the application, dismisses the objection by the third party, grants legal personality to the union and orders its entry in the register of trade unions."

17. The Archdiocese challenged that 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 by other constitutional principles such as freedom of association, including the right to organise.

18. It submitted that the emergence within the structure of the Church of a trade union-type organisation for members of the clergy would seriously imperil the freedom of religious denominations to organise themselves in accordance with their own traditions. The first-instance court's judgment had added a new institution to the existing Church institutions, namely a trade union for priests, thereby jeopardising the autonomy of religious communities as guaranteed by the Constitution.

19. The Archdiocese also criticised the applicant union's stated aims, contending that they conflicted with the duties that were set out in the "job description" and accepted by priests by virtue of their "vow of faith". It pointed out that upon ordination, all priests had undertaken to abide by all the provisions of the Church's Statute, the rules of procedure of the Church's disciplinary and judicial bodies and the decisions of the Holy Synod of the Romanian Orthodox Church, local church assemblies and the parish council.

20. In June 2008 the Holy Synod declared that initiatives by priests from various regions of the country to set up trade unions were in breach of the law, the canons and the Church's Statute.



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

22. The relevant passages of the judgment read as follows:

"The Romanian Orthodox Church is organised and operates in accordance with its Statute, as approved by Government Ordinance no. 53/2008. The Statute prohibits priests from setting up associations, foundations or organisations of any kind, and hence trade unions. This prohibition is designed to safeguard the rights and freedoms of the Romanian Orthodox Church by allowing it to preserve the Orthodox tradition and its founding tenets.

By virtue of section 6(2) of Law no. 54/2003, internal regulations may not contain any provisions that are in breach of the Constitution or the law.

The establishment of a trade union would result in the consultative and deliberative bodies provided for by the Statute being 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 freedom to organise religious communities is recognised by the Constitution and Law no. 489/2006 on religious freedom and the legal status of religious denominations. Each denomination draws up its own statutes governing its internal organisation, its members' rights and obligations, its decision-making procedures and the operation of its disciplinary bodies.

Pursuant to Article 14 (w) of [the Statute of the Orthodox Church], the Holy Synod takes decisions concerning the establishment, operation or dissolution of national ecclesiastical associations and foundations set up and managed by the Romanian Orthodox Church; [it] grants or denies permission for the establishment, operation or dissolution of ecclesiastical associations and foundations which have their own governing bodies and operate within the territorial subdivisions of the Romanian Orthodox Patriarchate.

It follows from the above-mentioned provisions, which make no reference to trade unions, that the associations and foundations must be ecclesiastical and national in nature.

It also follows from Article 50 (e) of the Statute of the Orthodox Church that priests may not represent their parishes in court proceedings without the bishop's prior written consent. Similarly, in view of the oath of obedience towards the bishop which they took upon ordination, members of the clergy may not take part in court proceedings concerning personal matters without the bishop's prior written permission.

Law no. 54/2003 provides that persons performing management functions or functions involving the exercise of public authority, the judiciary, the military, the police and members of the special forces may not set up trade unions.

In the present case the Statute defines the parish, which is a subdivision of the Orthodox Church, as a community of Orthodox Christians, both clergy and laity, established within a specified geographical area, under the ecclesiastical, legal, administrative and economic authority of the diocese, and led by a priest.

An examination of the list of priests involved in the present case reveals that they chair their parish assemblies and councils. Since they perform management functions

and receive stipends on that account in accordance with the above-mentioned provisions, they may not form trade unions.

Having regard to the foregoing, the court allows the appeal, quashes the judgment and refuses the application for registration of the trade union."

23. On 29 September 2008 the attempt to set up the applicant union was discussed within the Synod of the Metropolis of Oltenia. The Synod decided that if the union's members were to lodge an application with the Court, they should be punished and referred to the disciplinary bodies. As a result, the members concerned were summoned to the Archdiocese headquarters, where some of them signed declarations to the effect that they no longer wished to pursue the application.

24. In a letter of 21 June 2010, the chancery of the Romanian Orthodox Patriarchate reminded the Archdiocese that priests were forbidden to apply to domestic and international courts without the consent of their hierarchy and asked it to obtain written declarations from the priests in question stating that they no longer wished to pursue the application and, in the event of their refusal, to refer them to the appropriate disciplinary bodies. Some of the priests, despite having signed the declarations, informed the Court that they intended to pursue the application lodged on behalf of the union.

25. On 19 April 2010 three priests who had been members of the applicant union set up an association called Apostolia together with five other people. The association received the approval of the Archbishop of Craiova, who made premises available for use as its headquarters. It was registered with the Craiova Court of First Instance on 8 June 2010.

26. The association's aims, as set out in its constitution, are: to educate the people in the spirit of Orthodox morality; to promote a sense of solidarity between the clergy and the faithful; to raise funds for the publication of documents to defend the faith and traditions; to organise and support cultural, religious and social activities; to take a stand against events, initiatives and demonstrations that denigrate Christian morality, the Orthodox faith, national identity and traditions; and to use all legal means to publicise its own decisions concerning the protection of pastoral, social and professional interests.

## II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

### A. Domestic law and practice

#### 1. *The Constitution*

27. The relevant provisions of the Constitution read as follows:

**Article 29**

"Freedom of thought and opinion and freedom of religion shall not be restricted in any form. No one shall be compelled to embrace an opinion or religion contrary to his or her own beliefs.

Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.

Religious denominations shall be free and religious communities shall be organised in accordance with their own regulations, subject to the conditions laid down by law.

All forms, means, acts and actions of religious enmity shall be prohibited in relations between religious denominations.

Religious communities shall enjoy autonomy in relation to the State and shall receive State support, including the provision of facilities offering religious assistance in the army, hospitals, prisons, asylums and orphanages."

**Article 40**

"Citizens may freely associate to form political parties, trade unions, employers' organisations and other forms of association."

**Article 41**

"The right to work shall not be restricted. Everyone is free to choose his or her profession, trade or occupation and workplace.

Employees are entitled to social protection measures. These concern employees' health and safety, working conditions for women and young people, the establishment of a national gross minimum wage, weekly rest, paid annual leave, work performed in particular or special conditions, vocational training, and other specific situations as provided for by law.

The normal average working day is a maximum of eight hours.

For equal work, women shall receive equal pay to men.

The right to collective labour bargaining and the binding force of collective agreements shall be guaranteed."

**2. *The Trade Unions Act***

28. The Trade Unions Act (Law no. 54/2003), in force at the material time, has been replaced by the Social Dialogue Act (Law no. 62/2011), which has incorporated the previous provisions concerning trade-union freedom. These provisions read as follows:

**Section 2**

"Anyone discharging duties on the basis of a contract of employment, including public officials, shall have the right to form and to join trade unions.

The establishment of a trade union shall require a minimum of fifteen members engaged in activities within the same profession or sector of activity.

No one shall be compelled to join, not to join or to leave a trade union."

**Section 3**

"Persons performing management functions or functions involving the exercise of public authority, the judiciary, the military, the police and members of the special forces may not set up trade unions."

**Section 6(2)**

"The internal regulations may not contain any provisions that are in breach of the Constitution or the law."

**Section 14**

"In order for the trade union to acquire legal personality, the representative of its founding members must submit an application for registration to the court of first instance within whose jurisdiction its registered office is located.

Two copies of the following documents, certified by the trade union's representative, must be appended to the application for registration:

- (a) the minutes of the founding meeting of the trade union, signed by at least fifteen founding members;
- (b) the constitution of the trade union;
- (c) the list of members of the union's governing bodies ...;
- (d) the authority form for the representative ..."

**Section 15**

"The competent court of first instance shall examine the application for registration within five days, verifying whether:

- (a) the documents referred to in section 14 above have been appended;
- (b) the minutes of the trade union's founding meeting and its constitution are in conformity with the applicable statutory provisions.

If the court of first instance finds that the statutory conditions for registration have not been met, the president shall summon the trade union's representative to a private meeting and shall ask the representative, in writing, to remedy the situation within seven days.

If the court finds that the application for registration satisfies the requirements of the first subsection of this section, it shall proceed, within ten days, to examine the application for registration in the presence of the union's representative.

The court of first instance shall allow or refuse the application for registration in a reasoned judgment.

The judgment shall be transmitted to the union's representative within five days of its delivery."

**Section 16**

"An appeal on points of law shall lie against the judgment of the court of first instance."

**Section 27**

"To achieve their aims, trade unions shall be entitled to use specific means of action, such as negotiation, mediation, arbitration, conciliation, petitions, demonstrations and strikes, in accordance with their constitution and subject to the conditions laid down by law."

**Section 28**

"Trade unions shall defend their members' rights under labour law ..., collective agreements and contracts of employment before the domestic courts and in dealings with other public authorities ...

In exercising this prerogative, [they] shall be entitled to take any form of action provided for by law, including applying to the courts on behalf of their members, without requiring an express instruction from them. ..."

**Section 29**

"Trade unions may submit proposals to the competent authorities concerning regulations in fields relating to the right to organise."

**Section 30**

"Employers shall invite delegates from representative trade unions to attend board meetings when issues of professional, economic, social, cultural or sporting interest are being discussed.

For the purpose of defending and promoting their members' professional, economic, social, cultural and sports rights and interests, trade unions shall receive from the employer the information required for the negotiation of collective agreements or, where appropriate, the conclusion of branch agreements, as well as information regarding the establishment and use of funds for the improvement of working conditions, workplace safety and social protection.

Decisions by the board and other similar bodies concerning matters of professional, economic, social, cultural or sporting interest shall be communicated to the trade unions in writing, within forty-eight hours of their adoption."

**3. *The Religious Freedom Act***

29. The relevant provisions of the Religious Freedom Act (Law no. 489/2006) read as follows:

**Section 1**

"The State shall respect and guarantee the right to freedom of thought, conscience and religion of any person within national territory, in accordance with the Constitution and international treaties to which Romania is a party."

**Section 5**

"Members of religious communities shall be free to choose the form of association in which they wish to practise their faith – religious community, association or group – in accordance with the terms and conditions of this Act.

Religious communities, associations and groups shall be required to observe the Constitution and the law and not to threaten public safety, public order, health, morals and fundamental rights and freedoms."

#### **Section 8**

"Recognised religious communities shall have the status of charitable corporations. Under the provisions of the Constitution and this Act, they shall be organised and shall operate independently in accordance with their own statutes or canons."

#### **Section 10**

"The State shall contribute, on request, to the remuneration of clergy and lay staff of recognised religious communities, according to each community's number of adherents and actual needs."

#### **Section 17**

"On a proposal by the Ministry of Culture and Religious Affairs, the Government shall issue an ordinance granting the status of a State-recognised religious community to religious associations which, through their activities and number of members, are of public interest and of proven sustainability and stability.

The State shall recognise statutes and canons to the extent that their content does not threaten public safety, public order, health, morals or fundamental rights and freedoms."

#### **Section 23**

"Religious communities shall select, appoint, employ and dismiss staff in accordance with their own statutes, codes of canon law and regulations.

Religious communities may impose disciplinary sanctions on their employees, in accordance with their own statutes, codes of canon law and regulations, for breaches of their doctrine or moral principles."

#### **Section 24**

"Employees of religious communities which are affiliated to the State insurance scheme shall be subject to the legislation on the State social-security system."

#### **Section 26**

"Matters of internal discipline shall be exclusively subject to the provisions of internal regulations and canon law.

The fact that a religious community has its own judicial bodies shall not preclude the application of criminal legislation in respect of its members."

#### *4. Law on the unitary wage scale for workers paid from public funds*

30. Law no. 330/2009, which has since been replaced by Law no. 284/2010, contained provisions on the remuneration of the clergy and lay staff. It provided that the State and local authorities were to pay all of the wages of members of the clergy employed in public institutions, and

part of the wages of leaders of recognised religious communities and members of the clergy and laity employed by such communities.

31. Thus, the State pays clergy employed by recognised religious communities a monthly stipend equivalent to between 65% and 80% of the salary of a State school teacher. Clergymen holding senior positions receive a higher stipend.

32. A total of 16,602 posts are funded in this way, divided up among religious communities according to their number of adherents as established in the most recent population census. In the latest census (2011), 86% of the Romanian population identified themselves as Orthodox Christians. The State budget also covers all social-security contributions payable by employers in respect of members of the clergy employed by them.

33. Lay staff receive a monthly allowance equivalent to the national guaranteed minimum wage. This allowance and all social-security contributions payable by employers in respect of these employees are covered by local authority budgets. The law provides for 19,291 posts for lay staff, divided up according to the same population-based criterion as for clerical staff (see paragraph 32 above).

34. Priests and lay staff of religious communities pay social-security contributions calculated on the basis of their wages and enjoy all the rights deriving from them: medical insurance, unemployment insurance and pension entitlements. In 2010 their wages were reduced by the same percentage as those of public-sector employees (a reduction of 25%, with a view to balancing the State budget).

#### *5. Internal organisation and regulations of the Romanian Orthodox Church*

35. The Romanian Orthodox Church became independent in 1885. It has close relations with Orthodox churches in other countries.

36. Under the communist regime, Law no. 177/1949 guaranteed freedom of religion, and the Romanian Orthodox Church continued to operate under the supervision of the Ministry of Religious Affairs, which approved its Statute in 1949. Staff of the Church were paid from the State budget under the statutory provisions governing public servants.

37. The current organisation of the Romanian Orthodox Church is governed by its own Statute, in accordance with the Religious Freedom Act (Law no. 489/2006). The Church is headed by a Patriarch and has six metropolises in Romania, which comprise archdioceses, dioceses and approximately 13,500 parishes, served by some 14,500 priests and deacons.

38. The highest authority is the Holy Synod. It is made up of the Patriarch and all serving bishops. The central governing bodies also include the Church National Assembly, which includes three representatives of each diocese or archdiocese and is the central deliberative body, and the Church National Council, which is the central executive body.

39. At local level, the parishes, comprising Orthodox clergy and congregations, are legal entities registered with the administrative and tax authorities for the purpose of their non-profit-making and commercial activities. The priest is responsible for the administration of the parish. He chairs the parish assembly (the deliberative body comprising all parishioners) and the parish council (the executive body).

40. The current Statute of the Romanian Orthodox Church was adopted by the Holy Synod on 28 November 2007 and approved by a Government ordinance on 16 January 2008.

41. The relevant provisions of the Statute read as follows:

**Article 14 w**

“The Holy Synod shall take decisions on the establishment, organisation and dissolution of national ecclesiastical associations and foundations. It shall grant or refuse permission (approval) for the establishment, organisation and dissolution of Orthodox associations and foundations that operate in dioceses and have their own governing bodies.”

**Article 43**

“The parish is the community of believers, clergy and laity, within a specified geographical territory and subject to the canonical, legal, administrative and economic authority of the diocese or archdiocese. It is led by a priest appointed by the bishop.”

**Article 50**

“In fulfilling their mission ..., priests shall perform the following duties:

(a) celebrating Mass on Sundays, feast days and other days of the week ...; teaching religion in accordance with diocesan guidelines; and ensuring daily access to the church ...;

(b) applying all the provisions of the Statute and of regulations issued by the Church and the central bodies at parish level;

(c) implementing decisions by the hierarchy and the diocesan bodies concerning parish activities;

(d) drawing up and implementing the annual programme of religious, social, charitable and administrative activities at parish level and informing the diocese and parishioners of these activities;

(e) representing the parish in court proceedings and in dealings with the authorities or third parties, subject to prior written consent from the bishop; by virtue of the oath of obedience taken at the time of their ordination, members of the clergy and monks may not take part in court proceedings concerning personal matters without the bishop’s prior written permission;

(f) convening and chairing the parish assembly, parish council and parish committee;

(g) implementing decisions of the parish assembly and council;

(h) keeping a register of parishioners;

(i) keeping a register of baptisms, marriages and deaths ...;



(j) managing the parish assets in accordance with the decisions of the parish assembly and council and overseeing the management of the assets of cultural and social institutions and church foundations set up within the parish;

(k) drawing up and keeping an inventory of all parish property ..."

#### **Article 52**

"Priests and other church staff have the rights and are bound by the obligations set forth in the Holy Canons, this Statute, church regulations and the decisions of the archdiocese."

#### **Article 88**

"The bishop ... shall order the appointment, transfer or dismissal of clergy and lay staff in the different parishes ... He shall ensure the observance of discipline by members of the clergy and lay staff in his diocese, either directly or through ecclesiastical bodies."

#### **Article 123 §§ 7, 8 and 9**

"Members of the clergy shall serve the diocese by virtue of the mission they have freely assumed and the vows and solemn public undertaking they read out and signed prior to their ordination. Before assuming their pastoral mission, they shall receive a decision from the bishop setting out their rights and duties.

Without the bishop's permission, no priests, deacons or monks may form, be members of or take part in associations, foundations or other organisations of any kind.

The status of priest, deacon or monk is incompatible with the pursuit of any other personal activities of an economic, financial or commercial nature that are contrary to Orthodox Christian morals or the interests of the Church."

#### **Article 148**

"The following ecclesiastical bodies shall have jurisdiction in matters of doctrine, morals, canon law and discipline in respect of serving or retired clergymen, priests and deacons:

(A) [General matters]:

(a) the parish disciplinary consistory;

(b) the diocesan or archdiocesan consistory;

(B) On appeal [by a staff member in the event of dismissal]: the Metropolitan Consistory, provided that the appeal has been declared admissible by the Metropolitan Synod or the Holy Synod."

#### **Article 150**

"The parish disciplinary consistory shall act as a disciplinary tribunal ... and as a mediation body for disputes among church staff, or between the priest and the congregation.

If the parties are dissatisfied with its decision, the case shall be referred to the diocesan consistory, whose decision shall be final."

**Article 156**

"By virtue of the autonomy of religious communities under the law, internal disciplinary matters shall be settled by the Church's judicial bodies. Their decisions shall not be subject to appeal in the civil courts."

42. During 2004 the priests of the Archdiocese of Craiova signed employment contracts of indefinite duration with the Archdiocese. The contracts set out the parties' general rights and duties and specified the priests' place of work, position, working hours, annual leave entitlement and monthly salary. The job description appended to the contract listed the priests' duties as follows:

"Offering spiritual guidance to parishioners in accordance with church regulations;

Celebrating Mass every Sunday and feast day; attending to parishioners and setting up home in the parish;

Managing the assets of the parish and of Church cultural institutions and foundations;

Drawing up and maintaining an inventory of the parish assets; managing the parish's finances and accounts; keeping records of parish revenue and expenditure and making them available to the archdiocesan inspectorate in the course of financial reviews and audits;

Obtaining supplies of liturgical items from the archdiocese to be put on sale;

Ensuring prompt payment of all financial contributions owed to the archdiocese;

Refraining from taking part in court proceedings without the consent of the archdiocese, whether relating to disputes concerning the parish or to personal matters;

Representing the parish in dealings with third parties in the event of a dispute;

Refraining from any act that would be incompatible with the status of priest;

Observing all the provisions of the Statute of the Church, other ecclesiastical instruments and the oath taken at the time of ordination.

Any breach of the above-mentioned duties shall give rise to proceedings before the Church disciplinary bodies, which may impose a range of penalties up to and including dismissal."

43. On 17 May 2011, in response to an enquiry from the Church, the Ministry of Labour informed the Patriarch that, following an examination of the relevant legislation, experts from the Ministry had reached the conclusion that the Labour Code was not applicable to the employment relationship between the Romanian Orthodox Church and members of the clergy and that, as a result, the Church was not obliged to sign individual employment contracts with them.

44. Accordingly, from November 2011 the employment contracts in question were replaced, at the bishop's instigation, with appointment decisions issued by him. The decisions specified the place of work and the post occupied. They also stated the following:

"In discharging his duties, the priest shall be directly subordinate to the bishop. He must work together with the other priests of the parish and the diocesan representatives.

The priest shall perform his tasks ... in accordance with the requirements of Article 50 (a)-(k) of the Statute of the Church.

In fulfilling his mission, he must be familiar with and, in accordance with the oath taken at the time of his ordination, scrupulously abide by the Holy Canons, the Statute of the Church, ecclesiastical regulations and the decisions of the Holy Synod and the diocese. He must submit to hierarchical authority and defend the legitimate interests of the Romanian Orthodox Church and his congregation.

From the date of his appointment, the priest shall be entered in the register of positions and salaries. His salary shall be determined in accordance with the statutory provisions governing remuneration of members of the clergy. He shall be entitled to annual leave calculated on the basis of seniority.

The priest shall be required to obtain supplies of items for sale (candles, calendars, liturgical items, books, and so on) from the diocese alone. He shall permanently supervise the activities of the kiosk (*pangarul*) where these items are on sale.

In the event of misconduct or breaches of discipline or of the duties set out in this decision, the priest shall be dismissed by the bishop ... He shall be punished in accordance with the rules of the Church's disciplinary bodies."

*6. Domestic practice concerning the establishment of trade unions within the clergy and the existence of other forms of association within the Romanian Orthodox Church*

45. The law and the 1949 Statute did not provide for any restrictions on freedom of association for Orthodox believers and Church personnel. Under the communist regime, trade unions were set up by Church employees.

46. In a final judgment of 4 October 1990 the Medgidia Court of First Instance, under the Political Parties and Other Forms of Association Act (Law no. 8 of 31 December 1989), authorised the operation of Solidaritatea, a trade union of Orthodox clergy and lay staff of the Archdiocese of Tomis (Constanța), and granted it legal personality.

47. In its constitution the Solidaritatea trade union stated that its aims were to strive for "a renewal of spiritual life and a restructuring of administrative activities ... in line with the new requirements of democratic life and full freedom of thought and action, and in accordance with the principles set out in the doctrines and regulations of the Romanian Orthodox Church". It was envisaged that the union would be able to apply to the courts to defend its members' interests, that it would assist in drawing up civil and ecclesiastical regulations with a view to protecting its members' rights and interests, and that its members would be represented by its president on all the Church's decision-making bodies.

48. In May 2012 the Archdiocese of Tomis sought a court order for the dissolution of the Solidaritatea trade union on the grounds that it had failed to observe its own constitution by not holding any general meetings, not

appointing any executive bodies and not carrying out its intended activities. The proceedings are still pending.

49. In a final judgment of 5 June 2007 the Hârlău Court of First Instance, under the Trade Unions Act (Law no. 54/2003), granted legal personality to the Sfântul Mare Mucenic Gheorghe trade union of clergy, monks and lay staff of the Romanian Orthodox Church.

50. In its constitution the Sfântul Mare Mucenic Gheorghe union set out the following aims:

- to ensure respect for the fundamental rights of its members to work, dignity, social protection, safety at work, rest, social insurance, unemployment benefits, pension entitlements and other entitlements laid down in the legislation in force;
- to provide each of its members with work corresponding to his professional training and skills;
- to ensure compliance with the statutory provisions concerning the duration of leave and days of rest;
- to promote initiative, competition and freedom of expression among its members;
- to ensure the implementation and strict observance of the statutory provisions concerning protection of employment and the rights deriving therefrom;
- to protect its president and representatives, both during and after their terms of office;
- to be present and represented on disciplinary bodies;
- to set up joint ecclesiastical committees;
- to be involved in the drafting or amendment of any Church internal regulations, in particular the new Statute;
- to be consulted on a mandatory basis in connection with decisions affecting its members;
- to negotiate employment contracts;
- to hold democratic elections for the nomination of Church representatives;
- to take legal action against any individuals or other entities, including the church authorities, responsible for administrative or regulatory measures adversely affecting its members' rights and interests; and
- to use petitions, demonstrations and strikes as means of defending its members' interests and protecting their dignity and fundamental rights.

51. In January 2011 the president of the union requested its dissolution, noting that there had been a considerable improvement in relations between its members and the church authorities. The proceedings are still pending.

52. To date, some 200 church associations and foundations recognised by the national courts are in existence, having received permission from bishops in accordance with the Church's Statute.

#### *7. Case-law of the domestic courts*

53. In a judgment of 19 September 2005 the High Court of Cassation and Justice held that the civil courts had jurisdiction to invalidate a priest's dismissal and to supervise the execution of the court decision ordering his reinstatement and the payment of his salary.

54. In a judgment of 4 February 2010 in a different case, the High Court upheld a judgment in which the Bucharest Court of Appeal had dismissed an action by an Orthodox priest against the refusal of the Labour Inspectorate to review the application of labour law by his employer (the diocese). It held that only the provisions of the relevant internal regulations were applicable in the case, that they prevailed over the general rules of the Labour Code in this context, and that the Labour Inspectorate did not have jurisdiction to review whether the diocese had complied with these rules.

55. In three decisions delivered on 10 June 2008, 3 July 2008 and 7 April 2011 the Constitutional Court acknowledged that the existence of internal disciplinary bodies within religious communities and the fact that their decisions could not be challenged in the civil courts amounted to a restriction of the right of access to a court, but held that the restriction was justified by the autonomous nature of religious communities. It noted in this connection that pursuant to Law no. 489/2006, the only cases which the ordinary courts had jurisdiction to hear in respect of members of the clergy were those concerning criminal offences.

## **B. International law**

### *1. Universal standards*

56. The relevant provisions of Convention no. 87 of the International Labour Organisation (ILO) on Freedom of Association and Protection of the Right to Organise (adopted in 1948 and ratified by Romania on 28 May 1957) read as follows:

#### **Article 2**

"Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."

#### **Article 3**

"1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

#### **Article 4**

"Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority."

#### **Article 7**

"The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof."

57. The relevant provisions of Recommendation no. 198 concerning the employment relationship, adopted by the ILO in 2006, read as follows:

"9. For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.

...

11. For the purpose of facilitating the determination of the existence of an employment relationship, Members should, within the framework of the national policy referred to in this Recommendation, consider the possibility of the following:

(a) allowing a broad range of means for determining the existence of an employment relationship;

(b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present; and

(c) determining, following prior consultations with the most representative organizations of employers and workers, that workers with certain characteristics, in general or in a particular sector, must be deemed to be either employed or self-employed.

...

13. Members should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include:

(a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work;

(b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements

such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker."

## 2. *European standards*

58. Romania ratified the revised European Social Charter on 7 May 1999. Article 5 of the Charter, concerning the right to organise, is worded as follows:

"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations."

59. Article 12 § 1 of the Charter of Fundamental Rights of the European Union reads as follows:

"Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests."

60. The relevant parts of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation read as follows:

"The Council of the European Union,

...

Whereas: ...

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No. 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

(5) It is important to respect such fundamental rights and freedoms. This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests.

...

(24) The European Union in its Declaration No. 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member

States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.

...

Has adopted this Directive:

...

#### Article 4

##### Occupational requirements

1. Member States may provide that a difference of treatment which is based on [religion or belief] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force ... or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. ...

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos."

61. In the practice of European States, relations between churches and the State are governed by a variety of constitutional models. In the majority of the Council of Europe's member States,<sup>1</sup> the law itself does not define the nature of the legal relationship between a religious community and its clergy. The religious community may conclude an employment contract with its ministers, but is not under any obligation to do so, and in most cases does not. However, even where there is no employment contract, members of the clergy are often entitled to welfare benefits under the same conditions as other beneficiaries of the social-security system. In a minority of States,<sup>2</sup> the relationship is governed by the applicable labour law, although members

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<sup>1</sup> Bosnia and Herzegovina, Estonia, Georgia, Hungary, Republic of Moldova, Montenegro, Ireland, "the former Yugoslav Republic of Macedonia", Latvia, Lithuania, Germany, Greece, Spain, Portugal, Italy, Poland, Slovenia, France and certain Swiss cantons.

<sup>2</sup> Finland, Bulgaria, Slovakia, Ukraine, Belgium, Austria, Russia, Turkey, Luxembourg, Sweden and certain Swiss cantons.



of the clergy are required to observe a heightened duty of loyalty towards the religious community that employs them. Lastly, in other States<sup>1</sup> the domestic courts determine on the basis of the individual circumstances whether or not the employment relationship can be classified as contractual.

With regard to the trade-union rights of members of the clergy, no States formally ban them from setting up trade unions, and in some States they are even expressly afforded this right. It should also be noted that, for instance, in Austria, Bulgaria, Finland, Turkey, France, the United Kingdom, Ireland and the Netherlands there are trade unions for ministers of religion, or associations that defend interests closely resembling those defended by workers' trade unions.

## THE LAW

### I. ANONYMOUS NATURE OF THE APPLICATION AND ALLEGED HINDRANCE OF THE RIGHT OF INDIVIDUAL PETITION

#### A. The parties' submissions

62. The applicant union submitted that as soon as steps had been taken to form a trade union, its members had come under intense pressure from the Church. This had continued after the application had been lodged with the Court and, as a result, several members had been forced to withdraw from the proceedings, while others had requested anonymity in order to be able to pursue the application.

63. It stated that the pressure had intensified after the delivery of the Chamber judgment, and in support of that assertion submitted a number of statements by Church leaders as reported in the press, together with a press release of February 2012 in which the Romanian Orthodox Patriarchate had criticised the judgment.

64. In view of the above considerations, it submitted that the State had failed to comply with its positive obligation to protect applicants to the Court from pressure, both from the State authorities and from others.

65. Accordingly, it asked the Grand Chamber to find a violation of Article 34 of the Convention.

66. The Government expressed doubts as to whether the application reflected a genuine intention on the part of the applicant union's members to apply to the Court. They argued that the identities and names of the individuals who had applied to the Court on the union's behalf had changed during the course of the proceedings before the Chamber and asked the

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<sup>1</sup> Belgium, the Netherlands, the United Kingdom.

Grand Chamber to establish the precise identity of those who had brought and pursued the application. Without raising a preliminary objection, they submitted that this question was important both for the merits of the case and for the issue of just satisfaction.

67. They maintained that only deliberate measures by the State could be held to constitute a hindrance of the right of individual application. Since, in their submission, the authorities could not be accused of any action or inaction that had intentionally endorsed or tolerated the Church's allegedly improper conduct in the present case, the State could not be said to have infringed the right of individual petition.

### **B. The Grand Chamber's assessment**

68. The Grand Chamber observes that although the respective positions of the Government and the applicant union differ, they both relate to the application of Article 34 of the Convention, taken alone or in conjunction with Article 35 § 2 (a). These provisions are worded as follows:

#### **Article 34**

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

#### **Article 35 § 2**

"The Court shall not deal with any application submitted under Article 34 that  
(a) is anonymous ..."

#### *1. Alleged anonymity of the application*

69. The Grand Chamber observes at the outset that the Government are estopped from raising this issue, given that they omitted to do so before the Chamber. In so far as they challenged the admissibility of the application on the grounds that certain members of the applicant union had wished to remain anonymous, it reiterates that a Government with doubts as to the authenticity of an application must inform the Court in good time, and that the Court alone is competent to determine whether an application satisfies the requirements of Articles 34 and 35 of the Convention (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 293, ECHR 2005-III).

70. It would also point out that the purpose of granting anonymity under Rule 47 § 3 to persons bringing a case before the Court is to protect applicants who consider that the disclosure of their identity might be harmful to them. In the absence of this protection, such applicants might be deterred from communicating freely with the Court. Furthermore, an

association that has been dissolved or refused registration is entitled to lodge an application, through its representatives, complaining about the dissolution or refusal (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 57, ECHR 2001-IX).

71. In the present case, the Court notes that the applicant union applied to it through its representatives, who instructed Mr I. Gruia to act on their behalf. They later retracted the statements sent to the Court by the Archdiocese of Craiova, in which they had indicated their intention to withdraw their application. They explained that the Archdiocese had compelled them to sign the statements. Since they had submitted factual and legal information enabling the Court to identify them and establish their links with the facts in issue and the complaint raised, both the President of the Chamber and, subsequently, the President of the Grand Chamber granted their request not to have their identity disclosed.

72. That being so, the Court considers that the application is not anonymous within the meaning of Article 35 § 2 of the Convention and that the intention of the applicant union's members to act on the union's behalf in the proceedings before it is not in doubt. Accordingly, even assuming that the Government are not estopped from raising the objection that the application is anonymous, the Court dismisses the objection.

## 2. *Alleged hindrance of the right of individual petition*

73. The Court reiterates that the undertaking not to hinder the effective exercise of the right of individual application precludes any interference with the individual's right to present and pursue a complaint before the Court effectively. It is of the utmost importance for the effective operation of the system of individual application instituted under Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. As the Court has noted in previous decisions, "pressure" includes not only direct coercion and flagrant acts of intimidation against actual or potential applicants, members of their families or their legal representatives, but also other improper indirect acts or contact designed to dissuade or discourage applicants from pursuing a Convention remedy (see, among other authorities, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005-I).

74. In the instant case, the Court observes that the applicant union alleged a violation of Article 34 of the Convention for the first time before the Grand Chamber. It further notes that the events complained of, including the request to withdraw the application lodged with the Court, took place before the delivery of the Chamber judgment (see paragraphs 23 and 24 above).

75. Having regard to the fact that the applicant union has been represented by a lawyer since the application was lodged and has not put forward any particular reasons that might have dispensed it from complaining to the Chamber of a violation of Article 34 of the Convention, the Grand Chamber considers that the union is estopped from raising this complaint before it.

76. In so far as the applicant union complained of events occurring after the case was referred to the Grand Chamber, in respect of which it would consequently not be estopped from alleging a violation of Article 34, the Court reiterates that the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention (see, *mutatis mutandis*, *Cyprus v. Turkey* [GC], no. 25781/94, § 81, ECHR 2001-IV).

77. However, in the instant case it observes that the applicant union has not substantiated its allegation that the pressure exerted on its members intensified after the delivery of the Chamber judgment to such an degree that the State should be held responsible for not taking action to stop such pressure.

78. In this connection, it notes that in support of its allegations the union referred solely to statements by the Orthodox Patriarchate and several members of the Church hierarchy, as reported in the press, criticising the Chamber judgment. However, these opinions do not appear to have been followed by any measures aimed at inducing members of the union to withdraw or amend the application before the Grand Chamber or to hinder in any other way the exercise of their right of individual petition.

79. In the Court's opinion, the facts of the case do not support the conclusion that the national authorities exerted pressure, or allowed pressure to be exerted, on the applicant union's members, or that they failed in any other way to comply with their obligation to secure the effective exercise of the right of individual application. They cannot be held responsible for the actions of the press or for statements made by individuals exercising their freedom of expression and not holding a position of public authority.

80. In these circumstances, the Court considers, firstly, that the applicant union is estopped from alleging a violation of Article 34 of the Convention in respect of events that took place before the delivery of the Chamber judgment and, secondly, that as regards the events occurring after that date, the respondent State has not breached its obligations under Article 34 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

81. The applicant union submitted that in refusing its application for registration, the Dolj County Court had infringed its right to organise as guaranteed by Article 11 of the Convention, which provides:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

### A. The Chamber judgment

82. In its judgment of 31 January 2012 the Chamber found a violation of Article 11 of the Convention. Observing that priests and lay staff carried out their duties within the Romanian Orthodox Church under employment contracts, that they received salaries funded mainly from the State budget and that they were covered by the general social-insurance scheme, it considered that a contractual employment relationship could not be exempted from all rules of civil law. It concluded that members of the clergy, and *a fortiori* lay employees of the Church, could not be excluded from the scope of Article 11.

83. Next, examining the refusal to register the applicant union in relation to the general principles of trade-union law, it accepted that the measure had been prescribed by domestic law (namely, the Trade Unions Act (Law no. 54/2003) and the Religious Freedom Act (Law no. 489/2006), as interpreted by the County Court in the light of the Statute of the Orthodox Church) and had pursued a legitimate aim (namely, the preservation of public order, encompassing the freedom and autonomy of religious communities) in that it had sought to prevent a disparity between the law and practice concerning the establishment of trade unions for Church employees.

84. It then observed that the County Court’s decision to refuse the applicant union’s registration had been mainly based on the need to protect the Orthodox Christian tradition, its founding tenets and the rules of canon law concerning decision-making. In that connection it held that the criteria defining a “pressing social need” had not been met in the instant case, since the County Court had not established that the applicant union’s programme, as set out in its constitution, or the positions adopted by its members were

incompatible with a "democratic society", let alone that they represented a threat to democracy.

85. Observing that the reasons given by the County Court to justify the refusal to register the applicant union had been of a purely religious nature, the Chamber further considered that that court had not had sufficient regard either to the interests of employees of the Romanian Orthodox Church – in particular, the existence of an employment contract between them and the Church – or to the distinction between members of the clergy and lay employees of the Church, or to the question whether the ecclesiastical rules prohibiting union membership were compatible with the domestic and international regulations enshrining workers' trade-union rights.

86. Lastly, noting that the right of Orthodox Church employees to join a trade union had already been recognised by the domestic courts in the case of other trade unions, the Chamber concluded that a measure as drastic as the refusal to register the applicant union had been disproportionate to the aim pursued and consequently unnecessary in a democratic society.

## **B. The parties' submissions**

### *1. The applicant union*

87. The applicant union submitted that priests and clerical staff of the Romanian Orthodox Church had a similar status to civil servants. Like civil servants, they were recruited by competitive examination. They were then appointed by the bishop by means of a decision setting out their rights and obligations. They took an oath upon their ordination and their salaries were set in the law governing the remuneration of all public servants and reduced by the same proportion in the event of an economic crisis. They paid contributions to the general social security scheme and were entitled to the full range of welfare benefits. Furthermore, similarly to universities, the Romanian Orthodox Church was allocated funds from the State budget to pay its employees' wages. Accordingly, the applicant union submitted that neither the Romanian Orthodox Church's practice of not signing employment contracts with its staff nor the fact that it paid part of their wages from its own funds could affect the actual nature of the relationship between the Church and its employees, since the relationship entailed all the aspects of an employment contract and was similar to that between civil servants and the institution employing them.

88. The applicant union alleged that, unlike other occupational groups which were likewise bound by specific duties of loyalty but had trade unions to defend their interests, employees of the Romanian Orthodox Church, numbering some 15,000, were deprived of any form of protection from potential abuses in relation to such matters as salaries or transfers.

89. It added that the interference with its members' freedom of association had not been prescribed by domestic law. In that connection it cited Articles 40, 53 and 73 of the Constitution, by which citizens were guaranteed the right to join together freely in forming political parties, trade unions, employers' associations or other kinds of association, a right that could be restricted only by an institutional Act. It submitted that it could be inferred from these provisions that there was no legislative instrument barring priests from forming a trade union, the refusal of its registration having been based solely on Article 123 § 8 of the Church's Statute; the mere fact that the Statute had been approved by the government did not give it the status of a domestic legislative instrument, let alone that of an institutional Act capable of restricting a constitutional freedom. Submitting that Article 123 § 8 of the Statute was at variance with the Constitution, the applicant union concluded that the decision to prohibit it was in breach of domestic law. The decision therefore had no legal basis and infringed Article 11 of the Convention.

90. The applicant union accepted that the measure in issue had pursued a legitimate aim, namely, protection of the Church's interests, but contended that the measure had not been necessary in a democratic society to preserve the Church's religious autonomy.

91. In its submission, where relations between the State and religious communities were concerned, a distinction needed to be made between a community's religious activities and its civil and commercial activities. Thus, while any State interference with religious activities should be strictly forbidden, the Church's civil and commercial activities were unconnected to religion or to the Church's spiritual mission and should therefore be governed by civil law. In that connection, the applicant union pointed out that it did not wish to alter either Christian dogma or the organisation of religious worship but that its sole aim was to fight for the protection of its members' statutory rights, including the right to receive the guaranteed legal wage and the right not to be wrongfully dismissed. It also asserted that its members had sought – and obtained – oral permission to form a trade union but that the archbishop had subsequently withdrawn his initial consent following opposition from the Holy Synod.

92. The applicant union accepted that some of the aims set out in its constitution might appear to conflict with the duties of priests, but contended that they had been "copied wholesale from the Trade Unions Act" and that they were also intended to protect the interests of the Church's lay employees, who were not bound by the same obligations as priests. It further submitted that in any event, any action it might have taken such as strikes or other similar activities would have been subject to review by the judicial authorities, which could impose sanctions up to and including dissolution. It added that even if priests did decide to go on strike or to organise other activities outside the remit of their ministry, they would

remain subject to the Church's disciplinary procedure and its Statute, which likewise provided for sanctions.

93. Lastly, the applicant union noted that two other trade unions had already been set up within the Church and that their recognition by the State had not affected its internal organisation or given rise to parallel rules of governance. It also submitted that trade unions for Church personnel operated freely in several other Council of Europe member States.

94. In conclusion, the applicant union contended that its prohibition, as a preventive measure based purely on assumptions made in the light of its constitution, had not been proportionate to the aim pursued and had amounted to a violation of Article 11 of the Convention.

## *2. The Government*

95. The Government did not raise any pleas of inadmissibility and accepted that the refusal to register the applicant union had constituted interference with its right to freedom of association. They further pointed out that there was no legal impediment preventing lay staff of the Romanian Orthodox Church from forming a trade union.

96. As regards members of the clergy, the Government argued that by virtue of the Statute of the Romanian Orthodox Church and the Religious Freedom Act, their relationship with the Church was a "freely accepted service and mission relationship" falling outside the sphere of labour law, and hence outside the scope of the Labour Code. They observed that priests performed their duties in accordance with a decision by the bishop setting out their rights and obligations, and a vow of faith and obedience which they took upon their ordination. They added that the employment contracts signed in 2004 by the Archdiocese of Craiova were the result of an erroneous interpretation of the law and had never been registered by the Labour Inspectorate, which had in fact confirmed that labour law was not applicable to the relationship between the Orthodox Church and its ecclesiastical staff. That position was shared by the High Court of Cassation and Justice and the Constitutional Court, which had both held that in accordance with the autonomy of religious denominations, the ordinary domestic courts did not have jurisdiction to review decisions by the ecclesiastical courts in relation to the provisions of the Labour Code.

97. The Government further asserted that the State did not provide remuneration for priests, its role in this respect being limited to granting financial assistance calculated on the basis of the Church's number of adherents and actual needs. It was entirely the Church's responsibility to redistribute the funds received from the State among its staff. Thus, the State made a total of 12,765 assistance payments to the Orthodox Church, the amounts of which varied between 163 and 364 euros, while the Church paid 1,005 priests and 1,408 lay employees entirely from its own funds. As regards the affiliation of priests and other Church employees to the State



social-insurance scheme, the Government submitted that this was the choice of the national Parliament, which enjoyed a wide margin of appreciation in such matters; however, their affiliation did not affect their status and did not make them State officials.

98. In the alternative, the Government pointed out that priests were responsible for the administration of their parishes and, as such, performed management functions; pursuant to the Trade Unions Act, this barred them from trade-union activities.

99. Having regard to the above considerations, the Government expressed concern at the idea that Article 11 could be deemed applicable to the present case, seeing that the provisions of labour law did not apply to the applicant union's members.

100. In any event, they submitted that the interference had been prescribed by law, had pursued a legitimate aim and was necessary in a democratic society.

101. In their submission, the legal basis for the measure in issue was Article 123 § 8 of the Church's Statute, by which the participation of members of the clergy in any form of association was subject to the archbishop's prior consent. That provision formed part of domestic law following the approval of the Statute by a government ordinance, and did not conflict with the Constitution, which, while guaranteeing freedom of association, including trade-union freedom, made it subject to the conditions provided for by law – the applicable law in the present case being the Statute of the Church. Furthermore, the fact that the Trade Unions Act did not explicitly ban priests from forming a trade union did not amount to tacit recognition of that right; instead, exercising its autonomy, the Church had decided that the activities of its staff should be governed by rules other than those of labour law.

102. As to the legitimate aim pursued by the interference, the Government called on the Grand Chamber to depart from the analysis made by the Chamber, which had found that the measure in question was aimed at preserving public order by protecting the freedom and autonomy of religious communities. They asserted that the sole aim of the interference had been to protect the rights and freedoms of others, namely those of the Romanian Orthodox Church. That being so, the specific reference to public order was immaterial to the present case.

103. As to whether the measure had been necessary and proportionate, the Government pointed out, firstly, that the ban on forming trade unions without the archbishop's consent concerned only members of the clergy and that the Church's lay staff remained free to join together in accordance with the conditions and criteria set forth in the Trade Unions Act.

104. The freedom of association of members of the clergy, meanwhile, was fully respected by the Romanian Orthodox Church, within which there

were several hundred associations and foundations, among them the Apostolia association in the Archdiocese of Craiova.

105. In the Government's submission, the requirement for the archbishop's permission to be obtained for any form of association involving members of the clergy was legitimate and reflected the principle of the Church's autonomy. The Government were surprised that in the present case the applicant union had not sought such permission and added that the ordinary courts could, in appropriate circumstances, have ruled that a denial of permission was wrongful.

106. The Government noted that on account of their status, priests belonging to the applicant union were bound by a heightened degree of loyalty towards the Orthodox Church. No right to dissent existed: disaffected priests could leave the Church at any time, but as long as they chose to remain, they were deemed to have freely consented to abide by its rules and to waive some of their rights.

107. As regards the possible effects of the establishment of a trade union on the Church's operational methods, the Government argued that the applicant union's constitution suggested that, should it actually be established, it would attempt to introduce a parallel set of rules to those of the Church. This was clearly apparent from a reading of the passages concerning the recruitment of staff, the promotion of initiative, competition and freedom of expression, the signing of collective agreements and employment contracts, observance of civil-law rules on working hours, representation on decision-making bodies or the right to strike. The Government therefore submitted that recognition of the applicant union would necessarily have led to the emergence of a system of joint management within the Romanian Orthodox Church; this would have been a source of conflict between the union and the Church hierarchy, requiring adjudication by the domestic authorities, in breach of the State's duty of neutrality and impartiality and the autonomy of religious denominations.

108. They explained that in the present case the State had been anxious to forestall any attempt at unionisation before the applicant union began to operate and that this approach had been justified by the fact that the union would have been able to make use of its rights under the Trade Unions Act as soon as it was registered, without any form of prior judicial supervision.

109. Lastly, the Government drew attention to the wide variety of rules governing the status of priests and their right to freedom of association in the Council of Europe's member States, and submitted that the lack of a European consensus in this area indicated that the national authorities should be left a wide margin of appreciation.

### C. The third parties' submissions

110. The third-party Governments and NGOs intervening in the proceedings all shared the respondent Government's position.

#### *1. The Greek Government*

111. The Greek Government submitted that in the event of a conflict between the rights protected by Articles 9 and 11 of the Convention, the Court should start by determining whether recognition of a right to freedom of association within a religious community infringed the right to autonomy of the community in question. In their view, the autonomy of religious communities should prevail and such communities should enjoy the right to determine their relations with their staff on the basis of their own internal regulations, even if these restricted or limited the exercise of certain rights.

112. The Greek Government contended that since priests performed an essentially religious function, the distinction between religious and non-religious activities was immaterial. Furthermore, the domestic courts were better placed than an international court to settle any disputes arising in this sphere.

#### *2. The Government of the Republic of Moldova*

113. The Government of the Republic of Moldova submitted that the Chamber had not struck a sufficient balance between the freedom of association claimed by the applicant union and the freedom of religion and right to autonomy of the Orthodox Church. They contended that Article 11 of the Convention could not be construed as imposing a positive obligation on the State to recognise a secular association within a religious community where such recognition would be at variance with the State's duty of denominational neutrality.

114. They further submitted that under Article 9 of the Convention, the members of a religious community should be regarded as having freely chosen, on joining the community, to give up some of the civil rights to which they might have laid claim under Article 11.

#### *3. The Polish Government*

115. The Polish Government submitted that the Chamber should have focused more on the special nature of the relationship between the Church and its clergy. The fact that the rights claimed by a group of clergymen were of an economic, social or cultural nature did not support the conclusion that recognition of their trade union would be unlikely to undermine the autonomous operation of the religious community in question.

116. They argued that it was in the first place for religious communities themselves to decide which activities were to be treated as part of religious

practice or as having an impact on their internal organisation or mission, and that to entrust this role to the domestic courts would be a source of conflict and would require the courts to settle religious matters, in breach of the autonomy of religious denominations and the State's duty of neutrality.

117. Lastly, they submitted that, on account of their training and their decision to join the clergy, priests had a heightened duty of loyalty towards the Church and should be aware of the requirements of their mission, which limited the exercise of certain rights.

#### *4. The Georgian Government*

118. The Georgian Government pointed out that Church-State relations were dealt with differently from one country to another and that there was no European consensus in this area.

119. Accordingly, they submitted that the Contracting States and their courts should enjoy a wide margin of appreciation in safeguarding the autonomy of religious communities from any threats. The State should refrain from encouraging any form of dissent within such communities.

#### *5. The Archdiocese of Craiova*

120. The Archdiocese of Craiova submitted that in the Romanian Orthodox Church, the canonical figure of the priest was directly linked to that of the bishop. The relationship between the bishop and his clergy was founded on mutual trust and the unity of the Church's mission, and it would be inconceivable in canon law for there to be any antagonism between the Church authorities, as represented by the Holy Synod, and bishops and members of the clergy. The latter played a part in the democratic exercise of ecclesiastical authority and were able to rely on the Church's internal rules to defend themselves against any abuse of authority. In addition, any refusal by the archbishop to grant permission to form an association could be referred to the Holy Synod.

121. In conclusion, the Archdiocese submitted that the formation of a trade union of priests and lay staff would upset the existing relationship between the Church and the clergy and would pose a threat to public order and social harmony.

#### *6. The Moscow Patriarchate*

122. The Moscow Patriarchate emphasised the special nature of the hierarchical service relationships within religious communities and the heightened degree of loyalty that such relationships entail. The State should guarantee religious communities, by virtue of their autonomy, the exclusive competence to determine their own structure and internal operating rules.

123. The fundamental element of the service relationship for priests was the performance of religious services, and this relationship could not be

reduced in an abstract, artificial manner to an employment relationship subject to the rules of civil law. The Moscow Patriarchate argued that it was impossible in practice to extend the scope of the ordinary legislation to religious communities, and such an approach would cause intractable problems for such communities, including the Russian Orthodox Church.

7. *The NGO European Centre for Law and Justice (ECLJ)*

124. The ECLJ submitted that priests were bound by a heightened duty of loyalty towards the Church. This duty had been acknowledged both in Council Directive 2000/78/EC of 27 November 2000 and in the Court's case-law.

125. The ECLJ added that priests fell outside the scope of the right to organise as they were not "employees" but had an exclusively religious vocation and their relationship with the Church was not based on an employment contract.

126. Lastly, it submitted that where, as in the present case, the facts in dispute were of a religious nature, the interference in issue could not be reviewed by means of a proportionality test weighing up the interests of religious communities against the interests which individuals could claim under Articles 8 to 12 of the Convention, since these Articles protected rights which the individuals concerned had freely chosen not to exercise.

8. *The NGOs Becket Fund and International Center for Law and Religion Studies*

127. These organisations referred to the case-law of the United States Supreme Court concerning the autonomy of religious institutions. In the case of *National Labor Relations Board v. Catholic Bishop of Chicago* (440 US 490 (1979)) the Supreme Court had held that the domestic authorities could not disregard the bishop's will by recognising a trade union for teachers from Catholic schools, observing that such recognition would interfere with the autonomous operation of religious institutions. In *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al.* (no. 10-553 (2012)), the Supreme Court had applied the "ministerial exception" doctrine, holding that the provisions of labour law were not applicable to employees of religious institutions, whether members of the clergy or the laity.

128. The two organisations contended that the position of the United States Supreme Court was consistent with that of the European Court as regards protection of the autonomy of religious communities in their relations with the clergy. The Chamber had thus erred in departing from that position, and this error would have a negative impact on religious autonomy in that the State might be required, should the Chamber judgment be upheld, to adjudicate in disputes between religious communities and their members.

#### **D. The Grand Chamber's assessment**

129. The Government questioned whether Article 11 of the Convention was applicable to members of the clergy. The Grand Chamber considers that this question forms part of the examination of the merits of the case and will therefore examine it below.

##### *1. General principles*

###### **(a) The right to form trade unions**

130. The Court observes at the outset, having regard to developments in international labour law, that trade-union freedom is an essential element of social dialogue between workers and employers, and hence an important tool in achieving social justice and harmony.

131. It further reiterates that Article 11 of the Convention presents trade-union freedom as a special aspect of freedom of association and that, although the essential object of that Article is to protect the individual against arbitrary interference by public authorities with the exercise of the rights it protects, there may in addition be positive obligations on the State to secure the effective enjoyment of such rights (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 109-10, ECHR 2008).

132. The boundaries between the State's positive and negative obligations under Article 11 of the Convention do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analysed in terms of a positive duty on the State or in terms of interference by the public authorities which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole.

133. In view of the sensitive character of the social and political issues involved in achieving a proper balance between the respective interests of labour and management, and given the high degree of divergence between the domestic systems in this field, the Contracting States enjoy a wide margin of appreciation as to how trade-union freedom and protection of the occupational interests of union members may be secured (see *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, § 58, ECHR 2006-I).

134. Article 11 of the Convention affords members of a trade union the right for their union to be heard with a view to protecting their interests, but does not guarantee them any particular treatment by the State. What the Convention requires is that under national law trade unions should be enabled, in conditions not at variance with Article 11, to strive for the protection of their members' interests (see *National Union of Belgian Police v. Belgium*, 27 October 1975, §§ 38-39, Series A no. 19, and *Swedish*

*Engine Drivers' Union v. Sweden*, 6 February 1976, §§ 39-40, Series A no. 20).

135. Through its case-law, the Court has built up a non-exhaustive list of the constituent elements of the right to organise, including the right to form or join a trade union, the prohibition of closed-shop agreements, and the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members. It recently held, having regard to developments in labour relations, that the right to bargain collectively with the employer had in principle, except in very specific cases, become one of the essential elements of the right to form and join trade unions for the protection of one's interests (see *Demir and Baykara*, cited above, §§ 145 and 154).

**(b) Autonomy of religious organisations**

136. The Court reiterates that religious communities traditionally and universally exist in the form of organised structures. Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associations against unjustified State interference. Seen from this perspective, the right of believers to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of these communities as such but also the effective enjoyment of the right to freedom of religion by all their active members. Were the organisational life of the community not protected by Article 9, all other aspects of the individual's freedom of religion would become vulnerable (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI; *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 118, ECHR 2001-XII; and *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, nos. 412/03 and 35677/04, § 103, 22 January 2009).

137. In accordance with the principle of autonomy, the State is prohibited from obliging a religious community to admit new members or to exclude existing ones. Similarly, Article 9 of the Convention does not guarantee any right to dissent within a religious body; in the event of a disagreement over matters of doctrine or organisation between a religious community and one of its members, the individual's freedom of religion is exercised through his freedom to leave the community (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 80, 15 September 2009).

138. Lastly, where questions concerning the relationship between the State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body

must be given special importance (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 109, ECHR 2005-XI). This will be the case in particular where practice in European States is characterised by a wide variety of constitutional models governing relations between the State and religious denominations.

## 2. *Application of the above principles in the present case*

139. The Court will ascertain whether, in view of their status as members of the clergy, the applicant union's members are entitled to rely on Article 11 of the Convention and, if so, whether the refusal to register the union impaired the very essence of their freedom of association.

### (a) **Applicability of Article 11 to the facts of the case**

140. The question whether the applicant union's members were entitled to form the union raises the issue of whether Article 11 was applicable to them. On this point, the Grand Chamber does not share the Government's view that members of the clergy must be excluded from the protection afforded by Article 11 of the Convention on the ground that they perform their duties under the authority of the bishop, and hence outside the scope of the domestic rules of labour law.

141. It is not the Court's task to settle the dispute between the union's members and the Church hierarchy regarding the precise nature of the duties they perform. The only question arising here is whether such duties, notwithstanding any special features they may entail, amount to an employment relationship rendering applicable the right to form a trade union within the meaning of Article 11.

142. In addressing this question, the Grand Chamber will apply the criteria laid down in the relevant international instruments (see, *mutatis mutandis*, *Demir and Baykara*, cited above, § 85). In this connection, it notes that in Recommendation no. 198 concerning the employment relationship (see paragraph 57 above), the International Labour Organisation (ILO) considers that the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterised in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties. In addition, the ILO's Convention no. 87 (see paragraph 56 above), which is the principal international legal instrument guaranteeing the right to organise, provides in Article 2 that "workers and employers, without distinction whatsoever" have the right to establish organisations of their own choosing. Lastly, although Council Directive 2000/78/EC (see paragraph 60 above) accepts the existence of a heightened degree of loyalty on account of the employer's ethos, it specifies that this cannot prejudice freedom of association, in particular the right to establish unions.



143. Having regard to the above considerations, the Court observes that the duties performed by the members of the trade union in question entail many of the characteristic features of an employment relationship. For example, they discharge their activities on the basis of a decision by the bishop appointing them and setting out their rights and obligations. Under the bishop's leadership and supervision, they carry out the tasks assigned to them; besides performing liturgical rites and maintaining contact with parishioners, these tasks include teaching and the management of parish assets; members of the clergy are also responsible for the sale of liturgical items (see paragraph 44 above). In addition, domestic law provides for a specific number of posts for members of the clergy and laity which are largely funded from the State and local authority budgets, the post-holders' wages being set with reference to the salaries of Ministry of Education employees (see paragraphs 30 et seq. above). The Romanian Orthodox Church pays employer's contributions on the wages paid to its clergy, and priests pay income tax, contribute to the national social security scheme and are entitled to all the welfare benefits available to ordinary employees, such as health insurance, a pension on reaching the statutory retirement age, or unemployment insurance.

144. Admittedly, as the Government pointed out, a particular feature of the work of members of the clergy is that it also pursues a spiritual purpose and is carried out within a church enjoying a certain degree of autonomy. Accordingly, members of the clergy assume obligations of a special nature in that they are bound by a heightened duty of loyalty, itself based on a personal, and in principle irrevocable, undertaking by each clergyman. It may therefore be a delicate task to make a precise distinction between the strictly religious activities of members of the clergy and their activities of a more financial nature.

145. However, the question to be determined is rather whether such special features are sufficient to remove the relationship between members of the clergy and their church from the ambit of Article 11. In this connection, the Court reiterates that paragraph 1 of Article 11 presents trade-union freedom as one form or a special aspect of freedom of association and that paragraph 2 does not exclude any occupational group from the scope of that Article. At most the national authorities are entitled to impose "lawful restrictions" on certain of their employees in accordance with Article 11 § 2 (see *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, §§ 28-29, ECHR 2006-II). Moreover, other occupational groups, such as the police or the civil service, are likewise subject to particular constraints and special duties of loyalty without their members' right to organise being called into question (see, for example, *National Union of Belgian Police*, cited above, § 40, and *Demir and Baykara*, cited above, § 107).

146. Furthermore, even assuming that members of the Romanian Orthodox clergy may waive their rights under Article 11 of the Convention,

the Court observes that there is no indication in the present case that the members of the applicant union agreed to do so on taking up their duties.

147. The Court further notes that the domestic courts have already explicitly recognised the right of members of the clergy and lay employees of the Romanian Orthodox Church to form a trade union (see paragraphs 46 and 49 above).

148. Having regard to all the above factors, the Court considers that, notwithstanding their special circumstances, members of the clergy fulfil their mission in the context of an employment relationship falling within the scope of Article 11 of the Convention. Article 11 is therefore applicable to the facts of the case.

149. The Grand Chamber agrees with the parties that the refusal to register the applicant union amounted to interference by the respondent State with the exercise of the rights enshrined in Article 11 of the Convention.

150. Such interference will not be compatible with paragraph 2 of Article 11 unless it was "prescribed by law", pursued one or more legitimate aims and was "necessary in a democratic society" to achieve those aims.

**(b) Whether the interference was "prescribed by law" and pursued one or more legitimate aims**

151. The parties agreed that the interference in issue had been based on the provisions of the Statute of the Romanian Orthodox Church. However, they differed as to whether it had been "prescribed by law".

152. The applicant union submitted that the interference had had no legal basis in domestic law since the provisions of the Church's Statute, not ranking as an institutional Act, could not override the provisions of the Constitution guaranteeing trade-union freedom. The Government disputed that argument, submitting that as the Statute had been approved by a government ordinance, it formed part of domestic law.

153. The Court reiterates its settled case-law to the effect that the expression "prescribed by law" not only requires that the impugned measures should have some basis in domestic law, but also refers to the quality of the law in question, which must be sufficiently accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). It further reiterates that the phrase "prescribed by law" refers in the first place to national law and that it is not, in principle, for the Court to examine the validity of "secondary legislation", that being primarily a matter for the national courts (see *Campbell v. the United Kingdom*, 25 March 1992, § 37, Series A no. 233).

154. In the present case, it observes that neither the Constitution nor the institutional Acts on trade unions and religious freedom, nor indeed the Statute of the Church, expressly prohibit members of the clergy or lay staff of the Church from forming trade unions. The domestic courts have inferred

such a prohibition from the provisions of the Church's Statute by which the establishment of Church associations and foundations is the prerogative of the Holy Synod and the archbishop's permission is required for members of the clergy to take part in any form of association whatsoever.

155. The Court notes that the foreseeability and accessibility of the above-mentioned provisions are not in issue here. It has not been disputed that the applicant union's members were aware of the relevant provisions of the Statute, or that in the absence of permission from the archbishop it was only to be expected that the Church would oppose their request for registration of the union. Indeed, they maintained that they had sought the archbishop's permission, which had been refused following intervention by the Holy Synod.

156. As to the applicant union's main argument, namely that although the Church's Statute had been approved by the Government, its provisions could not override those of the Constitution, the Grand Chamber considers that this amounts to challenging the validity of domestic legislation on the grounds that the provisions in issue are unconstitutional and disregard the hierarchy of norms. However, it is not for the Court to examine this argument, which concerns the validity of a form of "secondary legislation". The interpretation of the Contracting Parties' domestic law is primarily a matter for the national courts (see, among other authorities, *Rekvényi v. Hungary* [GC], no. 25390/94, § 35, ECHR 1999-III). In this connection, it must be pointed out that the County Court, sitting as the court of final instance, confined itself to a general observation that under the Trade Unions Act, internal regulations could not contain any provisions that were in breach of the Constitution or other laws. Unlike the Court of First Instance, it did not examine the specific issue of whether the prohibition on forming a trade union without the archbishop's permission was compatible with the provisions of the Constitution. However, the Court considers that since the County Court relied on the Church's Statute in its judgment, it implicitly took the view that the provisions of the Statute were not unconstitutional.

157. Accordingly, the Court is prepared to accept, as the national courts did, that the interference complained of had a legal basis in the relevant provisions of the Statute of the Romanian Orthodox Church and that these provisions satisfied the "lawfulness" requirements established in its case-law (see, *mutatis mutandis*, *Miroľubovs and Others*, cited above, § 78).

158. Lastly, the Grand Chamber agrees with the parties that the interference pursued a legitimate aim under paragraph 2 of Article 11, namely the protection of the rights of others, and specifically those of the Romanian Orthodox Church. Unlike the Chamber, it can see no reason to take into account the additional aim of preventing disorder.

**(c) As to whether the interference was "necessary in a democratic society"**

159. In the Court's opinion, it is the domestic courts' task to ensure that both freedom of association and the autonomy of religious communities can be observed within such communities in accordance with the applicable law, including the Convention. Where interferences with the right to freedom of association are concerned, it follows from Article 9 of the Convention that religious communities are entitled to their own opinion on any collective activities of their members that might undermine their autonomy and that this opinion must in principle be respected by the national authorities. However, a mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to render any interference with its members' trade-union rights compatible with the requirements of Article 11 of the Convention. It must also show, in the light of the circumstances of the individual case, that the risk alleged is real and substantial and that the impugned interference with freedom of association does not go beyond what is necessary to eliminate that risk and does not serve any other purpose unrelated to the exercise of the religious community's autonomy. The national courts must ensure that these conditions are satisfied, by conducting an in-depth examination of the circumstances of the case and a thorough balancing exercise between the competing interests at stake (see, *mutatis mutandis*, *Schüth v. Germany*, no. 1620/03, § 67, ECHR 2010, and *Siebenhaar v. Germany*, no. 18136/02, § 45, 3 February 2011).

160. While the State generally enjoys a wide margin of appreciation in cases such as the present one, where a balance has to be struck between competing private interests or different Convention rights (see, *mutatis mutandis*, *Evans v. the United Kingdom* [GC], no. 6339/05, § 77, ECHR 2007-I), the outcome of the application should not, in principle, vary according to whether it was lodged with the Court under Article 11 of the Convention, by the person whose freedom of association was restricted, or under Articles 9 and 11, by the religious community claiming that its right to autonomy was infringed.

161. The central issue in the present case is the non-recognition of the applicant union. In the proceedings before the courts with jurisdiction to examine the union's application for registration, the Archdiocese, which was opposed to its recognition, maintained that the aims set out in the union's constitution were incompatible with the duties accepted by priests by virtue of their ministry and their undertaking towards the archbishop. It asserted that the emergence within the structure of the Church of a new body of this kind would seriously imperil the freedom of religious denominations to organise themselves in accordance with their own traditions, and that the establishment of the trade union would therefore be likely to undermine the Church's traditional hierarchical structure; for these

reasons, it argued that it was necessary to limit the trade-union freedom claimed by the applicant union.

162. Having regard to the various arguments put forward before the domestic courts by the representatives of the Archdiocese of Craiova, the Court considers that it was reasonable for the County Court to take the view that a decision to allow the registration of the applicant union would create a real risk to the autonomy of the religious community in question.

163. In this connection, the Court observes that in Romania, all religious denominations are entitled to adopt their own internal regulations and are thus free to make their own decisions concerning their operations, recruitment of staff and relations with their clergy (see paragraph 29 above). The principle of the autonomy of religious communities is the cornerstone of relations between the Romanian State and the religious communities recognised within its territory, including the Romanian Orthodox Church. As the Government indicated, members of the Romanian Orthodox clergy, and hence the priests belonging to the applicant union, perform their duties by virtue of their ministry, their undertaking towards the bishop and the decision issued by the latter; the Romanian Orthodox Church has chosen not to incorporate into its Statute the labour-law provisions which are relevant in this regard, a choice that has been approved by a government ordinance in accordance with the principle of the autonomy of religious communities.

164. 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 Court does not consider that the judicial decision refusing to register the union with a view to respecting the autonomy of religious denominations was unreasonable, particularly in view of the State's role in preserving such autonomy.

165. In this connection, the Court observes that it has frequently emphasised the State's role as the neutral and impartial organiser of the practice of religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society, particularly between opposing groups (see, among other authorities, *Hasan and Chaush*, cited above, § 78, and *Leyla Şahin*, cited above, § 107). It can only confirm this position in the present case. Respect for the autonomy of religious communities recognised by the State implies, in particular, that the State should accept the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them that might pose a threat to their cohesion, image or unity. It is therefore not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that exist or may emerge within them.

166. Having regard to all the information in its possession, the Court shares the Government's view that in refusing to register the applicant union, the State was simply declining 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. It remains to be determined whether the examination carried out by the County Court in refusing the union's application satisfied the conditions for ensuring that the refusal of its registration was necessary in a democratic society (see paragraph 159 above).

167. The majority of the Chamber answered this question in the negative. They held that the County Court had not taken sufficient account of all the relevant arguments, having justified its refusal to register the trade union on purely religious grounds based on the provisions of the Church's Statute (see paragraphs 77 et seq. of the Chamber judgment).

168. The Grand Chamber does not agree with that conclusion. It observes that the County Court 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. It considers that by taking this approach, the County Court was simply applying the principle of the autonomy of religious communities; its refusal of the applicant union's registration 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 Statute.

169. Furthermore, the applicant union did not put forward any reasons to justify its failure to request permission formally from the archbishop. Nevertheless, the national courts compensated for this omission by obtaining the opinion of the Archdiocese of Craiova and examining the reasons it gave. The County Court concluded, endorsing the reasons put forward by the Archdiocese of Craiova, 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 thus confirmed that the risk alleged by the Church authorities was plausible and substantial, that the reasons they 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.

170. More generally, the Court observes that the Statute of the Romanian Orthodox Church does not provide for an absolute ban on members of its clergy forming trade unions to protect their legitimate rights

and interests. Accordingly, there is nothing to stop the applicant union's members from availing themselves of their right under Article 11 of the Convention by forming an association of this kind that pursues aims compatible with the Church's Statute and does not call into question the Church's traditional hierarchical structure and decision-making procedures. The Court notes that the applicant union's members are also free to join any of the associations currently existing within the Romanian Orthodox Church which have been authorised by the national courts and operate in accordance with the requirements of the Church's Statute (see paragraph 52 above).

171. Lastly, the Court takes 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 (see paragraph 61 above), it considers that the State enjoys a wider margin of appreciation in this sphere, encompassing the right to decide whether or not to recognise trade unions that operate within religious communities and pursue aims that might hinder the exercise of such communities' autonomy.

172. In conclusion, regard being had to the reasons set out in its judgment, the County Court's refusal to register the applicant union did not overstep the margin of appreciation afforded to the national authorities in this sphere, and accordingly was not disproportionate.

173. There has therefore been no violation of Article 11 of the Convention.

#### FOR THESE REASONS, THE COURT

1. *Holds*, unanimously, that the Government are estopped from raising the issue of the anonymity of the application;
2. *Holds*, unanimously, that the applicant union is estopped from alleging a violation of Article 34 of the Convention on account of events that took place before the delivery of the Chamber judgment and that, as regards events occurring after that date, the respondent State has not breached its obligations under Article 34 of the Convention;
3. *Holds*, by eleven votes to six, that there has been no violation of Article 11 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 July 2013.

Michael O'Boyle  
Deputy Registrar

Dean Spielmann  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Wojtyczek;
- (b) joint partly dissenting opinion of Judges Spielmann, Villiger, López Guerra, Bianku, Møse and Jäderblom.

D.S.  
M.O'B.



## CONCURRING OPINION OF JUDGE WOJTYCZEK

*(Translation)*

1. I fully agree with the majority’s conclusion that there has been no violation of the Convention in the present case. However, I do not share all the opinions expressed in the reasoning of the judgment. My doubts concern in particular the applicability to members of the clergy of trade-union freedom as defined in Article 11 of the Convention.

2. In the present case, three important principles relating to the interpretation of the Convention need to be emphasised.

Firstly, the interpretation of a provision of this international treaty is based on the principle of its unity. Accordingly, any Article of the Convention must be interpreted in the light of all the provisions of the Convention and the Protocols thereto that have been ratified by all member States of the Council of Europe. While such an approach will not eliminate all conflicts between rights in concrete situations, it will nevertheless reduce their number.

Secondly, as the majority rightly note, the models governing religious denominations vary greatly within the High Contracting Parties. Such diversity is an important argument in favour of allowing States a wide margin of appreciation in this sphere. Furthermore, in defining the extent of this margin, regard should be had to religious diversity in Europe. Religious pluralism is reflected in particular through the varying definitions of the duties of a minister of religion in different faiths.

Thirdly, according to the Preamble to the Convention, fundamental freedoms are best maintained by an “effective political democracy”. In addition, any restrictions on the various freedoms safeguarded by the Convention must be “necessary in a democratic society”. The interpretation of the Convention must therefore have due regard for the democratic ideal. Among the different characteristics of a democratic State, the principle of State subsidiarity should not be overlooked. A democratic society will flourish in a subsidiary State which observes the autonomy of the various communities of which it is made up. Such legitimate autonomy may be reflected, for example, in self-regulation by means of extra-legal rules of conduct produced or accepted by different social groups.

3. Under Article 11 § 1 of the Convention, everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. It is not in doubt that members of the clergy are entitled to freedom of peaceful assembly and freedom of association in general. The question arising is that of the personal scope of the right to form or join trade unions.

Trade-union freedom is a fundamental freedom safeguarded by the Convention. Trade unions are associations formed with a view to protecting the rights and interests of workers and employees in their dealings first and foremost with their employers and also with the public authorities. While Article 11 of the Convention does not explicitly exclude any particular occupational group, it is clear that trade-union freedom, as enshrined in that Article, applies to all those who carry on a gainful occupation involving a relationship of subordination *vis-à-vis* the person they are working for.

4. Article 9 § 1 of the Convention provides that everyone has the right to freedom of thought, conscience and religion. Freedom of religion has a collective dimension and, among other things, presupposes the autonomy of religious denominations. This autonomy includes in particular the freedom of each religious community to define its internal structure, the duties of members of the clergy and their status within the community. Any restriction of the autonomy of religious communities must be justified by the need to implement the values safeguarded by the Convention. The Romanian Orthodox Church, like other denominations, enjoys a substantial degree of autonomy, which is protected by the Convention.

5. Trade-union freedom, as safeguarded by Article 11 of the Convention, must be interpreted in the light of Article 9 in particular. The mission pursued by members of the clergy has a spiritual dimension, which is defined by the doctrine of each different religion. While this definition varies considerably from one religion to another, it is nevertheless necessary to take it into account in analysing the legal bond between members of the clergy and their religious community. As the majority note, this bond results from a personal undertaking by members of the clergy. It should be added that the undertaking in question is given freely and, by its nature and depth, goes beyond any professional undertaking arising from a relationship governed by labour law. Furthermore, when asking the religious community to entrust him with the mission of a member of the clergy, the person concerned freely undertakes to abide by the internal regulations issued by the community. Thus, the ecclesiastical members of the applicant union freely undertook, among other things, not to form a trade union without the blessing of their bishop. Admittedly, as the majority note, the undertaking given by a member of the clergy is in principle supposed to be irrevocable, but everyone nevertheless retains freedom of choice and, in practice, may decide unilaterally to relinquish his duties, even if this means breaching the rules of religious law.

6. The majority have examined the special nature of the legal bond between members of the clergy and their church in the light of the various criteria for establishing the existence of an employment relationship. In so doing, they have rightly noted that the work done by members of the clergy has a number of special features.

It should be noted that an employment relationship is both reciprocal and economic in nature: the remuneration paid by the employer serves as consideration for the economic resources generated by the employee.

An analysis of the work done by members of the clergy must take into account the spiritual dimension of their mission. The value of their work does not lend itself to economic assessment. Moreover, whereas the main purpose of engaging in gainful employment is to secure income, the mission of a member of the clergy is of a different nature. It should be noted in this connection that while the State funds the salaries of members of the clergy in Romania and a number of other countries, the same duties are carried out in other European countries without any remuneration, whether from the State or the religious community. In many monastic communities, members take a vow of poverty. The legal relationship between a member of the clergy and the religious community is not of a reciprocal nature.

In this context it is difficult to treat the very specific mission of a member of the clergy as an occupation carried on for the benefit and on behalf of another individual or entity. The fact that religious communities in some States, for various reasons, apply certain provisions of labour law to their relations with members of the clergy does not erase this fundamental distinction.

It should also be noted that social security systems may extend to different groups of people who are not engaged in gainful employment. The fact that a person is covered by a social security system does not form a basis for concluding that the person has entered into a legal relationship governed by labour law.

7. In view of the specific nature of the mission undertaken by members of the clergy, it is difficult to conclude that the part of Article 11 of the Convention relating to trade-union freedom is applicable in the present case. The application of the provisions of labour law to the relationship between a religious community and its clergy in certain States does not result from an obligation under the Convention.

JOINT PARTLY DISSENTING OPINION OF JUDGES  
SPIELMANN, VILLIGER, LÓPEZ GUERRA, BIANKU,  
MØSE AND JÄDERBLOM

1. We are not in disagreement with the Grand Chamber's findings acknowledging that members of the Romanian Orthodox clergy fulfil their mission in the context of an employment relationship within the Church and that, as a consequence, (a) the Article 11 guarantees concerning the right to form and to join trade unions for the defence of employees' interests are applicable to this case, and (b) the Romanian courts' refusal to register the applicant union therefore constitutes an interference in the exercise of that right (see paragraphs 149-50 of the judgment).

2. However, in its judgment the Grand Chamber did not arrive at the conclusion that should have been drawn in the circumstances of the present case from the above-mentioned premises: that the Romanian courts' refusal to register the applicant union constituted a violation of its right to freedom of association under Article 11 of the Convention.

3. As an essential element of social dialogue between workers and employers, freedom to join trade unions is recognised in the Convention as a special aspect of freedom of association that must be protected against arbitrary interference from public authorities. According to the Court's case-law, the exceptions provided for in Article 11 § 2 must be strictly construed. Only convincing and compelling reasons can justify restricting freedom of association (see *Demir and Baykara v. Turkey*, no. 34503/97, §§ 96 et seq., ECHR 2008). This right certainly includes the right to form trade unions. In this connection it should be noted that Article 7 of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise provides that the acquisition of legal personality by workers' organisations cannot be subject to conditions that would undermine that right.

4. In this case, the Dolj County Court refused the applicant union's application for registration in very general and succinct terms. In doing so it overturned a prior judgment of the Craiova Court of First Instance granting the union's application for registration in the register of trade unions, which had been supported by the public prosecutor (see paragraphs 12 and 15 of the judgment). The County Court thus endorsed the position of the appellant, the Archdiocese of Craiova, based on the absence of permission from the bishop to form the trade union and the freedom of religious denominations to organise themselves (see paragraph 18).

5. In their observations before the Grand Chamber, the Government alleged that the County Court's decision was based on existing law, pursued a legitimate aim (preserving the autonomy of religious communities) and was proportionate and necessary in a democratic society. We can accept, as the majority of the Grand Chamber did, that the County Court's decision was based on existing law and pursued a legitimate aim. We do not agree,

however, with the assertion that its decision was a proportionate or necessary measure for preserving the autonomy of the Romanian Orthodox Church. In the circumstances of the case, the County Court, by unreservedly adopting the Archdiocese's position, did not take into account the competing interests and did not perform a balancing exercise to assess the proportionality of the adopted measure in relation to the applicant union's rights. We consider that such an exercise would have concluded that the autonomy of the Romanian Orthodox Church and its freedom from any external or internal interference would not have been jeopardised by the recognition of the applicant union, with respect to either its doctrine (principles and beliefs) or its organisational operations.

6. Concerning the Church's autonomy in establishing its own doctrine, the applicant union's constitution explicitly specified that it intended to fully observe and apply ecclesiastical rules, including Church statutes and canons. Moreover, neither the applicant union's constitution nor its members' statements contain any criticism of the Church or of the Orthodox faith. The applicant union's demands were exclusively limited to protecting its members' professional, economic, social and cultural rights and interests.

7. Concerning the Church's autonomy with respect to its internal operations, the Government and the intervening third parties maintained that the union's activities would negatively affect the institutional autonomy of the Church by creating a parallel authority within the Romanian Orthodox organisation. However, the union's programme clearly indicates that its sole purpose would have been to defend the interests of its members, proposing a series of measures in that regard and not claiming any decision-making powers within the Church. The programme sought to represent the union within certain Church bodies. And the union's proclaimed objectives were not to replace Church authorities with union ones, but rather to present and defend proposals before those authorities on behalf of union members, on no account assuming Church functions.

8. The Government also claimed that the union's activities might disrupt Church operations, citing possible strikes as an example. But this is a different question from the Romanian authorities' registration of the union, since it addresses the union's possible future conduct. Indeed, this argument, which did not form part of the national courts' assessment of the applicant union's application for registration, is highly speculative. The drastic measure of refusing to register a trade union solely on the basis of part of its programme can only be justified in cases of serious threats or if the programme's goals are incompatible with democratic principles or are manifestly unlawful (see, *mutatis mutandis*, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 58, *Reports of Judgments and Decisions* 1998-I; *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 107 et seq., ECHR 2003-II; and *Gorzelik and Others v. Poland* [GC], no.

44158/98, § 103, ECHR 2004-I). Furthermore, even after registration, the union's members would still have remained within the administrative structure of the Church and subject to its internal regulations, which imposed special duties on them as members of the clergy. Nor would the Church or national authorities have been powerless to deal with any activities of the union contravening those special duties. Measures compatible with Article 11 § 2 of the Convention could certainly have been applied. Specifically, to address the perceived dangers alluded to by the Romanian Government regarding the applicant union's potential right to strike – although this is certainly one of the most important union rights – the Grand Chamber judgment should have taken into account two aspects of the Court's case-law: (a) the right to strike is not an absolute right (see *Schmidt and Dahlström v. Sweden*, 6 February 1976, § 36, Series A no. 21, and *Dilek and Others v. Turkey*, nos. 74611/01, 26876/02 and 27628/02, § 68, 17 July 2007), and (b) limitations on the right to strike may under certain circumstances be permissible in a democratic society (see *UNISON v. the United Kingdom* (dec.) no. 53574/99, ECHR 2002-I; *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), no. 38190/97, ECHR 2002-VI; and *Enerji Yapı-Yol Sen v. Turkey*, no. 68959/01, § 32, 21 April 2009).

9. There are additional reasons for discarding the argument that registering the applicant union would in any way have compromised the Church's activities or threatened its autonomy. First and foremost is the fact that the Romanian courts had already recognised the right of Church employees, both lay and clergy, to form trade unions, having granted legal personality to two unions for members of the Orthodox clergy, Solidaritatea and Sfântul Mare Mucenic Gheorghe (see paragraphs 46 and 49 of the judgment). And there is no indication, either in the Government's observations or in the information available to the Court, that the existence of these two unions has in any way undermined the autonomous operations of the Romanian Orthodox Church.

10. Furthermore, and from a more general point of view, the unnecessary and disproportionate nature of the refusal to register the applicant union is reinforced by the fact that although constitutional models governing relations between the different European States and religious denominations vary greatly, none of them excludes members of the clergy from the right to form trade unions. In some countries, they are even expressly afforded that right (see paragraph 61 of the judgment).

11. In view of the foregoing, the Grand Chamber should have found that the Dolj County Court's decision denying the applicant union registration on account of the lack of permission from the bishop did violate its right to freedom of association under Article 11 of the Convention.