



# ROMANIA

## Single ECtHR Case Study Report

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## **Sindicatul “Păstorul cel Bun” v. Romania**

v. 28.11.17

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- 1. Basic details:** Case name, date of submission, date of ECtHR judgment, full list of applicants, core issue addressed by the case

*Sindicatul “Păstorul cel Bun” v. Romania*, European Court of Human Rights (in this report ‘ECtHR’ or simply ‘the Court’) Application no. 2330/09, Chamber Judgment 31.01.2012, Grand Chamber Judgment 09.07.2013.

The applicants in this case were clerical and lay employees of the Romanian Orthodox Church (hereafter ROC) who founded the “Păstorul cel Bun” (Eng. “The Good Shepherd”) trade union (Rom. *sindicat*) in order to represent their interests in relation to their employer, the ROC, and to state authorities. The applicants asked to remain anonymous in the Court proceedings.

The central complaint in the *Sindicatul “Păstorul cel Bun” v. Romania* case (hereafter simply *Sindicatul*) was that the Romanian state had infringed Article 11 of the European Convention on Human Rights (ECHR) regarding freedom of assembly and association when it refused to officially register the “Păstorul cel Bun” trade union.

The main legal issue in the case was whether state labor law is applicable to work relations within the ROC - it pertains to the wider class of legal issues related to the principle of religious communities’ autonomy from state interference (or, in other words, to the question of ‘ministerial exception’ - see Slotte and Årsheim 2015 for a discussion of different relevant cases, including *Sindicatul*).

- 2. Context of the issue:** Socio-legal, political and historical background to the issue at hand and/or practices that prompted the litigation, in the given country. (Max 1000 words).

Two separate dimensions are important to consider in relation to the wider context of the *Sindicatul* case. The first concerns the autonomy of religious communities to organize their internal matters free from state interference. The second concerns the dynamics of conflict between ordinary clergy and hierarchs within the ROC. Both dimensions are briefly explored below.

The first post-communist law regarding the general legal regime of religious freedom in Romania (Law 489/2006<sup>2</sup>) posited the autonomy of religious communities to organize free from state interference. This was very different from how the law had delineated the relations between religious communities and state authorities during communism (through Decree

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<sup>1</sup> I would like to thank my colleagues from the Grassrootsmobilise team as well as Matthias Koenig for helpful comments on a first draft of this report.

<sup>2</sup> Text available (in Romanian) at [http://www.cdep.ro/proiecte/2006/000/20/5/leg\\_pl025\\_06.pdf](http://www.cdep.ro/proiecte/2006/000/20/5/leg_pl025_06.pdf), accessed 22 October 2017.

177/1948<sup>3</sup>). The 1948 Decree concerning the regime of religious denominations subjected religious communities to strong state control. For instance, appointed or elected religious leaders could not take office without the approval of state authorities (Article 21) and religious communities' finances and assets were subjected to the state's oversight (Articles 29-30). In contrast, Law 489/2006, also in force at present, contains provisions for a wide autonomy for religious denominations in both matters related to personnel and assets (Sections 3 and 4 of the Law)<sup>4</sup>. The statute of each religious denomination (formally approved through a Government Ordinance) provides the normative framework for handling internal matters related to the life of the religious community.

Both the issue of personnel policy as well as that of asset management are important for this discussion. The founders of the trade union at the core of the *Sindicatul* case aimed for more 'transparency' on both matters on the part of their employer, the ROC (see Grand Chamber decision, §10). Both issues are also at the core of recent conflicts between priests and their hierarchs from the ROC. This is the second dimension of the *Sindicatul* case's wider background briefly explored below.

At the same time supported by the state with funds (in direct proportion to the number of believers) and exempt from taxes, religious denominations have been recently in the spotlight of the Romanian mass media<sup>5</sup>. The handling of internal matters by the majority ROC (who is also the prime beneficiary of state funds) have been particularly scrutinized by journalists. Various conflicts between priests and the ROC hierarchs have been presented recently to the general public in which defrocking was presented as the outcome of unsolved financial and asset-related conflicts<sup>6</sup>. In the accounts of the defrocked priests presented in the mass media, as well as in other related journalist accounts, the ROC is accused of focusing on extracting money from its believers, with deleterious effects on the work lives of priests, who are allegedly evaluated more according to their skills in collecting money than in performing their pastoral mission<sup>7</sup>. The conflicts exposed at the time of the founding of the "Păstorul cel Bun" trade union can thus be seen as part of a wider background of conflict within the ROC which does not appear to have changed. If some Orthodox priests contested their superiors' administrative decisions in civil courts (as discussed below), others have formed independent religious communities outside the ROC (see Popa and Andreescu 2017 for an analysis of these communities' challenges with respect to religious freedom under the current legal framework).

In Romania, clerical employees (not only those of the ROC) have until present repeatedly appealed to civil courts of justice to contest the decisions of their hierarchical superiors. This

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<sup>3</sup> Text available (in Romanian) at <http://www.anrp.gov.ro/uploads/pdf/DECRET%20%20%20Nr%20177-1948.pdf>, accessed 27 November 2017.

<sup>4</sup> The 1948 decree (which was enforced until 1989) only took into account the existence of recognized religious denominations. The present-day legal framework distinguishes between 'religious denominations' (Rom. *culte*), 'religious associations' (Rom. *asociații religioase*) and 'religious groups' (Rom. *grupuri religioase*). See Andreescu (2008) for a discussion of these distinctions. For the purposes of the present report, the category of religious denominations is most relevant. The majority ROC is at present one of the 18 officially recognized religious denominations in Romania.

<sup>5</sup> 'Let there be light' is (in English translation) the title of a recent journalist initiative aiming to scrutinize the finances of all religious communities in Romania, especially of those supported with state funds. The information about the aims of the initiative is available (in Romanian) at <https://safielumina.ro/facerea-lumii-lor/>, accessed 26 November 2017.

<sup>6</sup> See, for instance, the documentary aired in 2016 by the national television channel Antena 3. The video material is available (in Romanian) at <http://inpremiera.antena3.ro/reportaje/dom-dom-sa-naltam-349.html>, accessed 26 November 2017.

<sup>7</sup> See the above mentioned television documentary. The daily news media outlet *Gândul* (more generally critical of the ROC) published a series of articles about the Church under the general title "Godporația", a term coined by joining "God" and "corporation" (Rom. *corporația*).

fact is reflected in the decisions of the Constitutional Court in which the constitutionality of Law 489/2006 was evaluated with respect to its stipulations regarding the exclusive applicability of the religious denominations' own statute in handling internal matters. Article 26 (2) of the Law stipulates that "for matters of internal discipline solely statute and canonical provisions are applicable" (my translation).

In a case that reached the Constitutional Court from the Oradea Court of Appeal, the appellate court noted that the provisions of the above mentioned article are unconstitutional (contradicting Art. 21 of the Constitution that stipulates free access to justice) as long as they can be interpreted as saying that disciplinary measures applied to the clerical personnel are completely out of the jurisdiction of civil courts of law. The Constitutional Court (Decision 797/2008) dismissed the unconstitutionality claim indicating that state juridical norms referring to labor discipline are not applicable to religious denominations' personnel. In its judgments on this and related cases (see Decisions 640/2008, 446/2011, 448/2011, 403/2016) the Constitutional Court also drew on the jurisprudence of the ECtHR to support its argumentation (*Hasan and Chaush v. Bulgaria*, *Eva Dudova and Zdenek Duda v. Czech Republic*, *Ahtinen v. Finland*, *Lautsi v. Italy* (Chamber Decision)).

**3. Nature of litigation:** Strategic or not? (Elaborate). At its inception was the ECtHR an aim or was it conceived as a local/national case originally?

It is interesting to note from the outset that the *Sindicatul* case attracted much more attention in the 'transnational legal field' in which the ECtHR operates (Koenig 2015) than it did in the national juridical field or in the national public sphere. The case became of strategic importance for the theme of religious communities' autonomy after it reached Strasbourg, having not been initiated with this aim.

The priests who founded the trade union simply applied for the legal recognition of the organization and its inscription in the registry of trade unions at the Craiova Court of First Instance. The case was related to local specificities, namely the tense relations between the incumbent Metropolitan of Oltenia and ordinary priests under his authority. The fact that similar dissatisfactions may have been simultaneously present in other eparchies of the ROC is illustrated by the parallel application for registration of another priestly trade union in the city of Iași also in May 2008<sup>8</sup>. Still, to my knowledge, the two initiatives were unrelated. One former member of the "Păstorul cel Bun" trade union shared in the course of an interview that the initiative of his trade union had been limited to priests from the Metropolitan Church of Oltenia, but that it could have expanded in time to include ROC priests from other parts of the country.

The unionized priests were represented in front of the domestic courts by local-level lawyers with whom the priests were acquainted. The representation in front of the domestic courts and at the ECtHR was largely made *pro bono*. There were two lawyers involved in the proceedings in Strasbourg. One former trade union member shared that the first lawyer was

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<sup>8</sup> Based on information from the mass media, the president of this second trade union withdrew the request for legal recognition (a few days after filing the request) after being informed that he risked to be defrocked (<http://ieseanul.gandul.info/saptamanal/biserica-a-sugrumat-sindicatul-popilor-2675604>, accessed January 7, 2017). It must also be noted here that before 2008 two other trade unions composed of ROC clergy and lay employees had already been officially registered by domestic courts, in 1990 and 2007. Both trade unions were in process of dissolution at the time of the ECtHR Grand Chamber decision in 2013 (see Grand Chamber decision, §45-§51).

not fluent in English or French, and thus a second lawyer able to plead in front of the Grand Chamber was searched for and found using the Internet.

While it was not designed to have an impact through litigation in Strasbourg, the litigation around the registration of the priestly trade union took on a 'strategic' dimension at the local level. This was attested by the fact that one of the actors asking to intervene in the proceedings was a locally prominent jurist known for his criticism of the ROC. The jurist had published several articles in the local mass media condemning the managerial abuses of the Oltenia Metropolitan. In the request for intervention he wrote, the jurist criticized the ROC for its inability to break with its past, tainted by the cooperation with communist authorities and by internal authoritarianism.

The above-mentioned request for intervention in the proceedings was made in the name of a local NGO among whose founding members were the above-mentioned jurist as well as the lawyer who represented the priestly trade union all the way to the ECtHR (until the Chamber Decision). The declared goals of the local NGO (whose name (in English translation) was "Civil Society Association"<sup>9</sup>) were to "fight against corruption", to achieve "the firm and correct application of the laws" and "the defense of citizens' rights and freedoms as recognized by the Universal Declaration on Human Rights and by the European Convention for the Defense of Human Rights" (my translation).

The NGO's request for intervention was rejected by the Dolj Tribunal, the court that also rejected the priests' application for the legal recognition of the trade union. As a result of this decision, the priests asked for a complaint to be written to the ECtHR by their local lawyer (this unfolding of the events was reported by one former member of the trade union).

- 4. Pre-ECtHR history of case:** Through which local and national courts (or other administrative bodies and procedures) did the case pass; what year did the process start locally/nationally? If strategic litigation, was it prompted by any particular event?

The case started nationally on May 20<sup>th</sup> 2008, when a request for the official registration of the trade union was submitted to the Craiova Court of First Instance by the president of the trade union. The case was first judged at the Craiova Court of First Instance and the registration request was accepted. On appeal filed by the ROC Archdiocese of Craiova, the Dolj Tribunal rejected the request for registration.

- 5. External influences:** Was the claim supported by other local, national or transnational influences (funding, legal advice, other NGO support)? If so, please elaborate (indicate also at what stage – e.g., from its inception or only when it reached the ECtHR?)

At the local level, the above-mentioned NGO ("Civil Society Association") intervened to support the registration of the priestly trade union. The Craiova branch of the Association of Christian Orthodox Students (ASCOR) (an NGO working at national level, drawing on spiritual guidance from ROC hierarchs) issued a press release after the registration decision of the Court of First Instance in which it criticized the initiative of the priestly trade union<sup>10</sup>. The latter NGO did not ask for leave to intervene in the domestic proceedings.

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<sup>9</sup> The NGO is apparently no longer active at present.

<sup>10</sup> <https://theologia.wordpress.com/tag/ascor-craiova/>, accessed January 6, 2017.

The main claim in the case was not supported by transnational actors but rather counteracted through their intervention. The European Centre for Law and Justice (ECLJ), the Becket Fund and the International Center for Law and Religion Studies were the transnational actors intervening in the proceedings once the case reached the ECtHR. The ECLJ asked to intervene as a third party in the proceedings at the Chamber and contributed to the organization of an event in Strasbourg at which the case was discussed ahead of the Grand Chamber proceedings.

I do not have any evidence concerning transnational funding or legal advising neither for the trade union nor for the ROC. The trade union was represented on a *pro bono* basis. Some lawyer-related expenses were covered from the funds granted through the ECtHR Chamber decision as well as from funds gathered from the founding members themselves.

In front of the domestic courts, the ROC Archdiocese of Craiova was represented by a locally hired lawyer. The Archdiocese of Craiova was also granted the right to intervene in the ECtHR proceedings and for this intervention it independently hired a lawyer from Bucharest (one interviewee from the ROC Patriarchate opined that the Bucharest-based lawyer played the main role in shaping the text of the intervention).

Romanian human rights activists concerned with the issue of workplace discrimination did become interested in the *Sindicatul* case, especially with respect to the status of lay employees within religious organizations (see, e.g., the analysis in Lordache 2013), though this interest did not trigger any subsequent mobilization.

- 6. Pre-case mobilisations:** Give a full account of mobilisations around the case from its inception up to its airing at the ECtHR, including the initiating organization(s), alliances (pro and con) which may have taken shape around the issue, claims made at various points, etc.

This section overviews the legal mobilization of the main protagonists in the case before it reached the ECtHR. To my current knowledge, legal mobilization was the sole strategy used by the involved actors to achieve their goals.

On May 20<sup>th</sup>, 2008, the president of the "Păstorul cel Bun" trade union applied at the Court of First Instance in Craiova for the registration of the organization (which had been constituted at a general meeting held on April 4<sup>th</sup>, 2008) in the registry of trade unions. The request was accompanied by 35 letters of adhesion to the trade union signed by priests and three lay employees of the ROC.

On May 21<sup>st</sup> a request for intervention (dated May 20<sup>th</sup>, 2008) was submitted to the Craiova Court of First Instance by the Archdiocese of Craiova, motivating that it had a legitimate direct interest in the proceedings. Also on May 21<sup>st</sup>, requests for withdrawal from the trade union were submitted by 8 founding members who argued that they were not aware that the trade union's statute was against the canons of the ROC.

On May 22<sup>nd</sup> the Craiova Court of First Instance admitted in principle the Archdiocese's request for intervention, but rejected it in its substance<sup>11</sup>, and decided the formal registration of the trade union.

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<sup>11</sup> In the request it was held that the registration of the trade union was against the provisions of Law 489/2006 regarding religious freedom and religious denominations, against the canons of the ROC and the provisions of the Law 54/2003 on Trade Unions that stipulated that persons with managerial functions – which parishioner priests were said to hold – cannot organize in trade unions.



On May 26<sup>th</sup>, 2008, the leaders of the “Păstorul cel Bun” trade union organized a press conference in which they announced the goals of the newly registered priestly trade union. To my knowledge, this conference was reflected mainly in the local mass media (the case gained the attention of the central mass media after the ECtHR's Chamber decision).

At the beginning of June 2008, the Archbishopric of Craiova, through its locally hired lawyer, filed an appeal to the decision of the Craiova Court of First Instance. While the appeal rehearsed the arguments from the first intervention (see footnote 12 above), it also engaged with the Article 11 of the European Convention on Human Rights (ECHR), which had been mentioned in the decision of the Craiova Court of First Instance in order to support the argumentation for the registration of the trade union. The Archbishopric's lawyer pointed out in the appeal that the freedom of association guaranteed under Article 11 of the ECHR can be limited in order to protect the rights and freedoms of others (in this case the rights and freedoms of the ROC).

On July 2<sup>nd</sup>, 2008, the “Civil Society Association” filed a request for intervention. In its request, it indicated that the submitted appeal of the Archbishopric of Craiova did not have a registration number in the Archbishopric's registry and that the lawyer did not have the letter of empowerment from the Metropolitan of Oltenia (or, in his absence, from the ROC Patriarch Daniel).

On July 6<sup>th</sup>, 2008, a formal letter signed by the Patriarch Daniel was filed to the court. Through this letter, the appeal formulated and submitted by the lawyer at the beginning of June 2008 was formally recognized by the ROC, as requested in the intervention of the “Civil Society Association”.

At the beginning of July 2008, the Holy Synod of the ROC issued a press release in which it communicated that trade unions were neither in line with the canon law of the ROC nor with its formal statute and that priests who formed such unions risked being defrocked<sup>12</sup>.

On July 11<sup>th</sup>, 2008, through its lawyer, the trade union filed its response to the appeal made by the Archbishopric of Craiova and requested the maintenance of the decision of the Craiova Court of First Instance.

On July 11<sup>th</sup>, 2008, the Dolj Tribunal admitted the appeal formulated by the Archbishopric of Craiova and rejected the registration of the trade union.

**7. Post-case mobilisations:** Trace any mobilisations taking place in the aftermath of the case (including impact of this case on other local/national/ECtHR cases emerging in the national context).

One interviewee from the ROC Patriarchate opined that there were little ‘effects’ to be noticed in the aftermath of the ECtHR Grand Chamber decision in the *Sindicatul* case because no Article 11 violation was found. He thought that a different final solution would have probably triggered new similar initiatives. I did not find information about any new trade union formed by clergy (neither of the ROC nor of other religious communities) after 2013. This may have been due to the demobilizing effects of the Grand Chamber decision on priests from within the ROC (though it is important also to note that dissatisfied priests have adopted and still adopt other strategies of conflict resolution, like individually contesting

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<sup>12</sup> See the news material available (in Romanian) at <http://www.mediafax.ro/social/preotii-care-se-organizeaza-in-sindicat-vor-fi-caterisiti-2768320>, Accessed 27 November 2017.

(generally without success) disciplinary measures in civil courts, or leaving the ROC and joining other Orthodox hierarchies).

The *Sindicatul* case drew the attention of the representatives of several minority religious organizations. Still, based on my interview data with this category of actors, *Sindicatul* attracted less attention than the *Lautsi v. Italy* case (interviewees were asked explicitly whether they knew these cases). This situation may be explained both by the different reception of the two ECtHR cases in the Romanian public sphere and by the comparatively reduced levels of labor conflicts in these minority religious organizations.

For instance, several interviewees knew about the Chamber decision in the *Sindicatul* case, but not about the Grand Chamber decision. One interviewee from a minority denomination indicated that he perceived the *Sindicatul* case as one example of attempt to reform the ROC (thus not considering it relevant for his own church). Another representative of a minority religious community justified his lack of sustained interest in the *Sindicatul* case saying that it had been 'the Orthodox Church's business'.

The reception of the *Lautsi v. Italy* case in the national public sphere appears to have been different than that of *Sindicatul*, at least judging by my interviewees' awareness (I refer here both to representatives of religious organizations and of secularist and religious NGOs) of the two cases. It must be noted that the *Lautsi* Chamber and Grand Chamber decisions came in a context in which in Romania vivid debates (as well as legal mobilizations by both secularist and counter-secularist activists) had taken place concerning the presence of Orthodox icons in public classrooms (see Popa and Andreescu under review for an account of these mobilizations). In contrast, the theme of priests' unionization at the core of the *Sindicatul* case was likely overpowered by other themes simultaneously arising in the public sphere, and did not become a topic of longer-term debate (the debate about Orthodox icons in public schools was started in 2006 and lasted until 2008, before being reignited by the 2009 *Lautsi* Chamber decision).

The Grand Chamber decision in the *Sindicatul* case does not appear to have had strong reverberations in the juridical field either. For instance, the Constitutional Court, in its last judgement on an exception of unconstitutionality raised in a case concerning a labor conflict within the ROC (Decision 403/2016) does not cite the *Sindicatul* Grand Chamber decision in order to support its argumentation regarding the autonomy of religious communities.



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