



Grand Chamber of the Strasbourg Court rules in favour of Romania and Romanian Orthodox Church

July 9, 2013 – The Grand Chamber of the European Court of Human Rights published its judgment on the case of the Good Pastor trade union (Sindicatul Pastorul cel bun, № 2330/09) versus Romania. The ECHR supreme instance reversed the judgment made by the Third Section of the Court on January 31, 2012, and safeguarded the autonomy of a religious organization from the state (European Convention of Human Rights Article 9). The new decision recognizes the right of a state to deny legal registration to anti-canonical structures within a canonical Church. Thus, the Court re-confirmed the right of the Romanian Church to order its internal life in accordance with canonical rules without interference of state bodies in behalf of anti-canonical groups.

The previous judgment of the European Court of Human Right on the case of the Good Pastor trade union versus Romania was made on January 31, 2012. At that time, the international judicial instance held that the refusal of the Romanian authorities to register a trade union of the Romanian Orthodox Church's clergy created against canonical rules ran counter to the freedom of assembly and that the association thus created was legally guaranteed by the European Convention of Human Rights Article 11. In addition, the Romanian state was to pay 10 thousand Euros to the applicant 'trade union' of clergy.

In the end of April 2012, Romania appealed against the judgment to the Grand Chamber of the Court, which was taken under advisement.

The Representation of the Russian Orthodox Church at the Council of Europe closely followed the proceedings. In cooperation with the Moscow-based Institute of State-Confessions Relations, the ROC prepared a legal analysis of the ECHR's judgment of January 31, 2012. On June 7, 2012, the Council of Europe held in Strasbourg a seminar on the Autonomy of the Church in Recent Judgments of the European Court of Human Rights. Among the attending lawyers from various European countries were Hegumen Philip (Riabykh), Moscow Patriarchate representative to the Council of Europe, and Dr. I. Ponkin, director of the Institute of State-Confessions Relations and Rights.

Later the Strasbourg representation of the Moscow Patriarchate acted as a third party in the proceedings before the Chamber, making a legal contribution of the Russian Orthodox Church to the support of the fraternal Romanian Orthodox Church and Romania by identifying with the canonical Church in its freedom to define its internal order. The case made by the Moscow Patriarchate is set forth in the Grand Chamber's official decision of July 9, in the section 'Third Parties'. The Strasbourg judges

paid attention to the two arguments set forth by the Russian Church: 'The Moscow Patriarchate emphasised the special nature of the hierarchical service relationships within religious communities and the heightened degree of loyalty entailed by such relationships. The State should guarantee religious communities, by virtue of their autonomy, the exclusive competence to determine their own structure and internal operating rules'.

In addition, the judgment took into account the following remark made by the Moscow Patriarchate: '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'.

Acting in behalf of Romania were Greece, Moldova, Poland and Georgia.

Nevertheless, the ECHR in its new decision makes a number of reservations contrary to the understanding of the autonomy of religious organizations expressed in the Court's previous decisions. Thus, the Grand Chamber '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' (Par. 148), and that even if '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' (Par. 146). In stating that, the Court completely ignored the information it was given that a priest, in assuming his duty, signs an oath of loyalty to the Supreme Church authority and canonical order of the Church.

Regrettably, the Court has agreed to the opportunity for secular courts to consider internal clerical conflicts concerning issues of canonical order. In this case, the Court has deviated from its previous practice expressed, for instance, in the judgment it made on May 15, 2012, in the case of *Fernandez Martinez v. Spain*: 'The requirements of the principles of religious freedom and neutrality preclude the state from carrying out any further examination of the necessity and proportionality in settling a dispute' if 'the dispute is of strictly religious nature'.

The decision made by the Grand Chamber on July 9 is a compromise reflecting the different opinions existing within the Court concerning relations between society and religious organizations. For instance, six judges including the president of the Court expressed a dissenting opinion stating that the establishment of a trade union without permission from the Supreme Authority does not undermine the Church.

Source: <https://mospat.ru/en/news/52486/>