

**EUROPEAN COURT OF HUMAN RIGHTS  
GRAND CHAMBER**

**CASE OF SINDICATUL “PĂSTORUL CEL BUN” v. ROMANIA**  
*(Application no. 2330/09)*

**WRITTEN COMMENTS OF THIRD-PARTY INTERVENERS  
THE BECKET FUND FOR RELIGIOUS LIBERTY AND  
THE INTERNATIONAL CENTER FOR LAW AND RELIGION STUDIES**

## I. Introduction

1. These written comments are submitted by Interveners the Becket Fund for Religious Liberty and the International Center for Law and Religion Studies, in accordance with leave granted by the Court on 17 September 2012 under Rule 44 § 2 of the Rules of the Court. Interveners submit these comments to assist the Court in reaching a just and equitable result and in properly interpreting the Parties' obligations set forth in the Convention.
2. To that end, we bring a comparative perspective that stresses commonalities across Europe and the United States in protecting the deeply entrenched right of religious communities to autonomy in their internal affairs. Comparative perspective in this matter is particularly significant because of the broad ramifications this case has for the protection of religious autonomy rights in all countries of the Council of Europe. These protections take different forms in various legal systems, but remain a hallmark of the constitutional orders of the West. However strong the right to unionise may be, that freedom necessarily receives different contours when it collides with the rights of religious communities whose experience long antedates the idea of collective bargaining. The European Court has repeatedly stressed that "the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection Article 9 affords." *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (ECtHR, App. No. 40825/98, 31 July 2008) § 78.
3. Interveners are organisations with extensive experience in the field of freedom of religion, including cases involving autonomy of religious communities, both in the United States and throughout Europe. Thus, while Interveners draw on their experience in litigating religious freedom appeals before the Supreme Court of the United States, they also bring in-depth awareness of the commitment of European jurisdictions to protecting the autonomy of religious communities. In fact, despite stereotypical assumptions of divergence between American and European church-state jurisprudence due to the American Establishment Clause, the reality is one of substantial convergence, particularly when it comes to the autonomy of religious institutions. European precedents were argued to the Supreme Court in the most recent autonomy case in the United States (*Hosanna-Tabor*), and for the same reason, we hope comparative analysis will be helpful here.
4. The Third Section's approach to the problem of state interference with how a religious group interacts with its employees poses a significant practical problem.
5. The Third Section's approach would unnecessarily thrust European governments and courts into countless religious disputes, drawing judges and other government officials into the business of second-guessing and superintending the internal decisions of churches.
6. Indeed, allowing Church employees to unionise in defiance of ecclesiastical authority puts the State into the ill-fitting role of ultimate religious arbiter. The State (or perhaps this Court) would be forced to decide what terms and conditions of employment are subject to collective bargaining, what bargaining tactics are acceptable within the context of a religious community, and ultimately what work a priest should do or

even who should be a priest. This outcome runs counter to basic principles of pluralistic, democratic government and to centuries of well-founded deference to religious self-determination in free societies.

7. These problems are highlighted by comparing the jurisprudence of the United States Supreme Court and European tribunals to the Third Section's approach in this case. Of course, European and United States jurisprudential contexts are quite different, not least because of the United States Constitution's prohibition on established churches, which finds no counterpart in the Convention. Both traditions, however, converge in their strong commitments to the protection of the autonomy of religious institutions. In what follows, we show how key features of these mutually reinforcing traditions call for reversal of the Third Section's judgement.
8. The Third Section's decision sharply conflicts with relevant U.S. case law as well as European constitutional jurisprudence. The key U.S. principles are set forth in two Supreme Court cases: the 1979 case *National Labor Relations Board v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979) and *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*, 132 S.Ct. 694 (2012), decided by unanimous vote in January of this year.
9. As described in greater detail below, *Catholic Bishop* stands for the principle that the clerical and lay employees of church-run institutions, including religious schools, may not unionise over the opposition of their church, because of religious freedom concerns. In *Hosanna-Tabor*, the Supreme Court elaborated on this idea by holding that questions of "internal church governance" must remain off-limits to government interference both in order to preserve autonomy for religious organisations and because civil courts are not competent to decide how churches should be organised or who should carry out a church's mission.
10. European constitutional tradition is similarly committed to broad protection for religious autonomy. As this Court has repeatedly held, "the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is, thus, an issue at the very heart of the protection which Article 9 affords." *See, e.g., Obst v. Germany* (ECtHR, App. No. 425/03, 23 September 2010) § 44; *Zeugen Jehovas*, §§ 61, 79. All Member States protect religious autonomy to some degree. This includes broad autonomy protections in particular for a religious community's relationship with its clergy and the ways its clergy relates to others. *See, e.g., Serif v. Greece*, (ECtHR, App. No. 38178/97, 14 December 1999); Gerhard Robbers, ed., *Church Autonomy: A Comparative Study* (Peter Lang 2001); Overview of Church Autonomy in Europe, in W.W. Bassett, W.C. Durham, and R.T. Smith, *Religious Organizations and the Law* (West/Thomson Reuters, 2012), § 9.90 (Table 9.91).

## **II. United States cases regarding employees of religious institutions**

### **A. *National Labor Relations Board v. Catholic Bishop of Chicago***

11. In *Catholic Bishop*, teachers at Catholic schools in Chicago and South Bend, Indiana sought recognition of their unions by the National Labor Relations Board despite the opposition of their diocesan employers. Under the National Labor Relations Act, the Labor Board has the power to accord recognition to unions over employer objections.

29 U.S.C. § 151 *et seq.* In that sense, the Act affirms a right to association that is parallel at the statutory level to Article 11 of the Convention.

12. The Board recognised the unions, rejecting the dioceses' argument that allowing the unions would interfere with their autonomy as religious institutions. In reaching its decision, the Board distinguished between what it called "completely religious" employers and those like the diocesan schools that were "just religiously associated." *Catholic Bishop*, 440 U.S. at 493. The Board did not assert jurisdiction over "completely religious" employers but did assert jurisdiction over those "just religiously associated."
13. The dioceses appealed the Board's ruling, and the case came before the Supreme Court. The Supreme Court overturned the Board's decision, holding that the National Labor Relations Act did not give the Board the power to recognise trade unions at religious schools. The Court did not hold that the Act violated the Constitution, but interpreted the Act to avoid any conflict with the constitutional religious freedom principles of the First Amendment.
14. The Court recognised that government regulation of trade unions (including the grant of collective bargaining rights) would lead to "intrusion into the administration of the affairs of church-operated schools[.]" thereby interfering with the teacher's unique role in "fulfilling the mission of a church-operated school" and encroaching upon clergy-administrators' "autonomous position[.]" *Catholic Bishop*, 440 U.S. at 501, 503.
15. Another result would be "entanglement with the religious mission of the school," despite "[g]ood intentions by government":

The resolution of [charges of labour law violations], in many instances, will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission. It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.

*Catholic Bishop*, 440 U.S. at 502.
16. The Court's decision in *Catholic Bishop* thus stands for the proposition that government cannot force religious institutions to allow trade unions because that would both (a) intrude into the internal affairs of the religious institution; and (b) force government officials into an unacceptable inquisitorial role with respect to religious institutions.

**B. *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission***

17. In *Hosanna-Tabor*, the Supreme Court for the first time addressed a constitutional doctrine that had long been accepted by the lower courts: the "ministerial exception." The ministerial exception doctrine states that otherwise applicable and neutral laws prohibiting employment discrimination cannot be applied to "ministerial" employ-

ees—a term that refers to religious leaders of any sort, not just to ordained clergy—because to do so would violate the United States Constitution.

18. The plaintiff in *Hosanna-Tabor* was a schoolteacher with mixed religious and secular responsibilities. She was removed from office by the defendant church congregation for what it called insubordination. The teacher claimed it was instead disability discrimination, and complained to a federal anti-discrimination agency, the Equal Employment Opportunity Commission (EEOC), which sued on her behalf. On review by the Supreme Court, the federal government took the novel position that there was no such thing as a ministerial exception. Put another way, the federal government argued—akin to the Third Section in the present case—that freedom of religion principles simply did not apply to church employment relationships. The Supreme Court rejected the federal government’s arguments in a unanimous decision, calling the federal government’s position, “untenable,” “remarkable,” and “extreme” *Hosanna-Tabor*, 132 S.Ct. at 706, 709. The Supreme Court held not only that there is a ministerial exception, but that it also applies to a teacher like the plaintiff in *Hosanna-Tabor*.
19. The Court explained that the ministerial exception serves *two* important constitutional interests: (1) the necessary religious freedom of churches and other religious bodies to exercise control over internal matters of governance, and (2) the need to avoid putting government in the role of second-guessing religiously significant decisions such as who should be a minister. *Hosanna-Tabor*, 132 S.Ct. at 703 (“The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own.”). The Court stressed that state interference with the selection process for employees with ministerial responsibilities “intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.” *Hosanna-Tabor*, 132 S.Ct. at 706.
20. In rejecting the federal government’s argument that there was nothing special about a religious employment relationship, the Court stated “That result is hard to square with the text of the First Amendment itself, which gives *special solicitude* to the rights of religious organizations. We cannot accept the remarkable view that the Religion Clauses have nothing to say about a religious organization’s freedom to select its own ministers.” *Hosanna-Tabor*, 132 S.Ct. at 706 (emphasis added).
21. The Court also rejected the contention that only employees with “exclusively religious duties” would merit constitutional protection:

We cannot accept that view. Indeed, we are unsure whether any such employees exist. The heads of congregations themselves often have a mix of duties, including secular ones such as helping to manage the congregation’s finances, supervising purely secular personnel, and overseeing the upkeep of facilities.  
\* \* \* The amount of time an employee spends on particular activities is relevant in assessing that employee’s status, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed  
\* \* \*

*Hosanna-Tabor*, 132 S.Ct. at 708-09.

22. An important additional aspect of the case was the contrast the Supreme Court drew between “government regulation of \* \* \* outward physical acts” and “government interference with an internal church decision that affects the faith and mission of the church itself.” *Hosanna-Tabor*, 132 S.Ct. at 707. Internal church decisions that affect the church’s faith and mission are largely immune to government regulation, while physical acts in the world external to the church can be regulated just as other manifestations of religious belief. This internal-external distinction marks an important milestone in the American constitutional law concerning religious groups. Like the absolute right of the individual to believe, the Supreme Court has now declared that a religious group has an absolute right to choose the people that “personify its beliefs.” *Hosanna-Tabor*, 132 S.Ct. at 706; cf. *Cantwell v. Connecticut*, 310 U.S. 296, 304-5 (1940) (“[The First] Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.”). Put another way, just as individuals can make up their own minds about what they believe or don’t, churches can make up their own minds about their doctrines, teachings and beliefs without government interference. Precisely because the faith and mission of the church is carried out by employees entrusted with those responsibilities, their selection and governance fall within the range of internal affairs that are protected by the right to institutional autonomy.

### **III. European cases confirm the right of religious communities to autonomy in interactions with their clergy**

23. The principles established in *Catholic Bishop* and unanimously affirmed in *Hosanna-Tabor* are wholly consistent with parallel holdings in the European constitutional tradition. While there are disagreements in both the United States and Europe as to the precise scope of religious autonomy doctrine when it comes to employees carrying out exclusively secular tasks, there is strong convergence when it comes to protecting autonomy of religious communities in managing interactions with their clergy and those who serve in leadership or teaching capacities. See, e.g., *Obst* (leadership); *Siebenhaar v. Germany*, (ECtHR, App. No. 18136/02, 3 February 2011) (teaching). The guarantee of this right is a vital aspect of freedom of religion or belief, and is critical to the identity, authenticity and expressive integrity of religious communities. Religious communities constitute themselves through their clergy and those carrying out clerical functions. They need to be able to rely on the loyalty of those serving in these capacities, because compliance with church discipline goes directly to the religious community’s credibility. *Obst*, §§ 48-49. Religious communities are not free to be themselves and to follow their own internal beliefs and practices if the State interferes—or empowers private entities such as labour unions to interfere—in these sensitive relationships. In many if not all religious traditions, the organisation of clerical personnel and the structuring of the relations of spiritual leaders to laity are a matter of central doctrinal concern. State intervention that interferes with the autonomy of religious communities in managing interactions with their ministerial personnel strikes at the core of religious freedom.
24. The recent set of decisions from this Court regarding the autonomy of religious communities in personnel matters underscores the validity of these principles. Thus in *Obst* this Court dealt with a case involving the termination of the head of public relations for the Mormon Church for all of Europe on grounds of his violation of

church behavioural standards. The Court held that German courts had appropriately weighed the privacy rights of this individual against the Article 9 and Article 11 rights of the church, and were justified in concluding that the religious autonomy rights of the church outweighed the Article 8 rights of the terminated employee. Similarly, in *Siebenhaar* this Court held that the religious autonomy rights of a religious school outweighed the individual right to religious freedom of a teacher who became involved in promoting the views of a different religion. Even in *Schüth v. Germany*, where the Article 8 claims of a choirmaster prevailed over the Article 9 claims of the Roman Catholic Church, the result might have been different if German courts had taken all relevant considerations into account in their balancing of the rights. *Schüth v. Germany*, (ECtHR, App. No. 1620/03, 23 September 2010).

25. In these cases, the Court emphasised that States have a greater margin of appreciation when there is no consensus among member States of the Council of Europe on the relative importance of the issues at stake or how to best protect them. But when it comes to the right of religious communities to manage interactions with their clergy and other ministerial personnel, there is broad European consensus: churches have broad latitude to structure themselves and their relations with their clergy in accordance with their beliefs and doctrines. Indeed, case law typically protects religious autonomy not only with respect to the members of the clergy, but also with respect to school teachers, teachers of religious doctrine, and others holding high leadership or representational positions, or others (such as doctors and nurses at religious hospitals) who may be involved in religiously sensitive procedures. *See generally* Robbers, *supra* (surveying religious autonomy rights in the U.S. and over twenty European jurisdictions); Hildegard Warnink, ed., *Legal Position of Churches and Church Autonomy* (Leuven: Uitgeverij Peeters, 2001); Bassett *et al.*, *supra*, § 9.90 (Table 9.91), current version available at <http://www.religlaw.org/document.php?DocumentID=5990> (summarising religious autonomy principles in 33 Council of Europe jurisdictions). Historically, some of the most severe violations of religious freedom have arisen in contexts where governments with narrower traditions of freedom have run roughshod over core notions of religious autonomy by intervening in contested employment relationships. *See Hosanna-Tabor*, 132 S.Ct. at 702-4. In short, there is broad consensus both in the United States and in European jurisdictions that the right of religious institutions to manage their relations with key personnel, particularly clergy, is a fundamental dimension of religious freedom.
26. The fact that such personnel often perform functions that also have a non-religious dimension does not eliminate the importance of maintaining religious autonomy protections. For example, the Pope (like most religious leaders) engages in activities that have economic, social and cultural aspects. Just as this reality would not provide justification for a State to reorganise how the College of Cardinals selects a new Pontiff, so similar realities in every religious tradition cannot be used to justify State-backed reorganisation of clergy and religious personnel in violation of religious beliefs and practices. When mixed activities are involved, the result must be that religious freedom concerns are fully taken into account, not that they are left aside simply because other interests are also present. In the present case, European constitutional principles, parallel to those articulated by the U.S. Supreme Court, require that the combined religious and associational rights of the Romanian Orthodox Church prevail over the rights of a group of clergy seeking to invoke State power to impose an alternative regime of church governance.

#### IV. Discussion

27. In contrast to the pragmatic and sensitive approach of European and American courts, the Third Section's opinion dealt with the conflict between labour law and religious autonomy by imagining the conflict away. In the Third Section's view, the applicant could avoid Article 9 by addressing only questions "exclusively in the field of human rights and economic, social and cultural rights of salaried employees of the Church." *Sindicatul "Păstorul cel bun" v. Romania* (ECtHR, Third Section, 2330/09, 31 January 2012) § 75. Recognition of the union would therefore not affect the "legitimacy of religious beliefs nor the means used to express those beliefs." *Sindicatul*, § 75. This presupposes a false dichotomy between the categories of "religious" matters and human, economic, social, and cultural concerns. Experience shows that these categories substantially overlap.
  28. In their dissenting opinion, Judges Ziemele and Tsotsoria were right to argue that the Third Section majority had missed (or avoided) the primary problem presented by the application: "whether and how the clergy and other church employees have the right to form trade unions." *Sindicatul*, joint dissenting opinion of Judges Ziemele and Tsotsoria § 1. The dissenters answered that question in a way that echoes United States Supreme Court precedent, by recognising that the union's request would likely lead to direct confrontation with the hierarchy of the Romanian Orthodox Church: "We believe that in light of these union statutes, national courts could reasonably have considered that the creation of such an organisation would challenge the traditional hierarchical structure of the Church and how the decisions were taken." *Sindicatul*, joint dissenting opinion of Judges Ziemele and Tsotsoria § 5.
  29. The joint dissenting opinion also pointed out that the facts of the case reflect a set of theological disagreements amounting to a schism within the Romanian Orthodox Church. *Sindicatul*, joint dissenting opinion of Judges Ziemele and Tsotsoria at § 5. In effect, the Third Section's majority opinion put the Court itself at the top of the church hierarchy, overruling the Archdiocese's judgment as to church polity and structure, and ultimately picking sides in a theological dispute.
  30. *Hosanna-Tabor* and *Catholic Bishop* offer an alternative perspective that indicates why the better approach is to leave religious questions entirely to religious bodies. Indeed, looking at these American cases together with the Court's precedents points to a possible convergence of European and American religious freedom jurisprudence on a right of church autonomy.
- A. The problem of government interference with internal church governance is common to all pluralistic democratic societies.**
31. Disputes over internal church governance occur on both sides of the Atlantic, showing that the issue is not an artefact of particular legal systems, but is universal to all pluralistic democratic societies. Although the Supreme Court in *Catholic Bishop* and *Hosanna-Tabor* was interpreting the United States Constitution, the question for this Court under the Convention is fundamentally the same: who ultimately decides how the church organises itself to carry out its religious mission? Either it will be the

Church, or it will be the State. That presents the same legal problem in any pluralistic democratic state.

32. Non-democratic states have typically answered the question by declaring that the State must decide how churches are organised. Many of the totalitarian states in history have been deeply involved in controlling how members of religious groups interact with each other, partly as a method of preventing opposition to the government. Romania's own history, like much of the former Communist bloc, demonstrates the existence of this connection between dictatorship and state control of religious bodies.
33. Of course, some States are involved in clergy selection in the context of a formally established church, and such establishments are not prohibited by the Convention. But to subject a nominally autonomous church to control over internal church governance is inconsistent with the principles of pluralism embodied in the Convention. Nonestablished or disestablished churches must have the power to select and control the message of those who personify their doctrines and carry out their missions. As the Supreme Court stressed in *Hosanna-Tabor*, this autonomy flows not just from the prohibition on establishment but also from the guarantee of the freedom of religion.
34. It is true that some Council of Europe member States *do not* protect the autonomy of religious institutions as they ought, but this fact merely provides further proof of the need for robust protection of religious groups by the European Court of Human Rights. See, e.g., *Juma Mosque Congregation and Others v. Azerbaijan*, no. 15405/04 (application admitted; merits determination pending on claim of democracy-oriented mosque in Baku to appoint its own leaders without government interference).

**B. The problem of government interference in internal church governance cannot be solved by relabelling church activities as “non-religious” or “cultural.”**

35. The Third Section attempted to respond to the question of church autonomy by assuming that the activities of church employees could be neatly divided into categories labelled “religious” and “non-religious.” But it is wrong to treat “the field of human rights and [the] economic, social and cultural rights” of employees as one thing, and “the legitimacy of religious beliefs or the means used to express them” as another. *Sindicatul* at § 75. As the United States Supreme Court pointed out in *Catholic Bishop*, for most employees of religious organisations (and certainly the clergy), “[t]he conflict of functions inheres in the situation.” *Catholic Bishop*, 440 U.S. at 501 (quotation omitted). Similarly, in *Hosanna-Tabor* the Supreme Court rejected the lower court's attempt to divide the teacher's day into “religious” and “non-religious” parts, emphasising that “heads of congregations themselves often have a mix of duties” and that instead the “nature of the religious functions” performed had to be taken into account. *Hosanna-Tabor*, 132 S.Ct. at 709.
36. The facts in *Sindicatul* bear this point out. For example, as Judges Ziemele and Tsotsoria explain in their dissenting opinion, many of the stated purposes of the proposed trade union easily bleed into religious issues. How can a union demonstrate against, strike against, or even sue a hierarchical body like the Romanian Orthodox Church without transgressing its existing rules concerning fidelity to the Church's authori-

ties? How can the State empower the union to “negotiate” with the Archbishop to determine “the rights and duties of the clergy and laity”? How can the union demand to be inserted into “all decision-making”? *Sindicatul* at § 6. The Third Section held that these activities were “exclusively in the field of human rights and economic, social and cultural rights” and therefore would “not affect the legitimacy of religious beliefs or the means used to express them.” But treating the economic relationship between a Romanian Orthodox bishop and his priests as different and severable from their religious relationship would upset religious understandings centuries in the making.

37. The Third Section’s use of the religious/non-religious distinction with respect to these employees also reflects a profound misunderstanding of the role of religion and religious people within society. This was the same position rejected by the Supreme Court in *Hosanna-Tabor*. The Supreme Court refused the EEOC’s invitation to treat religious groups as essentially no different than non-religious groups. Instead, because the Constitution shows “special solicitude” for religious freedom, the Court held that governments should not interfere in religious employment relationships. *Hosanna-Tabor*, 132 S.Ct. at 706. The same reasoning applies under the Convention.
38. The Third Section’s related attempt to distinguish between “religious rights” and “cultural rights” is also a false distinction that does not really confront the problem of clergy management. *Sindicatul* at § 75. Religion is an integral part of culture—a fact most members of the Council of Europe States recognise as a matter of course. But the Third Section ignored this reality by presuming that a trade union could somehow protect the “cultural rights” of Church employees without affecting the religious rights of the Church as a whole. To treat “cultural rights” as one thing and “religious rights” as another is to misunderstand both religion and culture. And wherever religious interests are at stake, autonomy must be accounted for.

**C. The conflict between government regulation and internal church governance can only be solved by leaving ecclesiastical matters entirely to the churches.**

39. In contrast to the Third Section majority’s approach, the Supreme Court’s solution to the question of clergy selection in *Hosanna-Tabor* is quite simple and elegant. The Supreme Court rejected the idea that courts must engage in the messy and often impossible business of weighing the relative value of religious freedom against other values (such as those underlying employment discrimination laws or labour laws) and then striking an uncertain balance. Instead, the Supreme Court’s hands-off approach in *Hosanna-Tabor* leaves what is really a private law matter—the *internal* organisation of religious bodies—to the relevant ecclesiastical authorities. There is no more need for courts to decide how a church organises itself to carry out its religious mission than there is for courts to decide which political or social beliefs a nongovernmental organisation should espouse.
40. The increasing number of disputes that courts are seeing in this area result from increasing religious diversity in America and in Europe. In pluralistic democracies that include every world religion, a judge cannot hope to determine whether a particular person should be a religious leader, much less the terms of his employment. The hands-off approach is the only way for judges to be truly neutral in a pluralistic society. That is one of the primary lessons of *Hosanna-Tabor*, and one that may be of

some use to this Court as it confronts the issue of increasing religious diversity within Europe.

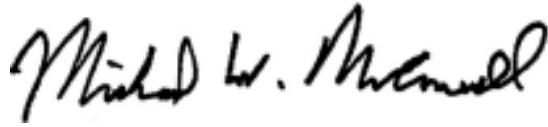
**D. ECtHR and United States law concerning the autonomy of religious groups is converging.**

41. One final point is pertinent to the case before the Grand Chamber. Although they are building from different foundations, there appears to be a remarkable convergence of Supreme Court jurisprudence and ECtHR jurisprudence in the area of collective religious freedom. In respect of individuals, European law has long distinguished between the *forum internum*, where the freedom to believe is absolute, and the *forum externum*, where the freedom to manifest those beliefs is necessarily limited. *See, e.g., Işık v. Turkey*, (no. 21924/05) (“In contrast to manifestations of religion, the right to freedom of thought, conscience and religion within the *forum internum* is absolute and may not be subjected to limitations of any kind.”) (quoting OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), *Guidelines for the review of legislation pertaining to religion or belief* (2004)). American law has also made this distinction, but with different vocabulary. *Cantwell*, 310 U.S. at 304-5 (“[The First] Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.”). This distinction between the *forum internum* and the *forum externum*, usually thought of in connection with individuals, may thus extend by analogy to the collective internal beliefs of religious communities, and the processes by which those beliefs are formed and articulated.
42. Left open until recently has been the question of the nature of the protection due to religious groups in formulating their beliefs, for example in deciding what the group’s creed is. Put another way, is there a *forum internum* for churches? Interveners submit that what the Supreme Court described in *Hosanna-Tabor* as “internal church decision[s] that affect[ ] the faith and mission of the church itself” is a fruitful method of demarcating the boundaries of a religious group’s *forum internum*. *Hosanna-Tabor*, 132 S.Ct. at 707. Just as an individual must be absolutely free to organise her own beliefs, a church or other religious body must also be free to organise the people who personify its beliefs. Government should not interfere with a group’s freedom to formulate a creed by employment discrimination laws, labour laws, or other means. Although the United States Supreme Court did not use the European term “*forum internum*,” that was what it was describing. This striking convergence with European precedent is a further indication of the universality of the problem, and the universality of its solution through autonomy for religious groups in their internal decisions about belief and governance.

**V. Conclusion**

43. For the reasons stated above, the Grand Chamber should hold that Romania did not violate Article 11 of the Convention by rejecting Păstorul cel bun’s application for registration as a union, and that on the contrary, the Romanian court system properly protected the religious autonomy rights of the Romanian Orthodox Church under Article 9 of the Convention.

For the Interveners:

A handwritten signature in black ink, reading "Michael W. McConnell". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

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