

**EUROPEAN COURT OF HUMAN RIGHTS**

*Pontificia, Real y Venerable Esclavitud Del Santísimo Cristo de la Laguna  
and Diócesis de San Cristóbal de la Laguna v. Spain*  
(Application no. 7421/25)

**Written Comments submitted on behalf of Third-Party Interveners  
the Centre for Law and Religious Freedom at Jagiellonian University  
and the Religious Freedom Clinic at Harvard Law School**

## **I. Introduction**

1. These written comments are submitted by Interveners the Centre for Law and Religious Freedom at Jagiellonian University and the Religious Freedom Clinic at Harvard Law School, in accordance with leave granted by the President of the Fifth Section on 20 May 2026 under Rule 44 § 3(a) 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 offer a comparative view that highlights a common thread across Europe and the United States. Across Western legal systems, religious communities have long enjoyed autonomy over their internal affairs, especially in matters of membership. That consensus is relevant here, because how this Court resolves the question presented will have consequences for religious organisations throughout the Member States. The forms these protections take vary, but their constitutional foundations are consistent across the West. As the Court has stated, “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.”<sup>1</sup>

3. The Court's precedents under Articles 9 and 11 are fully aligned with that broader consensus and protect the right of religious communities—including private lay associations organised for religious purposes—to determine their own membership criteria free from State interference. Finding no violation here would thrust State courts into countless religious disputes, drawing judges and other government officials into the business of second-guessing and superintending when a community's membership decisions are sufficiently “religious” to receive protection. Doing so would be inconsistent with the Court's repeated insistence that Member States maintain a neutral posture in religious matters.<sup>2</sup> Nor can such interference be justified as “necessary in a democratic society.” Because single-gender religious communities have maintained an established presence throughout the histories of European democracies, removing their single-gender character is plainly not “necessary.”

4. The Court should instead affirm the right of religious communities to define their own membership.

## **II. International law and Member States alike recognise the right of religious associations to structure their membership.**

5. The right to religious autonomy in international human rights law flows from the foundational guarantee of freedom of religion or belief in Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights. Both instruments protect not only individual religious freedom but also the freedom to manifest religion “in community with others”—language that necessarily implicates both the rights of religious communities as such

---

<sup>1</sup> *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 78, ECHR 2008.

<sup>2</sup> See, e.g., *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 113, 14 September 2007; *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, §§ 118, 123, ECHR 2001-XII.

and the right of each individual member to have the community reflect his or her own beliefs.

6. Participating States in the Organisation for Security and Cooperation in Europe have likewise committed to respecting the institutional autonomy of religious communities across a broad range of internal affairs. Under Principle 16(d) of the Vienna Concluding Document, States pledge to respect the right of religious communities to “organise themselves” according to their own structure—a commitment that necessarily encompasses decisions about who belongs to the community and on what terms. These commitments reflect a settled understanding among OSCE participating States that the internal ordering of a religious community, including questions of membership and leadership, falls within a protected sphere of autonomy into which the State does not intrude.

7. In Norway, for example, as recently reaffirmed by the Supreme Court of Norway, the Religious Communities Act ensures that “[r]eligious and belief communities are free to set their own terms for membership and may thus determine who may be admitted as a member.”<sup>3</sup> Invoking this Court’s precedents, the Supreme Court recognised that a “religious community’s autonomy is both a prerequisite for a pluralistic democratic society and for safeguarding the members’ individual freedom of religion.”<sup>4</sup>

8. In Poland, the Polish Constitution recognises the equal rights of churches “and other religious organizations” and provides that the State’s relationship with all religious organisations “shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere.”<sup>5</sup> In a case concerning the exclusion of a member by the Jehovah’s Witnesses, the Warsaw Court of Appeals protected the autonomy of religious organisations. The court explained that although exclusion from a religious community might deprive an individual of the ability to worship, teach, or perform ritual acts within that community, the Polish Constitution respects “the autonomy of religions and religious associations” and “does not permit interference in decisions regarding membership in a given religious community.” “Such matters,” the court explained, “are beyond the jurisdiction of the ordinary courts, which are not empowered to assess the conduct of adherents of a particular faith from the perspective of the principles adopted by that faith, nor to evaluate the sanctions imposed by a religious association against a person who has violated those principles.”<sup>6</sup>

9. In Spain, civil courts have applied similar principles in recent litigation arising from a monastery dispute. After Poor Clare nuns in the Belorado monastery left the Roman Catholic Church and were excommunicated, they sought civil registration of the monastery’s assets in their names. The Tribunal Superior de Justicia de Madrid declined to disturb the Church’s canonical determination of their status. The court held that Spanish law recognises canon law as statutory law governing the internal affairs of religious entities, and that the civil authorities had properly declined to facilitate converting ecclesiastical structures into civil associations. The

---

<sup>3</sup> *The State v. Jehovah’s Witnesses*, HR-2026-1009-A, Supreme Court of Norway, 29 April 2026, ¶ 53. In the case, the Supreme Court overturned the State’s decision to deregister the community of Jehovah’s Witnesses as a religious community recognised and subsidised by the State.

<sup>4</sup> *Ibid.*, ¶ 67.

<sup>5</sup> Constitution of the Republic of Poland, Arts. 25(1), 25(3) (2 April 1997).

<sup>6</sup> VI ACa 81/03 (Pol.), Warsaw Court of Appeals, 13 August 2003.

court confirmed that the departing members’ right to religious freedom was respected—they remained free to form their own associations—but that freedom did not entitle them to redirect the assets of a community whose internal governance was controlled by canon law.<sup>7</sup>

10. These examples are not exhaustive. Across the Member States, the principle that religious communities govern their own membership is reflected in constitutional frameworks, statutory law, and judicial decisions too numerous to catalogue here. The forms vary; but the substance is the same. Civil courts do not sit in review of a religious community’s membership decisions—and that settled consensus informs the proper interpretation of Articles 9 and 11.<sup>8</sup>

### **III. United States case law likewise recognises the principle of religious autonomy.**

11. Like its European counterparts, the United States Supreme Court has consistently affirmed the right of religious organisations to autonomy over their internal affairs.

12. In one of its earliest decisions in this area, the 1872 decision in *Watson v. Jones*, the Supreme Court explained that civil courts have “no jurisdiction” over any “matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.”<sup>9</sup> Were civil courts to decide such matters, the Supreme Court reasoned, the “validity of [any] ecclesiastical decree” would be determined in court, which would require that “the whole subject of the doctrinal theology ... and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care.”<sup>10</sup> In another decision from the same year, the Supreme Court clarified that “we cannot decide who ought to be members of [a] church.”<sup>11</sup>

13. In *National Labor Relations Board v. Catholic Bishop of Chicago*,<sup>12</sup> the Supreme Court addressed a dispute in which teachers at diocesan Catholic schools sought union recognition from the National Labor Relations Board, despite the relevant dioceses’ objection that NLRB jurisdiction would impermissibly intrude on their religious autonomy. The Board had sided with the teachers, drawing a distinction between employers that are “completely religious”—over which it disclaimed jurisdiction—and those it deemed merely “religiously associated,” a category into which it placed the diocesan schools and over which it claimed authority to act.<sup>13</sup>

14. 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. To interpret the Act otherwise, the Court ruled, would potentially

---

<sup>7</sup> *Sentencia*, Tribunal Superior de Justicia de Madrid (Sala de lo Contencioso-Administrativo, Sección Sexta), 11 June 2025.

<sup>8</sup> See Diana Verm Thomson & Kayla A. Toney, *Sacred Spheres: Religious Autonomy as an International Human Right*, 72 Cath. U. L. Rev. 151, 162-166, 181-182 (2023).

<sup>9</sup> *Watson v. Jones*, 80 U.S. 679, 733 (1872).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Bouldin v. Alexander*, 82 U.S. 131, 139-140 (1872).

<sup>12</sup> 440 U.S. 490 (1979).

<sup>13</sup> *Ibid.*, at 493 (citation omitted).

bring the Act into conflict with the First Amendment's religious freedom protections.<sup>14</sup>

15. In so holding, the Supreme Court recognised that subjecting church-operated schools to labour regulation would inevitably intrude on the administration of religious institutions and undermine the “autonomous position” of clergy in school governance.<sup>15</sup> The danger, the Court emphasised, lay not only in whatever conclusions the Board might ultimately reach—which could themselves burden rights protected by the First Amendment—but in “the very process of inquiry leading to findings and conclusions.”<sup>16</sup>

16. More recently, the Supreme Court expanded on the principle of religious autonomy in *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*<sup>17</sup> and *Our Lady of Guadalupe School v. Morrissey-Berru*,<sup>18</sup> each of which involved a religious group's right to determine who can serve as a teacher in a religious school.

17. In *Hosanna-Tabor*, the Supreme Court applied a constitutional doctrine known in the United States as the “ministerial exception.” That doctrine holds that otherwise generally applicable and neutral laws prohibiting employment discrimination cannot be applied to “ministerial” employees because to do so would violate the United States Constitution. The plaintiff in *Hosanna-Tabor* was a schoolteacher with mixed religious and secular responsibilities. She was removed from her position by the church congregation for insubordination, but the teacher claimed that her removal constituted unlawful disability discrimination.

18. In ruling against the plaintiff, the Supreme Court explained that the ministerial exception not only protects the right of churches and other religious groups to exercise control over internal matters of governance, but also avoids putting government in the role of second-guessing religiously significant decisions such as who should be a minister. The protection is thus rooted in both the First Amendment's Establishment and Free Exercise Clauses.<sup>19</sup>

19. Similar to ECtHR precedents on the distinction between *forum internum* and *forum externum*, the Supreme Court in *Hosanna-Tabor* drew a contrast between “government regulation of ... outward physical acts” and “government interference with an internal decision that affects the faith and mission of the church itself.”<sup>20</sup> The Court reasoned that whereas physical acts in the external world can be regulated like other manifestations of belief, internal religious decisions affecting a religious group's faith and mission are largely immune to government regulation. Put another way, just as individuals have complete freedom to decide what they believe or which church to join, religious communities can make up their minds about their

---

<sup>14</sup> *Ibid.*, at 504 (“We see no escape from conflicts flowing from the Board's exercise of jurisdiction over teachers in church-operated schools and the consequent serious First Amendment questions that would follow.”).

<sup>15</sup> *Ibid.*, at 503 (quoting *Pa. Lab. Relations Bd. v. State Coll. Area Sch. Dist.*, 461 Pa. 494, 504 (Pa. 1975)).

<sup>16</sup> *Ibid.*, at 502.

<sup>17</sup> 565 U.S. 171 (2012).

<sup>18</sup> 591 U.S. 732 (2020).

<sup>19</sup> *Hosanna-Tabor*, cited above, at 184 (“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.”).

<sup>20</sup> *Ibid.*, at 190.

doctrines, teachings, and membership. As “a matter ‘strictly ecclesiastical,’” such decisions are “the church’s alone.”<sup>21</sup>

20. In *Our Lady of Guadalupe*, the Supreme Court clarified that the ministerial exception doctrine may apply even when a teacher is not given the title of “minister” or required to receive formal religious training. In doing so, the Court situated the ministerial exception doctrine within the broader rubric of religious autonomy. The Court explained that the doctrine was rooted in a principle of “independence in what we have termed ‘matters of church government.’”<sup>22</sup> That principle protects religious groups’ “autonomy with respect to internal management decisions that are essential to the institution’s central mission.”<sup>23</sup>

21. In sum, the United States Supreme Court’s decisions in this area robustly protect the right of religious communities “to decide for themselves, free from State interference, matters of church government as well as those of faith and doctrine.”<sup>24</sup>

22. As to the question whether a religious association may be required to justify its membership decisions with a religious reason, *Hosanna-Tabor* expressly rejected an attempt to inquire into the religious school’s reasons. In response to the argument that the school’s stated reason for removing the ministerial employee was pretextual, the Supreme Court declined to consider whether the school had a valid reason, explaining that the ministerial exception doctrine’s purpose “is not to safeguard a church’s decision to fire a minister only when it is made for a religious reason.”<sup>25</sup> It is instead to ensure that a religious community’s decisions on internal religious matters are reserved to the religious community itself rather than the government or a civil court. To that point, *Catholic Bishop* would add that if courts undertake to decide whether a religious community has adequate religious reasons for their membership decisions, the problem doesn’t just lie in the government’s ultimate determination of that issue but in “the very process of inquiry leading to findings and conclusions.”<sup>26</sup>

#### **IV. European cases confirm the right of religious communities under the Convention to autonomously determine their membership.**

23. The principles established in European national case law and United States precedents including *Catholic Bishop*, *Hosanna-Tabor*, and *Our Lady of Guadalupe* are fully consistent with parallel European holdings under the Convention. As this Court’s decisions make clear, this principle of religious autonomy applies with full force to private lay communities of religious adherents who organise themselves for a religious purpose—whether or not the organisation asserts a religious reason for its membership criteria and whether or not the organisation might be deemed “culturally” important.

##### **A. Religious autonomy over membership is at the heart of Article 9.**

---

<sup>21</sup> *Ibid.*, at 195 (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 119 (1952)).

<sup>22</sup> *Our Lady of Guadalupe*, cited above, at 746 (quoting *Hosanna-Tabor*, cited above, at 186).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Hosanna-Tabor*, cited above, at 186 (quoting *Kedroff*, cited above, at 116).

<sup>25</sup> *Ibid.*, at 194.

<sup>26</sup> *Cath. Bishop*, cited above, at 502.

24. The principle of religious autonomy is firmly entrenched in the Court's Article 9 jurisprudence. That autonomy necessarily includes the principle that the conditions of their associations' membership should be determined by the religious communities themselves rather than the State. The Court has also made clear that the "State's duty of neutrality and impartiality ... is incompatible with any power on the State's part to assess the legitimacy of religious beliefs."<sup>27</sup> This should mean, for example, that a State's civil court has no power to assess the legitimacy of a religious community's justifications for how it structures its membership.

25. The Court has elaborated that principle in several cases:

26. In *Hasan and Chaush v. Bulgaria*, a case involving a leadership dispute within Bulgaria's Muslim community, the Grand Chamber articulated the broad principle of religious autonomy. The Court explained 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 which Article 9 affords."<sup>28</sup> The Court further explained that religious autonomy "directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable."<sup>29</sup>

27. In *Sindicatul "Păstorul cel Bun" v. Romania*, the Grand Chamber upheld Romania's decision not to authorise a trade union of Romanian Orthodox priests over the Romanian Orthodox Church's objection that the trade union was inconsistent with canon law and the Church's hierarchical governance structure.<sup>30</sup> Reaffirming *Hasan and Chaush*, the Court reiterated Article 9's protection of religious autonomy and held that the State has an obligation to remain "neutral and impartial" vis-à-vis religious communities in the exercise of their autonomy rights.<sup>31</sup> As relevant here, the Court also explained that "[i]n accordance with the principle of autonomy, the State is prohibited from obliging a religious community to admit new members or to exclude existing ones."<sup>32</sup>

28. *Sindicatul* likewise recognised that the principle of religious autonomy may override competing associational claims by individuals. Even though the priests possessed a facially valid right of association, the Court concluded that Article 9's religious autonomy principle requires State courts to respect a religious community's structure and rules.<sup>33</sup> Put another way, Article 9 does not permit an individual to compel a religious community to alter its internal rules or structures over the objection of the community itself. As the Court explained: "Article 9 ... does not guarantee any right to dissent within a religious body."<sup>34</sup>

29. In *Fernández Martínez v. Spain*, the Grand Chamber upheld the Catholic Church's non-renewal of a married priest's contract as a religious education teacher after the local bishop withdrew his approval, explaining that the Church's right to

---

<sup>27</sup> *Svyato-Mykhaylivska Parafiya*, cited above, § 113; *Metropolitan Church*, cited above, § 123.

<sup>28</sup> *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, ECHR 2013.

<sup>31</sup> *Ibid.*, § 165.

<sup>32</sup> *Ibid.*, § 137.

<sup>33</sup> *Ibid.*, § 139.

<sup>34</sup> *Ibid.*, § 137.

determine who may represent its teachings prevailed over the teacher's Article 8 right to private and family life.<sup>35</sup> The Court explained that the State must respect "the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them."<sup>36</sup> "[I]n the event of any doctrinal or organisational disagreement between a religious community and one of its members," the Court concluded, "the individual's freedom of religion is exercised by the option of freely leaving the community."<sup>37</sup>

30. Case law under the Convention has further clarified the principle of religious autonomy in cases involving the autonomy of religious communities in personnel matters. For example, in *Obst*, the Court held that German courts appropriately sided with the Church of Jesus Christ of Latter-day Saints when they upheld the decision of the Church to terminate its head of public relations for Europe on the grounds of his violation of Church behavioural standards.<sup>38</sup> Similarly, in *Rommelfanger v. Germany*, the Commission held that the State's decision to respect the Catholic Church's religious autonomy when it terminated a doctor who had publicly criticised the hospital's pro-life policies did not even rise to the level of an admissible claim.<sup>39</sup>

31. Most recently, the Court applied this autonomy principle to monastic institutions. In a 2026 advisory opinion, the Court considered whether civil courts could adjudicate a former nun's claim to re-enter the monastery after being excluded from the community.<sup>40</sup> The Court's advisory opinion, while mainly concerning Article 8 questions, affirmed the principle that religious communities including monastic institutions enjoy a protected sphere of internal self-government and that States are prohibited from obliging such communities to admit new members or exclude existing ones.

32. In the same vein, where a religious community's membership decisions are at issue, it is inappropriate for the courts of a Member State to use a *Drittwirkung* application of national law to override the Member State's obligations under the Convention. Indeed, membership in any church, religious organisation, or religious association cannot be guaranteed by any civil law provision, but is instead embedded in religious internal rules, and thus depends on the religious entity's decision alone.

33. Read together, the Court's cases and others establish a clear framework. They emphasise that "the principle of religious autonomy prevents the State from obliging a religious community to admit or exclude an individual."<sup>41</sup> That rule applies whether the individual asserts a right of association (*Sindicatul*), a private and family life claim (*Fernández-Martínez*), or, by extension, an equality claim.

---

<sup>35</sup> *Fernández Martínez v. Spain* [GC], no. 56030/07, §§ 131–132, ECHR 2014.

<sup>36</sup> *Ibid.*, § 128.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Obst v. Germany*, no. 425/03, § 44, 23 September 2010.

<sup>39</sup> *Rommelfanger v. Germany*, no. 12242/86, Commission decision of 6 September 1989, Decisions and Reports 62, p. 151.

<sup>40</sup> *Advisory opinion on the status of monastic premises and the jurisdiction of the courts to examine a dispute concerning them*, Request no. P16-2025-001, 5 March 2026.

<sup>41</sup> *Fernández Martínez*, cited above, § 129.

34. The Court's decisions also make clear that these protections are vital to their members' religious practice. Without such protections, "all other aspects" of individual religious freedom would become "vulnerable" and thus unstable.<sup>42</sup>

**B. Article 9's religious autonomy protection extends to private associations organised for a religious purpose.**

35. The principle of religious autonomy does not apply merely to churches, synagogues, and mosques. Quite correctly, the Court has been careful to state that the principle applies more broadly to "religious communities"<sup>43</sup> or "religious associations."<sup>44</sup> The Court's description accords with Article 9 § 1's text, which protects manifestation of religion "in community with others." That language naturally covers not only churches but any private association organised for religious purposes.

36. *Moscow Branch of the Salvation Army v. Russia* is instructive. The Salvation Army does not fit a conventional model of a church organised around sacramental clergy or traditional ecclesiastical forms. Yet the Court applied the principle of autonomy without hesitation, holding that religious believers have the right under Articles 9 and 11 to "associate freely, without arbitrary State intervention."<sup>45</sup>

37. By contrast, limiting autonomy protection to churches would be a mistake. Doing so would privilege one form of organised religious expression over another. The purpose of the autonomy principle is to keep States out of decisions that are internal to organised religious life. From a State's perspective, there is no principled reason why that purpose is better served in a church than in a lay brotherhood or other religious entity.

38. As explained below, in many traditions (including the Roman Catholic tradition), lay brotherhoods and confraternities are among the oldest and most important vehicles for communal religious life. Cutting such associations out of Article 9 protection would leave a large swath of organised religious practice exposed to State interference. Moreover, any religious group organised for the purpose of "worship" is expressly protected by the text of Article 9. The Court has thus specifically protected the ability to organise for worship.<sup>46</sup>

**C. Religious associations should not have to explain or justify their membership decisions to State courts.**

39. Requiring religious associations to assert a religious reason for their membership criteria would be starkly at odds with the principle of religious autonomy. That principle exists precisely because civil courts are neither equipped nor permitted by the Convention to evaluate whether a religious practice or determination is doctrinally necessary.

40. If a civil court requires a religious group to assert a religious justification, it can only be because the civil court claims the authority to review the religious group's justification to assess whether it is adequate. Once a court accepts such a

---

<sup>42</sup> *Ibid.*, § 127.

<sup>43</sup> *Hasan and Chaush*, cited above, § 62

<sup>44</sup> *Sviato-Mykhailivska Parafiya*, cited above, §§ 146, 150.

<sup>45</sup> *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 58, 5 October 2006.

<sup>46</sup> *Metropolitan Church*, cited above, at §§ 104, 114.

role, the protection dissolves. Courts would then be in the business of evaluating and adjudicating religious rationales.

41. *Fernández Martínez* is again on point. It explained that “the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”<sup>47</sup> But when a State court demands that a religious community justify its membership criteria in order to receive protection, it is doing precisely that. Likewise, in *Sindicatul*, the Grand Chamber did not ask the Romanian Orthodox Church to explain why the trade union of priests was incompatible with canon law or church governance. It simply held that the Church’s determination should be respected.<sup>48</sup>

42. Allowing membership decisions to be questioned by courts and government officials would entangle civil authorities in all manner of religious questions inappropriate for them to decide. For example, what if a Jewish woman wished to be counted towards the quorum for corporate prayer (the *minyan*) in contravention of Orthodox Jewish religious law? Or if a Catholic man wished to join a female religious order? Such membership questions are not proper for civil courts to decide.

**D. A religious association should not lose its autonomy merely because it might be considered “culturally” or otherwise dominant.**

43. Concluding that a religious association cannot limit its membership if it holds a “dominant position” in the economic, cultural, social, or professional sphere is also problematic under the logic of religious autonomy case law.

44. A church or other religious community may be societally significant in a given place, but its prominence should have no bearing on religious autonomy. No one can doubt, for example, that in countries like Spain, Italy, or Poland, the Catholic Church might be described as having a greater cultural or social position. But the fact that it does should not mean that the church should be forced to have a gender-integrated priesthood or lose control over other aspects of church governance.

45. Moreover, the religious sphere is not entirely distinct from the economic, cultural, social, or professional sphere. But experience dictates that there is overlap. It would be wrong to treat the field of human rights and economic, social and cultural rights as one thing, and “religious beliefs or the means used to express such beliefs” as another.<sup>49</sup> 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.<sup>50</sup> To say that culture and religion are entirely separate spheres is to understand neither culture nor religion.

**V. Requiring all-male or all-female religious associations to accept members of the opposite sex is not necessary in a democratic society.**

46. For a State’s interference with rights under Articles 9 and 11 to be justified, the State’s action must be “necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection

---

<sup>47</sup> *Fernández Martínez*, cited above, § 129.

<sup>48</sup> *Sindicatul*, cited above, §§ 165–166.

<sup>49</sup> *Hasan and Chaush*, cited above, § 78.

<sup>50</sup> See *Hosanna-Tabor*, cited above, at 193–194.

of the rights and freedoms of others.” But this condition cannot be met when a State interferes with a religious community’s right under the Convention to use gender as a criterion for membership. Because single-gender religious communities have existed in European democracies throughout European histories, forbidding them can hardly be said to be necessary in a democratic society.

47. Many religious communities across Europe limit membership to a single sex (as well as many more that do not limit membership based on sex). In Christianity and other religious faiths, all-male and all-female monastic traditions have existed for centuries and even millennia. For those traditions, the single-gender nature of their community is vital to the purpose for which they were created.

48. Single-gender communities continue to be the standard in Catholic and Orthodox monasticism today. And because there are both all-male and all-female religious communities in different faiths, their use of gender as a criterion for membership does not inhibit either men or women from forming and practicing their religion within such communities. To take Catholicism as an example, as of 2025, the Catholic Church had 58 religious orders for men and 115 religious orders for women. Neither sex is lacking in options of Catholic monastic communities to join.

49. Far from being incompatible with democratic society, single-gender religious communities have advanced their societies’ public safety, order, health, and morals. Such communities have done much to care for the poor, the sick, and the elderly, and all-female convents and monasteries have provided places for women to find safety and shelter, secure autonomy, and pursue education and studies. A decision to the contrary would not only be a grave violation of religious autonomy but would call into question the validity of countless single-gender religious associations.

## VI. Conclusion

50. Western legal systems agree that the internal ordering of a religious community—including who may join it—belongs to the community itself. That consensus finds its expression in international human rights instruments, in the domestic laws of Member States and the United States, and most importantly, in the Court’s own settled jurisprudence under Articles 9 and 11. The Court should hold that Articles 9 and 11 protect a religious association’s right to determine its membership.

Grzegorz Blicharz  
Franciszek Longchamps de Bérrier  
Eric Rassbach  
Centre for Law and Religious Freedom  
Jagiellonian University  
Gołębia 9  
31-007 Kraków  
Poland  
clrf@uj.edu.pl

Joshua C. McDaniel  
Parker W. Knight III  
Kathryn F. Mahoney  
Jacob M. McIntosh  
Harvard Law School  
Religious Freedom Clinic  
6 Everett Street, Suite 5110  
Cambridge, MA 02138  
United States  
jmcDaniel@law.harvard.edu