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Grand Chamber judgment in Nagy v. Hungary (Application no. 56665/09)

(a) Introduction

1. Today the Grand Chamber of the European Court of Human Rights (ECtHR) ruled on an important case concerning State neutrality on matters involving internal Church application of rules concerning employment and disciplinary proceedings against Church Ministers.
2. ADF International intervened in this case at both the Chamber level and the Grand Chamber arguing that the internal autonomy of the church should not be interfered with by the state or secular state courts.

(b) Facts of the case

3. Briefly, this case involves a complaint by the applicant, a Hungarian national, who was a pastor of the Hungarian Calvinist Church. As the result of a disciplinary procedure, he was dismissed from service as of 1 May 2006. He initiated labour-law proceedings against the Church and sued the Church for damages, but the courts discontinued the procedure. The courts held that the applicant's claims belonged exclusively before the ecclesiastical jurisdictions and could not be pursued before State courts.
4. In June 2005, disciplinary proceedings were brought against Mr. Nagy for being reported in a local newspaper as accusing a Calvinist boarding school of illegally receiving State subsidies. The first instance ecclesiastical court suspended the applicant from service as a pastor and later removed him from service. This was upheld by the second-instance ecclesiastical court in March 2006.
5. Prior to the final ecclesiastical decision, Mr. Nagy brought proceedings before both the labour and civil courts. Both sets of proceedings were ultimately discontinued on the ground that Mr. Nagy's claim could not be enforced before domestic courts. He claimed, *inter alia*, breach of contract and damages under civil law. Eventually the Hungarian Supreme Court concluded that Mr. Nagy's claim had no basis in civil law as his contract was to be determined under ecclesiastical church law"

The Plaintiff was appointed as a pastor in an ecclesiastical procedure, and the obligations of the Respondent were defined in an appointment letter issued by the assembly of presbyters. The

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parties established between themselves a pastoral service relationship, governed by ecclesiastical law.¹

6. Mr. Nagy then complained to the ECtHR regarding the Hungarian courts' refusal to deal with his contractual and pecuniary damages claim against the Reformed Church of Hungary. He relies in particular on Article 6 § 1 (right of access to court) of the European Convention on Human Rights ("the Convention").

Decision of the Second Section of the Court

7. In December 2015 the Second Section of the Strasbourg Court dismissed the applicant's case, and upheld the principle of church autonomy in such matters
8. The Strasbourg Court held that Article 6 § 1 does not guarantee any particular content for civil law "rights" in the substantive law of the Contracting States. Thus, the ECtHR decided that it may not create, through the interpretation of Article 6 § 1, a substantive right which has no legal basis in the State concerned. This interpretation means that guarantees in the Convention extend only to rights which can be said, at least on arguable grounds, to be recognised under domestic law. Furthermore, in assessing whether there is a civil "right", the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts.
9. The Second Section held that "strong reasons" would be needed to differ from the conclusion reached by the domestic Hungarian courts before it would substitute its own views for those of the national courts on a question of interpretation of domestic law. In this case the Hungarian Supreme Court ruled that the applicant's pastoral service relationship was not regulated by civil law, but by ecclesiastical law. As the applicant's pastoral service relationship lacked a civil-law legal basis, the court could not examine the applicant's claim arising out of the termination of the applicant's pastoral service and adjudicating it on the merits. The Hungarian Supreme Court, held that the applicant could only make a claim under the ecclesiastical law before the relevant bodies of the Calvinist Church. Thus the decision of the Hungarian Constitutional Court in 2003 that a person in the service of a church may only turn to a State court to have the dispute decided by the State court if the employment is based on State law.
10. The Second Section found that the reasoning of the Hungarian Supreme Court in relation to the correct application of Hungarian civil law was appropriate and not in violation of the Convention:

In the present case, the reasoning given by the Supreme Court as regards the legal nature of the relationship between the applicant and the Calvinist Church shows that it considered the applicant's submissions on their merits, before concluding that his claim had no basis in civil law. The Court is unable to conclude that the Supreme Court's decision as to the absence of a contractual relationship was arbitrary or manifestly unreasonable. It is not for

¹ *Nagy v. Hungary* [GC], Application no. 56665/09, § 24.

this Court to find that the provisions of the [old] Civil Code on agency contracts should have been extended to the applicant's engagement with the Calvinist Church, since this would effectively involve substituting its own views for those of the domestic courts as to the proper interpretation and content of domestic law.²

11. The Strasbourg Court concluded by holding that the decision of the Hungarian Supreme Court to refuse to make a determination on the applicant's claim cannot be considered arbitrary or manifestly unreasonable and, as such, the applicant cannot argue that he was deprived of the right to a determination of the merits of his claim under Article 6 of the Convention.³
12. On the basis of the foregoing, the Second Section held, by four votes to three, that there had been no violation of Article 6. On 15 December 2015 the applicant requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 2 May 2016 a panel of the Grand Chamber accepted that request.

(c) Grand Chamber judgment

13. Today, the Grand Chamber upheld the decision of the Second Section of the Court, reiterating that for Article 6 to be applicable in the context of a civil dispute, there must be a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention.⁴
14. The Grand Chamber was not impressed by the applicant's arguments that Hungarian civil law applied, due to the fact that he paid tax on his salary and was therefore to be considered an employee with contractual rights in the secular law. The Grand Chamber deferred to the analysis of the Supreme Court of Hungary that the applicant's relationship with the Reformed Church had been of an ecclesiastical nature before terminating his proceedings before State courts.⁵ Additionally the Grand Chamber was satisfied that Hungarian law did not provide churches or their officials with unfettered immunity against any and all civil claims, but only those claims that sought to challenge the "internal laws and rules of a church" within the meaning of the relevant provisions of the Hungarian Church Act 1990.⁶
15. The conclusion of the Grand Chamber's analysis of the Hungarian Courts' application of their laws on separation of church and state is important in the context of other potential disputes regarding the jurisdiction of church courts:

Given the overall legal and jurisprudential framework existing in Hungary at the material time when the applicant lodged his civil claim, the domestic courts' conclusion that the applicant's pastoral

² *Nagy v. Hungary*, Application no. 56665/09, §70.

³ *Ibid.*, §74.

⁴ *Nagy v. Hungary* [GC], Application no. 56665/09. Judgment of 14 September 2017, § 60.

⁵ *Ibid.*, § 73.

⁶ *Ibid.*, §74.

service had been governed by ecclesiastical law and their decision to discontinue the proceedings cannot be deemed arbitrary or manifestly unreasonable.⁷

16. The Grand Chamber proceeded to dismiss the Article 6 claim as not applying to the facts of the case and being incompatible *ratione materiae* with the provisions of the Convention.
17. Of note is the Joint Dissenting Opinion of Judges Sajo, Lopez Guerra, Tsotoria and Laffranque. They object to the decision of the majority to exclude the application of Article 6, stating that:

Such an understanding of the case-law not only encourages domestic arbitrariness, but may also deprive many people who enter into ecclesiastical service of the protection of due process. Ultimately, this judgment risks endorsing the position that all appointments and service agreements formed with religious institutions that are subject to internal rules fall outside the jurisdiction of the State. Consequently, such agreements are rendered unreviewable and any rights are unenforceable under domestic law.⁸

18. The Joint Dissenting opinion ignores the fact that Mr. Nagy did enjoy a court process which adjudicated his claim; that of the Reformed Church Courts. The fact that they exercised their ecclesiastical jurisdiction over the circumstances surrounding his disciplinary process was both part of the “appointment letter” from the assembly of presbyters and provided for by Hungarian Law under the relevant provisions of the Church Act 1990.

(d) Commentary and analysis

19. The European Court of Human Rights has consistently recognized the need for churches and religious organisations to operate freely without State intervention. This essential freedom, enshrined in Article 9 (freedom of religion) and 11 (freedom of association) of the European Convention on Human Rights (“the Convention”) is necessary for the proper functioning of religious institutions and even democracy itself.⁹ Although the right to religious autonomy may sometimes affect other Convention claims under Article 6 (fair trial), Article 8 (private and family life), and even Article 9 itself (where the rights of an individual may compete with the rights of a religious community), where competing interests are in conflict, it is incumbent upon this Court to weigh those competing interests.¹⁰
20. The Court has recognized that the rights guaranteed by Article 9 are a cornerstone of democracy and one of the vital elements that make up the identity of believers

⁷ Ibid., § 76.

⁸ Ibid, Joint Dissenting Opinion of Judges Sajo, Lopez Guerra, Tsotoria and Laffranque, Part 1.

⁹ *Holy Synod of the Bulgarian Orthodox Church and Others (Metropolitan Inokentiy) v. Bulgaria*, Application nos. 412/03 and 35677/04, § 119, 22 January 2009.

¹⁰ See *Öllinger v. Austria*, no. 76900/01, § 34, 29 September 2006.

and their conception of life.¹¹ Accordingly, Article 9 has taken the position of a substantive right under the European Convention.¹² Indeed, of all the qualified rights in the Convention, Article 9 is given the widest scope and is the least qualified.¹³

21. In the last fifteen years, this Court has heard a number of cases that centre on the issue of church autonomy. In the seminal case of *Hasan and Chaush v. Bulgaria*, the Court held that the State had wrongfully interfered with the internal life of the Muslim community by removing Mr. Hasan as Chief Mufti of the Bulgarian Muslims. In its judgment, the Court made several striking observations regarding the nature of Article 9, in particular:

The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is at the very heart of the protection which Article 9 affords...Church autonomy has a direct impact on the organisation of the community but also the effective enjoyment of the right to freedom of religion by all its active member...If the organizational life of the community was not protected by Article 9, all other aspects of the individual's freedom of religion would become vulnerable.¹⁴

22. The decision in *Nagy* is fully in accord with the approach taken by the Court in *Hasan and Chaush*, while not explicitly deciding the case through the lens of church autonomy, the Court implicitly endorsed that principal by agreeing with the conclusion of the Hungarian Supreme Court that the Church Act of 1990 created a distance between civil matters and internal Church matters.
23. The deference to the Hungarian domestic legal order on this point is of more than local relevance, as by not undermining the policy undergirding the complementary principles of State neutrality and church autonomy the Court has resisted the calls by some to unravel the basis of ecclesiastical authority to determine internal disputes. The fact that the Grand Chamber has deferred to a national court regarding the nuances of domestic law on the separation of civil and ecclesiastical jurisdictions is important as the majority in this case did not deem the existence of ecclesiastical courts determining employment disputes, *per se*, as antithetical to the Convention, nor did they entertain the notion, advanced by the dissenting opinions, that an ecclesiastical court process was incompatible with Convention notions of due process.

(e) Conclusion

24. The *Nagy* case has left the principal of church autonomy in employment and internal disciplinary disputes unscathed. This is welcome as the need for churches and religious organizations to operate freely without State intervention is at the heart of

¹¹ See *Kokkinakis v. Greece*, no. 14307/88, § 31, 25 May 1993.

¹² See *Vojnity v. Hungary*, no. 29617/07, § 36, 12 February 2013.

¹³ See Carolyn Evans, *Freedom of Religion Under the European Convention on Human Rights*, Oxford University Press, 2001, p. 137. Evans also points out that when the Convention was being written, the final draft of Article 9(2) was the narrowest of the proposed articles.

¹⁴ *Hasan & Chaush v. Bulgaria*, Application no. 30985/96, judgment of 26 October 2000, § 62.

the protections that Article 9 affords. It is inevitable that the claims of an individual will on occasion collide with the collective rights of a religious community. However, given the fundamental nature of Article 9 of the Convention and the centrality of “church autonomy” within Article 9 protections, the State’s duty of neutrality towards religious institutions is correctly interpreted as a duty to defer to churches in matters of ecclesiastical disputes. While this may, on rare occasions, have an impact on Convention-based claims, any other course of action would likely place other Convention rights above the fundamental right to freedom of religion and would position the Court, both domestic and in Strasbourg as the ultimate arbiter of religious disputes.