



Dismissed pastor of Hungarian Reformed Church had no arguable compensation claim under domestic law as he was employed under ecclesiastical law not civil law

In today's **Grand Chamber** judgment¹ in the case of **Károly Nagy v. Hungary** (application no. 56665/09) the European Court of Human Rights held, by a majority of ten votes to seven, that the application was inadmissible.

The case concerned the compensation claim brought by Mr Károly Nagy, a pastor, following his dismissal by the Hungarian Reformed Church. The courts rejected his claim as unenforceable.

Mr Nagy's claim was first dismissed by the labour courts on the basis of labour law. He then brought a civil action arguing that he had an agency contract with the Church. The domestic courts discontinued the proceedings, finding that the courts could not enforce any such claims as he was employed under ecclesiastical law not civil law.

In view of the overall legal framework in Hungary, the Court found that Mr Nagy thus had no "right" which could be said, at least on arguable grounds, to be recognised under domestic law. Article 6 (right of access to a court) was therefore not applicable in the present case.

Principal facts

The applicant, Károly Nagy, is a Hungarian national who was born in 1951 and lives in Gödöllő (Hungary).

In 1991 Mr Nagy was appointed as a pastor of the Reformed Church of Hungary. His rights and duties, together with the amount of his remuneration, were listed in the letter of appointment issued to him by the presbytery of the Reformed Church, Gödöllő parish.

In June 2005 disciplinary proceedings were brought against him for being reported in a local newspaper as saying that State subsidies had been paid unlawfully to a Calvinist boarding school. He was immediately suspended by the ecclesiastical court pending a decision on the merits. He received a letter stating that he was entitled to 50% of his service allowance during the period of suspension.

On 27 September 2005 the first-instance ecclesiastical court concluded that the applicant had committed disciplinary offences and removed him from service. On appeal the second-instance ecclesiastical court upheld that decision.

On 26 June 2006 Mr Nagy took his case to the Pest County Labour Court, seeking payment of 50% of his service allowance and other benefits to which, in his view, he should have been entitled during the period of his suspension. He argued in substance that his ecclesiastical service was analogous to employment. In December 2006 the Labour Court discontinued the proceedings on the ground that a pastor's service with the Church was governed by ecclesiastical law, whereas a layman's employment with the Church was governed by labour law. Accordingly, the provisions of the Labour Code were not applicable in the case. This decision was upheld on appeal. The applicant did not apply for review to the Supreme Court.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 10 September 2007 Mr Nagy lodged a civil action against the Reformed Church of Hungary with the Pest Central District Court, arguing that his relationship with the Church corresponded to an agency contract within the meaning of the Civil Code. On 2 January 2008 the court dismissed Mr Nagy's claim. After losing an appeal in the Budapest Regional Court on 17 October 2008, he took his case to the Supreme Court, which discontinued the proceedings on 28 May 2009. It found that Mr Nagy's claim was ecclesiastical in nature and not a civil-law claim, with the result that it could not be enforced by the domestic courts.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court) of the European Convention on Human Rights, Mr Nagy complained that the refusal by the domestic courts to settle a pecuniary claim arising from his employment as a pastor had breached his right of access to a court.

The application was lodged with the European Court of Human Rights on 19 October 2009.

In its Chamber judgment of 1 December 2015 the Court found 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 the panel of the Grand Chamber accepted that request. Third-party comments were received from the Alliance Defending Freedom, which had been given leave by the President to intervene in the written procedure. A hearing took place in public in the Human Rights Building, Strasbourg, on 12 October 2016.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Luis **López Guerra** (Spain),
András **Sajó** (Hungary),
Nona **Tsotsoria** (Georgia),
Vincent A. **De Gaetano** (Malta),
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
André **Potocki** (France),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Valeriu **Grițco** (the Republic of Moldova),
Iulia **Motoc** (Romania),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Georges **Ravarani** (Luxembourg),
Tim **Eicke** (the United Kingdom),

and also Françoise **Elens-Passos**, *Deputy Registrar*.

Decision of the Court

Article 6 § 1

The question to be addressed by the Court was whether Mr Nagy had a "right" that could be regarded – at least on arguable grounds – as recognised under domestic law.

In accordance with section 15 (2) of the 1990 Church Act, claims involving internal laws and regulations of a church could not be enforced by State organs. Should domestic courts establish that an ongoing dispute concerned an ecclesiastical claim unenforceable by domestic organs, they were required to terminate the proceedings pursuant to Article 130 (1) f of the Code of Civil Procedure. The main question that arose before the domestic courts therefore revolved around the exact nature of Mr Nagy's relationship with the Reformed Church.

The Court noted that Mr Nagy's ecclesiastical service was based on the letter issued by the parish presbyters appointing him as a pastor of the Reformed Church of Hungary.

After his dismissal, instead of turning to the ecclesiastical courts with his pecuniary claims against the Church, Mr Nagy first brought proceedings in the labour courts, claiming that his relationship with the Reformed Church was akin to employment. When the labour court discontinued the proceedings, Mr Nagy did not apply for review to the Supreme Court, but rather turned to the civil courts and claimed that his relationship with the Reformed Church in fact constituted an agency contract within the meaning of the Civil Code. It was only this last set of proceedings that had been declared admissible by the Chamber in its judgment of 1 December 2015 and that, therefore, fell to be examined by the Grand Chamber.

On 2 January 2008 the first-instance civil court concluded that Mr Nagy's relationship with the respondent Church could not be equated with an agency contract as defined by the Civil Code, because it lacked important characteristics of such contracts, and in particular the applicant's ecclesiastical services had no market value. This view was confirmed by the Supreme Court, which noted that the applicant's claim had been ecclesiastical rather than civil in nature and was not therefore enforceable in the national courts.

The Court noted that in the applicant's case all the national courts had discontinued the proceedings holding that Mr Nagy's claim could not be enforced in national courts since his pastoral service and the letter of appointment on which it was based had been governed by ecclesiastical rather than the State law. Furthermore, these findings were in line with the principles laid down by the Constitutional Court in its decision 32/2003 of 2003, concerning the issue of access to court of persons employed by religious organisations.

Having regard to the nature of Mr Nagy's complaint, to the basis on which he had served as a pastor, and to domestic law as interpreted by the domestic courts, the Court could not but conclude that Mr Nagy had no "right" which could be said, at least on arguable grounds, to be recognised under domestic law.

The Court held that Article 6 was not applicable to the facts of the present case.

Separate opinions

Judge Sicilianos expressed a dissenting opinion; Judges Sajó, López Guerra, Tsotsoria and Laffranque expressed a joint dissenting opinion; Judge Pinto de Albuquerque and Judge Pejchal each expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.