EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

APPLICATION NO. 56665/09

NAGY

Applicant

v.

HUNGARY

Respondent

WRITTEN OBSERVATIONS
OF THIRD PARTY INTERVENER:

Alliance Defending Freedom

Filed on
15 April 2014

Paul Coleman
Legal Counsel
Alliance Defending Freedom
Landesgerichtsstraße 18/10
1010, Wien
Austria
Tel: +43 1 904 95 54
Email: pcoleman@alliancedefendingfreedom.org

Introduction

1. Alliance Defending Freedom ("ADF") is an international legal organization dedicated to protecting and defending fundamental freedoms including freedom of religion and freedom of expression. As a legal alliance of more than 2,200 lawyers dedicated to the protection of fundamental human rights, it has been involved in over 500 cases before national and international forums, including the Supreme Courts of the United States of America, Argentina, Honduras, India, Mexico and Peru, as well as the European Court of Human Rights and Inter American Court of Human Rights. ADF has also provided expert testimony before several European parliaments, as well as the European Parliament and the United States Congress. ADF has accreditation with the Economic and Social Council of the United Nations, as well as the Organization for Security and Cooperation in Europe and the European Union (the European Union Agency for Fundamental Rights and the European Parliament). By direction of the Court this submission does not address the specific facts of the case or the applicant.

2. The European Court of Human Rights ("the Court") has consistently recognized the need for churches and religious organizations 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.[1] Although the right to religious autonomy may sometimes clash with other Convention rights, including 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, it is incumbent upon this Court to weigh the competing interests and to strike a fair balance.[2] To assist the Court in this task, this Intervention will highlight the fundamentality of church autonomy to both Article 9 and Article 11 of the Convention and will submit that, in order to preserve the autonomy of churches and the proper functioning of democracy, Council of Europe Member States and this Court should defer to churches in matters of ecclesiastical disputes.

i. The Fundamental Nature of Freedom of Religion

3. Freedom of thought, conscience and religion is a fundamental human right not only enshrined in Article 9 of Convention, but also in many other seminal international and regional human rights treaties and non-binding documents,[3] including Article 18 of the Universal Declaration of Human Rights (1948), Article 18 of the International

[1] ECHR, *Holy Synod of the Bulgarian Orthodox Church and Others (Metropolitan Inokentiy) v. Bulgaria*, Application nos. 412/03 and 35677/04, judgment of 22 January 2009, § 119.
[2] *See* ECHR, *Öllinger v. Austria*, Application no. 76900/01, judgment of 29 September 2006, §34.
[3] For example, the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981; UN Resolution on the Elimination of all forms of religious intolerance 1993; OSCE Vienna Concluding Document 1989, Principle 16.

Covenant on Civil and Political Rights (1966) and Article 10 of the Charter of Fundamental Rights of the European Union (2000).

4. The Court has even elevated the rights guaranteed by Article 9 as being one of the cornerstones of a democratic society and one of the vital elements that make up the identity of believers and their conception of life.[4] Accordingly, Article 9 has taken the position of a substantive right under the European Convention.[5] Indeed, of all the qualified rights in the Convention, Article 9 is the least qualified.[6] As former President of the Court, Sir Nicolas Bratza recently wrote; Article 9 is "a precious asset."[7] Similarly, the United Nations Human Rights Committee has stated that freedom of thought, conscience and religion is a "profound" and "far reaching" right of a "fundamental character"; one which State Parties may not suspend or derogate from even in times of public emergency pursuant to Article 4.2 of the ICCPR.[8]

5. In both United Nations treaties and the European Convention, the right to freedom of religion includes freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching. Moreover, as developed within the jurisprudence of this Court, freedom of religion is not limited to individuals but also extends collectively to religious communities and associations.[9] Indeed, as explained by the Court, without the protection for religious communities, any protection for the individuals who comprise those communities becomes threatened.[10]

ii. The Court's Church Autonomy Jurisprudence

6. The case-law of this Court and a number of international human rights documents make clear that the heart of freedom of religion is the concept of church autonomy – the ability of churches and religious organizations to have full control over their internal processes and be free from State intervention. For example, in 1988 the Parliamentary Assembly of the Council of Europe (PACE) produced an extensive list of recommendations on the situation of churches and freedom of religion in Eastern Europe, many of which touched upon the right of church autonomy.[11] In the year

[4] *See* ECHR, *Kokkinakis v. Greece*, Application no. 14307/88, 25 May 1993, § 31.
[5] *See* ECHR, *Vojnity v. Hungary*, Application no. 29617/07, judgment of 12 February 2013, § 36.
[6] *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.
[7] Sir Nicolas Bratza, The 'Precious Asset': Freedom of Religion Under the European Convention on Human Rights, *Ecclesiastical Law Journal*, Vol. 14, Issue 2, May 2012, pp 256-271.
[8] HRC, *General Comment No 22: The Right to Freedom of Thought, Conscience and Religion* (1993).
[9] *See* Julian Rivers, *The Law of Organized Religions*, Oxford University Press, 2010, pp.50-71.
[10] *See infra* paras 9-14.
[11] Recommendation 1086 (1988) on the situation of the Church and freedom of religion in Eastern Europe. For example, recommendation 10(i) referred to "the right of religious associations to unhindered existence and recognition under the law" and 10(iii) called for the provision of "the right to free election of church officers and bodies without interference."

following the PACE resolution, the Organization for Security and Cooperation in Europe (OSCE) held its third summit in Vienna, Austria. The Vienna Concluding Document (1989) dedicated a number of paragraphs to freedom of religion, and once again respect for church autonomy was a key component of this freedom. Principle 16.4 states:

> In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will … respect the right of these religious communities to establish and maintain freely accessible places of worship or assembly, organize themselves according to their own hierarchical and institutional structure, select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State, solicit and receive voluntary financial and other contributions.

7. In 2004 the OSCE together with the Venice Commission produced "Guidelines for Review of Legislation Pertaining to Religion or Belief."[12] In section 2(F)(1) the guidelines state: "Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed."

8. Similarly, the European Union has recognized the special relationship that exists between churches and those who work for them. In Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, section 4(2) states: "Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos."[13] This unique provision highlights the special need for the autonomous existence of religious organizations. Thus, in an EU directive directed at prohibiting discrimination in the field of employment, churches and religious organizations are given heightened protection, because of the particular duty of loyalty that exists between a church and its ministers.

9. In the last fifteen years, the European Court of Human Rights has heard a number of cases that centre on the issue of church autonomy. Beginning in 2000, 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:

[12] Organization for Security and Co-operation in Europe, Guidelines for Review of Legislation Pertaining to Religion or Belief (28 Sept. 2004).

[13] For other EU provisions, *see* EU Charter of Fundamental Rights (2000), Articles 10 and 12 and EU Guidelines on the promotion and protection of freedom of religion or belief, *Foreign Affairs Council Meeting*, Luxembourg, 24 June 2013, § 6.

> The Court recalls that religious communities traditionally and universally exist in the form of organized structures. They abide by rules which are often seen by followers as being of divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one's religion, protected by Article 9 of the Convention.
>
> Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, 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. It 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.[14]

10. The Court went on to state that, "[F]acts demonstrating a failure by the authorities to remain neutral in the exercise of their powers in this domain must lead to the conclusion that the State interfered with the believers' freedom to manifest their religion within the meaning of Article 9 of the Convention."[15] Accordingly, the Court held that the respondent State had violated Article 9 of the Convention. The Court's decision in *Hasan and Chaush* significantly developed the complementary principles of State neutrality and church autonomy and has since been reinforced in later decisions.

11. In *Metropolitan Church of Bessarabia and Others v. Moldova*, the court ruled that the State could not interfere with the internal workings of a church even to ensure healthy and peaceful relationships among the adherents and clergy. Thus, any State measures that favour a particular leader or compel the religious community to be placed, against its will, under a single leadership, constitute an infringement of freedom of religion.[16] Moldova refused to recognize and register the applicant church because it was not connected to the Russian Orthodox Church. The Court held that the State had a positive obligation to ensure judicial protection of the Church while at the same time protecting the Church's autonomy.[17] Citing *Hasan and Chaush*, the Court emphasized that the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very centre of Article 9

[14] ECHR, *Hasan & Chaush v. Bulgaria*, Application no. 30985/96, judgment of 26 October 2000, § 62.
[15] *Id.*, at § 78.
[16] ECHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, judgment of 13 December 2001, § 117.
[17] *Id.*, at § 118.

protections.[18] Moreover, it was held that "a State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs."[19]

12. Recently, in the case of *Holy Synod of the Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, the Court reaffirmed this reasoning and correctly posited that if church autonomy was not protected, all other aspects of an individual's freedom of religion would become vulnerable.[20] In the *Holy Synod* case, the Court dealt with an internal dispute regarding leadership with a competing Synod developing out of the schism. The Bulgarian government – seeking to end the dispute and maintain religious unity in the predominately Orthodox country – drafted a new religions law which in essence stripped the alternative Synod of its legal personality and automatically registered the majority of the Synod of Maxim as the only lawful Orthodox Church in Bulgaria.

13. While the Court held that it was a legitimate aim to seek the peaceful co-existence of members of the Bulgarian Orthodox Church, it could not do so by interfering with the internal workings of the church itself: "It follows that the unity of the Bulgarian Orthodox Church, while it is a matter of the utmost importance for its adherents and believers and for Bulgarian society in general, cannot justify State action imposing such unity by force in a deeply divided religious community."[21] Again, the Court reiterated that State measures favouring a particular leader or seeking to compel the community, or part of it, to place itself under a single leadership against its will would constitute an infringement of freedom of religion.

14. Thus, the jurisprudence of the European Court of Human Rights has been clear and unwavering: in order to uphold the collective aspect of freedom of religion as enshrined in Article 9 of the Convention interpreted in the light of Article 11, States must avoid interfering with the internal workings of the Church. Not only does Article 9 guarantee religious autonomy, it also "impose[s] on the State authorities a duty of neutrality."[22] The same principles of religious autonomy and neutrality must also apply to this Court. In circumstances in which the respondent State has refused to become embroiled in what is essentially a religious dispute within a religious community, it should not be the Court's place to adjudicate the dispute. Indeed, to do so would be to weigh other Convention rights above the right to freedom of religion and would place the Court in the uncomfortable position of ultimate arbiter of religious disputes.

[18] *Ibid.*
[19] *Id.*, at § 123.
[20] *Holy Synod*, cited above, § 103.
[21] *Id.*, at § 149.
[22] *Id.*, at § 139.

iii. Church Autonomy and Discipline of Leaders

15. One major component of church autonomy is the ability to appoint and dismiss leaders freely, without undue interference by the State. Recognizing the limitation of State jurisdiction over the affairs of the church, many countries in Europe have well-established ecclesiastical court systems that deal with such disputes. For example, in the United Kingdom a complex body of ecclesiastical courts deals with matters relating to the Church of England – including the discipline of clergy.[23] Moreover, the British courts have repeatedly held that church ministers, even in denominations outside the Church of England, are not employees for the purposes of employment law, and as such cannot bring claims in secular employment tribunals against the church.[24] In predominantly Catholic countries, special ecclesiastical courts have been established for the purpose of settling disputes. And in some European countries a wide variety of ecclesiastical courts exist for smaller denominations and members of other faith communities.[25] Indeed, throughout the Council of Europe, a number of systems are in operation, reflecting the cultural and religious diversity and pluralism existent within the region. Moreover, in many constitutional arrangements the secular courts are precluded from fully reviewing the decisions taken by church authorities.[26] Thus, not only are the systems within each country different, the way each system works varies widely.

16. Thus, as the Grand Chamber of this Court has rightly held, given the "wide variety of constitutional models governing relations between States and religious denominations in Europe," it is necessary that "the State enjoys a wider margin of appreciation in this sphere."[27] Similarly, the Grand Chamber has also held that where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given "special importance."[28] More generally, the Court has held that States generally enjoy a wide margin of appreciation in cases where a balance has to be struck between competing private interests or different Convention

[23] *See* Mark Hill, *Ecclesiastical Law (Third Edition)*, Oxford University Press, 2007.
[24] Most recently the Supreme Court held in the case of *President of the Methodist Conference v. Preston* [2013] UKSC 29 that the claimant Church Minister was not an employee for the purpose of the Employment Rights Act 1996. As Lord Templeman explained in *Davies v Presbyterian Church of Wales* [1996] ICR 280: "The duties owed by the pastor to the church are not contractual or enforceable. A pastor is called and accepts the call. He does not devote his working life but his whole life to the church and his religion. His duties are defined and his activities are dictated not by contract but by conscience. He is the servant of God."
[25] *See* Michael Germann, 'The German Perspective' in *Transformation of Church and State Relations in Great Britain and Germany*, Nomos, 2013, pp.107-115.
[26] *See* the disputes at the centre of the following recent cases: ECHR, *Müller v. Germany,* Application no. 12986/04, judgment of 6 December 2011 and ECHR, *Fernández Martínez v. Spain,* Application no. 56030/07. Discussed below.
[27] ECHR, *Sindicatul "Păstorul Cel Bun" v. Romania* [G.C.], Application no. 2330/09, judgment of 9 July 2013, § 171.
[28] ECHR, *Şahin v. Turkey* [GC], Application no. 44774/98, judgment of 10 November 2005, § 109.

rights.[29] Given the wide variety of constitutional models in existence, the Court has generally been very reluctant to override the decision of the national authorities when the case involves the relationship between the Church and those who work for it.

17. In *Obst v Germany*,[30] the applicant was dismissed as the European Director of Public Relations for the Church of Jesus Christ of Latter-day Saints after he entered into an adulterous relationship contrary to the teachings of the Church. He claimed before this Court that his dismissal breached Article 8 of the Convention. However, reiterating that the autonomy of religious communities was protected against undue interference by the State under Article 9 read in the light of Article 11, the Court dismissed his claim.

18. In *Siebenhaar v Germany*,[31] the applicant was dismissed from her role as a childcare assistant in a day-nursery run by Baden Protestant Church on the grounds of her involvement in a religious community whose teachings were incompatible with those of the Protestant Church. Relying mostly on Article 9, the applicant claimed that her dismissal by the Church breached her freedom of religion. However, the Court held that there had been no breach of Article 9. The German courts had previously held that her dismissal had been necessary to preserve the Church's credibility, which outweighed her interest in keeping her job, and the Fifth Section of the Court was content to accept these findings.[32]

19. Both the case of *Obst* and *Siebenhaar* involved the discipline of laypersons. However, the Court has also considered cases involving clergy or ordained ministers. In such cases, the Court has repeatedly emphasized the rights of the church to organizational and internal autonomy.

20. In the case of *Müller v. Germany*,[33] the applicants, Hanna and Peter Müller, joined the Salvation Army as officers and signed a declaration in which they expressly undertook not to be employed by the Salvation Army and not to enter into an employment contract with it.[34] During their missionary service they were the subject of complaints, and after being placed on a leave of absence, the Salvation Army terminated their service as officers on the basis that they were no longer fit to perform such service. Rather than appealing to the Salvation Army board of inquiry, the applicants sought what was effectively an unfair dismissal claim against the Salvation Army before the civil courts. However, in view of Germany's constitutional arrangements and the case-

[29] *See* ECHR, *Evans v. the United Kingdom* [GC], Application no. 6339/05, 10 April 2007, § 77.
[30] Application No. 425/03, judgment of 23 September 2010.
[31] Application No. 18136/02, judgment of 3 February 2011.
[32] By contrast, in the case of *Schüth v Germany*, Application no. 1620/03, judgment of 23 September 2010, the Court held that the dismissal of an organist and choirmaster from a Roman Catholic parish for leaving his wife and settling with a new partner was a breach of the applicant's right to private life under Article 8. This case and the Court's reasoning appear to be anomalous to the judgments in *Obst, Siebenhaar, Müller, Fernández Martínez and Sindacatul "Păstorul Cel Bun."*
[33] Application no. 12986/04, admissibility decision of 6 December 2011.
[34] Salvation Army Officers are ordained as ministers and are not considered "employees".

law of the Federal Court of Justice, the applicants' claim in the civil courts was dismissed as unfounded.[35]

21. The applicants then claimed before this Court that the decision of the national authorities violated their Article 9 rights and their rights under Article 6 on the basis that their claim had not been properly heard. After dismissing the Article 9 claim in 2008, the Court later dismissed the Article 6 claim in an admissibility decision of 6 December 2011. The Court noted that access to a court is not an absolute right and may be subject to legitimate limitations. It also accepted that Germany was within its right to only offer a very limited review of the case, given its deference to the internal affairs of the church. Within its limited review, the German courts concluded that there were no grounds for finding that the Salvation Army's decision had been arbitrary or contrary to public morals or public policy. Moreover, the fact that the applicants had not appealed against their dismissal before the Salvation Army board of inquiry meant that the applicants could not argue that they had been deprived of the right to obtain a decision on the merits of their claim. Accordingly, the applicants' complaint alleging lack of access to a court was considered unfounded and was rejected.

22. The case of *Müller* was soon followed by the case of *Fernández Martínez v. Spain*.[36] The case concerned the decision of the Catholic Church not to renew the contract of a priest, who was married with five children, to teach Catholic religion and morals. The decision followed the publication of an article disclosing his membership of the "Movement for Optional Celibacy" – a group that indicated their disagreement with the Church's position on abortion, divorce, sexuality and contraception. Although the decision is not final, it was the opinion of the Third Section that because the circumstances used to justify the non-renewal of the applicant's contract were of a strictly religious nature, "the requirements of the principles of religious freedom and neutrality preclude it from carrying out any further examination of the necessity and proportionality of the non-renewal decision, its role being confined to verifying that neither the fundamental principles of domestic law nor the applicant's dignity have been compromised."[37] Thus, because the applicant in *Fernández Martínez* was a member of the clergy, and because the dispute was religious in nature, the Court accepted Spain's deference to the autonomy of the Church and refrained from an in-depth analysis of the State's handling of the case.

23. The last case in this line of authorities is the Grand Chamber decision of *Sindacatul "Păstorul Cel Bun" v Romania*.[38] The case involved thirty-two Orthodox priests and three lay employees who attempted to form a trade union. The purpose of the trade

[35] In Germany the right to church autonomy is guaranteed by Article 137 § 3 of the 1919 Weimar Constitution (a provision incorporated in the German Basic Law).
[36] Application no. 56030/07, judgment of 15 May 2012. Referred to the Grand Chamber on 24 September 2012 and heard on 30 January 2013. Decision pending.
[37] *Id.*, at § 84.
[38] Application no. 2330/09, judgment of 9 July 9 2013.

union was to protect the interests of its membership in their dealings with Orthodox Church hierarchy and the Ministry of Culture and Religious Affairs. The Romanian State refused to register the trade union on the basis that the principles of religious autonomy and State neutrality prevented it from becoming involved in the internal operations of the Romanian Orthodox Church. Overturning a chamber decision of the Third Section, the Grand Chamber agreed with the submissions of the Romanian State, holding that:

> Respect for the autonomy of religious communities recognised by the State implies, in particular, that the State should accept the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them that might pose a threat to their cohesion, image or unity. It is therefore not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that exist or may emerge within them.

24. Accordingly, the refusal to register the applicant union did not overstep the margin of appreciation afforded to the national authorities and was not disproportionate.[39]

iv. Church Autonomy: Comparative Jurisprudence

25. The Court's case-law can be compared with the "ministerial exception" doctrine developed in the jurisprudence of the United States. In the 2012 case of *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC,*[40] the United States Supreme Court confronted the question of whether the First Amendment of the United States Constitution barred an employment discrimination lawsuit when the employer is a religious organization and the employee is one of the group's ministers.[41] In a unanimous decision, the US Supreme Court held that the US Constitution prevented the court from interfering with the decisions of churches in matters of ecclesiastical disputes.

26. The claimant in *Hosanna-Tabor* was a minister in the Lutheran Church and worked as a teacher at a small church-run school. Amongst other things, she taught a class on religion, led students in prayers and occasionally led a chapel service. After entering into a dispute with the Church, she was ultimately dismissed from her position and the Equal Employment Opportunity Commission (EEOC) brought a case against Hosanna-Tabor on her behalf.

27. In siding with Hosanna-Tabor, the Supreme Court held that a "ministerial exception" was grounded in the First Amendment of the US Constitution and it precluded the application of employment legislation, such as the Civil Rights Act 1964, to claims concerning the employment relationship between a religious institution and its

[39] *Id.*, at § 172.
[40] 565 U.S. ___, 132 S.Ct. 694 (2012).
[41] The first section of the First Amendment of the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

ministers.[42] The Court explained that the ministerial exception ensured that "the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical'—is the church's alone."[43] Accordingly, it was not for the State to interfere with the disciplinary decisions the Church had made in the circumstances. The Court held that:

> The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, 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.[44]

28. Similar to many judgments of this Court, the US Supreme Court recognized that the case involved a clash of competing interests. On the one hand an individual sought legal redress for alleged employment discrimination. One the other hand the church sought to maintain its autonomy free from State interference. The Court's answer to this clash was to refrain from adjudicating the dispute:

> The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.[45]

Conclusion

29. As the US Supreme Court concluded that the First Amendment has struck the balance for it in matters of ecclesiastical disputes, it can also be argued that Article 9 of the Convention has struck the balance for this Court. The need for churches and religious organizations to operate freely without State intervention is at the heart of the protections that Article 9 affords. Not only is church autonomy essential for the maintenance of true religious freedom, it is also necessary for the proper functioning of democracy. It is inevitable that the rights of an individual will on occasion collide with the collective rights of a religious community. However, in these circumstances Member States and this Court must decide who is the ultimate arbiter of such a dispute – the Church or the State? The Intervener submits that Article 9 of the Convention ensures the answer must be the Church.

---

[42] *Hosanna-Tabor*, cited above, § 705.
[43] *Id.*, at § 709. Citing *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94, 116 (1952), § 119.
[44] *Id.*, at § 706.
[45] *Id.*, at § 710.