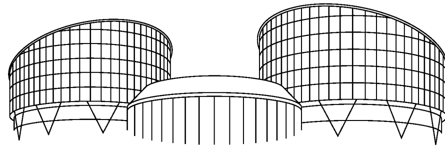

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KÁROLY NAGY v. HUNGARY

(Application no. 56665/09)

JUDGMENT

STRASBOURG

1 December 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Károly Nagy v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
András Sajó,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 2 December 2014 and 20 October 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 56665/09) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Károly Nagy ("the applicant"), on 19 October 2009.

2. The applicant was represented by Ms M. Nagy, a lawyer practising in Gödöllő. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicant alleged, in particular, that the State courts' refusal to adjudicate on his pecuniary claim arising from his ecclesiastical service amounted to a breach of Article 6 § 1, read alone and in conjunction with Article 14 of the Convention.

4. On 20 January 2014 the application was communicated to the Government.

5. On 25 March 2014 Alliance Defending Freedom, a non-governmental organisation with headquarters in Vienna, was granted leave, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, to intervene as a third party.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1951 and lives in Gödöllő.

7. In November 1991 the applicant took up the position of pastor in the Hungarian Calvinist Church (*Magyar Református Egyház*). As of December 2003, he served in the parish of Gödöllő. His rights and obligations as well as his remuneration were set out in an appointment letter (*lelkészi díjlevél*) issued by the parish presbyters.

8. On 22 June 2005 the applicant was informed that disciplinary proceedings had been instituted against him for stating in a local newspaper that State subsidies had been paid unlawfully to a Calvinist boarding school. Meanwhile, on 21 June 2005 the first-instance ecclesiastical court had suspended the applicant's service with immediate effect until a decision on the merits, for a maximum of sixty days. The applicant received a letter stating that he was entitled, under section 82(1) of Statute no. I of 2000 of the Hungarian Calvinist Church, to 50% of his service allowance during the period of his suspension.

9. On 27 September 2005 the first-instance ecclesiastical court removed the applicant from service, as a disciplinary measure. On an unspecified date, the second-instance ecclesiastical court upheld that decision and terminated the applicant's service with effect from 1 May 2006.

10. On 26 June 2006 the applicant took his case to the Pest County Labour Court, seeking the 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. Arguing that his suspension had reached its statutory maximum duration on 21 October 2005, he also sought the payment of the whole service allowance from that date until the termination of his service, that is, 30 April 2006. He argued in substance that his ecclesiastical service was analogous to employment, referring to tax rules to that effect (see paragraph 20 below).

11. On 22 December 2006 the Labour Court discontinued (*megszüntette*) the proceedings, holding that it had no jurisdiction to adjudicate on the applicant's claim. It considered that under section 2(3) of Statute no. I of 2000 of the Hungarian Calvinist Church, pastors' service with the Church was regulated by ecclesiastical rules, whereas laymen's employment with the Church was governed by the State's Labour Code. Accordingly, since the dispute before it concerned the applicant's service as a pastor, the provisions of the Labour Code were not applicable in the case, and there existed no judicial avenue before the State courts to decide on his claims.

The Pest County Regional Court upheld the decision on appeal on 27 April 2007. The applicant did not apply for a review to the Supreme Court.

12. On 10 September 2007 the applicant lodged a civil-law claim against the Hungarian Calvinist Church. His claim was based in the first place on sections 277(1) and 478(1) of the [old] Civil Code and on the agency contract he had allegedly concluded with the Church. He maintained that for the period from 21 October 2005 (that is, the date when the suspension

allegedly became unlawful) until 30 April 2006 (that is, the date of termination of his appointment) he was entitled to a fee for his services, which corresponded to the service allowance set out in his appointment letter. He thus sought enforcement of the contract. Alternatively, he based his claim on sections 318(1) and 339(1) of the [old] Civil Code and on the breach by the Church of its contractual obligations under the agency contract. He argued that by not paying him the allowance due for the period between 21 October 2005 and 30 April 2006, the Church had failed to fulfil its contractual obligations. He thus claimed damages, amounting to the loss of service allowances to which he would have been entitled under the contract for the above-mentioned period.

13. The Pest Central District Court dismissed the applicant's claim on the grounds that no contractual relationship had been established between the parties under civil law. In the court's view, the claim had no basis in civil law. It therefore did not embark on an assessment of the applicant's secondary claims, such as liability for breach of contract or recognition of debt.

14. The Budapest Regional Court upheld the first-instance decision on appeal, reasoning that the Hungarian Calvinist Church had no standing in the proceedings, since the applicant had been appointed by the parish of Gödöllő, a separate legal entity.

15. The applicant lodged a petition for review with the Supreme Court. By its decision of 28 May 2009, the Supreme Court quashed the final decision and discontinued (*megszüntette*) the proceedings. It stated as follows:

> "... In order to determine the rules applicable to the agreement (*megállapodás*) in question and to the implementation of the rights and obligations arising from it, it is necessary to have regard to the very purpose of the agreement underlying the plaintiff's actual claim as well as the elements thereof defining the parties' rights and obligations. The first-instance court rightly stated in its assessment that the agreement serving as the basis of the applicant's claim was not an agency contract regulated by civil law or concluded by and between parties enjoying personal autonomy in the marketing of [goods and services]. The plaintiff was appointed as a pastor in an ecclesiastical procedure, and the obligations of the respondent were defined in an appointment letter by the assembly of presbyters. The parties established between themselves a pastoral service relationship, regulated by ecclesiastical law.
>
> Under section 15(1) of Act no. IV of 1990 on Freedom of Conscience and Religion and on Churches, the Church is separated from the State. Under sub-section (2), no State coercion can be used to enforce the internal laws and regulations of Churches.
>
> Relying on the above provisions, the applicant can make a claim under the ecclesiastical law before the relevant bodies of the Calvinist Church. The fact that the agreement concluded under ecclesiastical law resembles a contractual agreement under the Civil Code does not prompt State jurisdiction or the enforceability of the claim in a judicial procedure within the meaning of section 7 of the Civil Code. (In the given case the basic elements of an agency contract and the conclusion of such a contract could not be established either.)

The labour court reached the same conclusion in the earlier proceedings when assessing the claim under the State labour law and dismissing its enforcement in judicial proceedings.

The first-instance court was right to point out that as the impugned agreement lacked a civil-law legal basis, the court could not examine the applicant's secondary claim (compensation for breach of contract). On the basis of the reasoning above, there were no grounds to adjudicate on the claim on the merits.

The Supreme Court accordingly quashes the final judgment, including the first-instance judgment, and discontinues the proceedings under sections 130(1) (a) and 157 (a) of the Code of Civil Procedure..."

This decision was served on the applicant at some point in time after 9 July 2009.

II. RELEVANT DOMESTIC LAW

16. The Code of Civil Procedure, as in force at the relevant time, provided as follows:

Section 130

"(1) The court shall reject a claim without issuing a summons [that is, without an examination on the merits] ... if it can be established that ...:

a) on the basis of the current Act or an international agreement, the jurisdiction of the Hungarian courts is excluded;

b) the enforcement of the plaintiff's claim comes under the competence of another court or authority, or under the jurisdiction of another court, but section 129 [on the transfer of cases] cannot be applied for lack of necessary information;

c) the case must be preceded by other proceedings;

d) the same course of action involving the same claims and the same subject matter is already under litigation or has already been decided either by the preceding court or any other court;

e) either of the parties lacks the capacity to conduct legal proceedings;

f) the plaintiff's claim is premature or cannot be enforced in judicial proceedings;

g) the claim was lodged by a person who has no legal authority or the law prescribes that the action must be lodged against a certain person, and the plaintiff, despite previous warning, fails to institute proceedings against this respondent;

h) the statute of limitations has expired and the plaintiff did not request reinstatement or it was dismissed by the courts;

i) the reasons enumerated in section 124(4) are present;

j) the plaintiff did not resubmit within the set time-limit a claim previously dismissed as incomplete or resubmitted an incomplete claim, and the case cannot be adjudicated."

Section 157

"The court shall discontinue the examination of the case [without an examination on the merits]:

a) if the claim should have already been dismissed, without issuing a summons, pursuant to section 130(1) points a) to h) ..."

17. The [old] Civil Code as in force at the relevant time, provided as follows:

Section 7

"It is the duty of all State organs to protect statutory rights. The enforcement of such rights should be a matter for judicial consideration, unless the law provides otherwise."

Section 277

"(1) Contracts shall be performed as stipulated, at the place and time, and in the quantity and quality specified in the agreement ..."

Section 318

"(1) The provisions of tort liability shall be applied to liability for breach of contract ..."

Section 339

"(1) A person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation."

Section 478

"(1) The principal (*megbízó*) shall pay [the agent] an appropriate fee, unless the circumstances or the relationship between the parties suggest that the agent (*megbízott*) has assumed the agency without any consideration."

18. The 1990 Church Act, as in force at the material time, provided as follows:

Section 15

"(2) No State coercion may be applied in order to enforce the internal laws and regulations of Churches."

19. Constitutional Court decision no. 32/2003 (VI. 4.) AB, issued on 4 June 2003 and submitted by the Government, contains the following passages:

"... A comprehensive interpretation of Article 60 (3) of the Constitution has been given by the Constitutional Court in its decision no. 4/1993 (II.12.) AB.

Accordingly:

... Under the principle of separation of State and church, the State is not allowed to interfere with religious issues or the internal affairs of churches. Compliance with

church rules governing internal church relationships between churches and their members is to be enforced by the churches or their authorised organs, in procedures laid down by them.

Based on the State laws and the – separately operating – church rules, it cannot be excluded that the two distinct systems of rules may regulate similar legal relationships. Between a church and its members, there can be relationships governed by internal ecclesiastical norms. No public authority may be involved in the enforcement of these norms. However, there can also be [between the same parties] legal relationships specified by the laws of the State and governed by the laws of the State, including the relevant remedy possibilities. Rights and obligations originating in legal relationships based on State laws may be enforced by means of State coercion.

... The fundamental right of access to a court ... does not carry with it an unrestricted right to file a court action. However, an essential element of a fundamental right shall not be restricted by an Act of Parliament; and any limitations must be indispensable and proportionate to the aims pursued. ...

In accordance with the fundamental right of access to a court, a person in the service of a church has [just as much as any other citizen] a constitutional right to turn to a State court in the event that his employment is based on State laws, in order to settle a legal dispute concerning his employment.

The State organs ... must determine under the State laws whether in a particular case a legal relationship governed by State laws exists between the parties and if the answer is in the affirmative, they must determine the appropriate procedure to follow. However, where on the basis of the State laws, a State authority or court establishes that it lacks jurisdiction, the State authority or court must not ... interpret or apply ecclesiastical rules. Administration of justice by the State must not result in the depletion of church autonomy.

... Under a joint interpretation of the doctrine of separation of Church and State and of the right of access to court, disputes relating to the rights and obligations of persons in religious service which are governed by State laws should be adjudicated on the merits by the State courts. The latter should, however, respect Church autonomy in their proceedings.

... It follows from the doctrine of separation of Church and State that the State may not be institutionally linked to any Church; therefore no State coercion can be used to enforce the internal rules of Churches.”

20. The applicant submitted that, according to Legal Opinion no. 1997/151, a circular issued jointly by the Ministry of Finance and the Tax Authority, the monthly remuneration received by ecclesiastical officials from their parish (“church salary”) was to be considered as income deriving from employment within the meaning of sections 24 to 27 of the Personal Income Tax Act.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant complained that the Hungarian courts had refused to hear his claim on the merits, in breach of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

22. The Government contested that argument.

A. Admissibility

23. The Government made four preliminary objections. They first argued that the complaint was incompatible *ratione personae* with the provisions of the Convention because the alleged infringement of the applicant's rights under the Convention was not imputable to the State. Secondly, they maintained that the applicant had not complied with the six-month rule laid down in Article 35 § 1. The third objection concerned his non-compliance with the rule of exhaustion of domestic remedies. Fourthly, they submitted that, in any event, the complaint was incompatible *ratione materiae* with the provisions of the Convention, since Article 6 did not apply in the case.

24. The applicant requested the Court to reject the Government's preliminary objections.

1. The six-month rule and the requirement of exhaustion of domestic remedies

25. In the Government's submission, the applicant had not exhausted domestic remedies under Hungarian law as required by Article 35 § 1, since he had not pursued a petition for review before the Supreme Court against the decision of the Pest County Regional Court in the employment proceedings.

26. Furthermore, the Government contended that the application had been lodged outside the six-month time-limit, since the domestic proceedings concerning the applicant's claim for unpaid remuneration had been terminated on 27 April 2007, the date when the Pest County Regional Court had dismissed, in a final judgment, his employment claim.

27. The applicant responded that the proceedings before the civil courts constituted a remedy that could have been successful. He exhausted that remedy. The six-month period started to run from the date of the delivery of the judgment of the Supreme Court in these proceedings, and the application had been filed within the time-limit.

28. The Court finds that the above objections are interrelated and must be examined together.

29. Under Article 35 § 1, the Court may deal with applications only after domestic remedies have been exhausted. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that an effective remedy is available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of the Convention system of protection of human rights, which is subsidiary to the national systems safeguarding human rights (see *Vučković and Others v. Serbia* [GC], no. 17153/11, § 69, 25 March 2014; *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 220, ECHR 2014 (extracts); and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 83; 9 July 2015). States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Vučković and Others*, cited above, § 70; *Mocanu and Others*, cited above, § 221; *Gherghina,* cited above, § 84; see also *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

30. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others*, cited above, § 71; *Mocanu and Others*, cited above, § 222; *Gherghina,* cited above, § 85; see also *Akdivar and Others*, cited above, § 66).

31. The Court observes that the applicant pursued a first claim for unpaid remuneration in employment proceedings. This litigation was discontinued by the court of second instance, which stated that the applicant's pastoral service did not constitute "employment" and, as a consequence, the rights arising from it could not be enforced by the State courts.

32. The Court notes that the applicant did not apply for a review to the Supreme Court. He therefore did not exhaust domestic remedies with respect to the employment proceedings. Accordingly, the Government's objection of failure to exhaust domestic remedies as regards the employment proceedings must be upheld. It follows that in this respect the application must be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

33. The applicant did, however, lodge a second claim, this time before the Pest Central District Court. Relying on sections 277(1) and 478(1) of the

Civil Code, he requested the court in the first place to order the Hungarian Calvinist Church to fulfil its obligations under what he perceived as an agency contract. As a secondary claim, he sought damages under sections 318(1) and 339(1) of the Civil Code for breach of contractual obligations. Those proceedings were pursued up to the Supreme Court. They were discontinued at that level on the grounds that the applicant had not entered into an agency contract regulated by the Civil Code, and that his claim therefore had no legal basis in civil law.

34. Thus, the core issue in the second proceedings was whether civil law governed the applicant's rights arising from his service with the Hungarian Calvinist Church, including the consideration as to whether the State courts had jurisdiction on the matter.

35. The Court finds that the proceedings before the civil courts were capable of affecting the applicant's position in relation to his pecuniary claim and could not be considered superfluous or futile. Thus, the applicant cannot be reproached for having sought relief by way of civil proceedings, arguing that his claim was based on a contract that fell under the rules of the Civil Code, following the dismissal of his employment claim for lack of jurisdiction. In other words, the applicant may reasonably be considered to have pursued the various potential aspects of his case in two consecutive sets of proceedings, neither of which appears to have been *ab initio* devoid of any prospect of success. In these circumstances, the Court is satisfied that the applicant, by lodging his second claim, took a step to exhaust domestic remedies that could be reasonably expected in the circumstances.

36. The civil proceedings were separate proceedings, procedurally unrelated to the employment proceedings. It follows that, while the applicant did not exhaust the domestic remedies in the employment proceedings, the question of exhaustion of remedies in the civil proceedings must be examined on its own merits. Since these latter proceedings were not inadequate or ineffective, on the one hand, and since the applicant pursued them up to the Supreme Court, on the other hand, the complaints about these proceedings cannot be rejected for non-exhaustion of domestic remedies.

37. It follows that the six-month time-limit in respect of the second set of proceedings started to run from the Supreme Court's judgment. Even taking the date of delivery of that judgment as the starting point, the Court cannot but conclude that the six-month rule has been respected.

38. Both preliminary objections must therefore be dismissed in respect of the civil-law proceedings.

2. *Compatibility* ratione personae *and* ratione materiae

39. The Government further argued that the applicant's complaint was inadmissible as being incompatible *ratione personae* with the provisions of the Convention. They submitted that the restrictions on the applicant's

rights under Article 6 § 1 of the Convention – namely, that his claims concerning his Church service could be examined only by the ecclesiastical court – were based exclusively on the ecclesiastical law itself. Statutes adopted by the Hungarian Calvinist Church could not be imputed to the State. Therefore, there had not been any interference with the applicant's rights on the part of the public authorities.

40. Moreover, the Government contested the applicability of Article 6 § 1 of the Convention. In their view, what was at stake was a legal relationship falling within the ambit of ecclesiastical law, rather than a civil right or obligation, and the application was therefore incompatible *ratione materiae* with the provisions of the Convention.

41. While the applicant did not explicitly respond to the first objection, he contested the second one.

42. For the Court, the Government's two pleas of incompatibility ultimately relate to the same issue: whether the applicant had a claim engaging, under Article 6 § 1, the State's responsibility to secure his access to a State court.

43. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) 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. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 74, ECHR 2009; *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012; and *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 42, ECHR 2015).

44. Article 6 § 1 does not guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States: the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see, for example, *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B; *Roche v. the United Kingdom* [GC], no. 32555/96, § 119, ECHR 2005-X; and *Boulois*, cited above, § 91). The starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 49, Series A no. 327-A). This Court would need strong reasons to differ from the conclusions reached by the superior national courts by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Roche*, cited above, § 120; *Markovic and Others v. Italy* [GC], no. 1398/03, § 95, ECHR 2006-XIV; and *Boulois*, cited above, § 91).

45. However, it should be emphasised that it is the right as asserted by the claimant in the domestic proceedings that must be taken into account in order to assess whether Article 6 § 1 is applicable (see, for example, *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, § 120, ECHR 2013 (extracts)). Where there is a genuine and serious dispute about the existence of the right asserted by the claimant under domestic law, the domestic courts' decision that there is no such right does not remove, retrospectively, the arguability of the claim (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 89, ECHR 2001-V).

46. In the present case, the applicant brought a claim against the Hungarian Calvinist Church, demanding that they fulfil what he perceived as contractual obligations, that is, the payment of fees due under sections 277 and 478 of the [old] Civil Code. He also claimed damages on the basis of an alleged breach of those obligations, a form of liability regulated in sections 318 and 339 of the [old] Civil Code. Those claims were opposed by the Hungarian Calvinist Church. The Court thus notes that a "dispute" existed concerning the actual existence of the rights arising out of a contract as claimed by the applicant.

47. The Court will first address the question whether a right, within the autonomous meaning of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *König v. Germany*, 28 June 1978, § 88, Series A no. 27), to the fulfilment of contractual obligations or to redress for damage sustained on account of a breach of contract, could arguably be said to be recognised under domestic law. To ascertain whether this was the case, the Court must only verify whether the applicant's arguments on this point were sufficiently tenable; it does not have to decide whether they were well-founded in terms of Hungarian law (see *Le Calvez v. France*, 29 July 1998, § 56, *Reports* 1998-V; *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 48, ECHR 2000-IV; and *Yanakiev v. Bulgaria*, no. 40476/98, § 58, 10 August 2006).

48. The Court notes that civil actions to obtain the enforcement of contractual obligations or to obtain redress for damage sustained on account of a breach of contract are ubiquitous in many systems of civil law. The wording of the [old] Civil Code reflects the presence of these concepts in Hungarian law. In the instant case, the dispute related to the applicability of the provisions relied on by the applicant to his relationship with the Calvinist Church.

49. To demonstrate that the provisions on contractual liability were indeed applicable to his case, the applicant relied on, *inter alia,* the Legal Opinion of the Ministry of Finance and the Tax Authority. The opinion stated that the monthly remuneration received by ecclesiastical officials from their parish ("church salary") was to be considered as income deriving from employment (see paragraph 20 above). In the proceedings before this Court, the respondent Government cited, in support of their argument that

there was no “arguable” right, a decision of the Constitutional Court concerning the alleged unlawful dismissal of a pastor and the non-applicability of labour-law provisions to that case (see paragraph 19 above).

50. While both considerations may have some relevance in the present case, for the Court neither the opinion of the Tax Authority nor the Constitutional Court’s decision concerned situations sufficiently similar to that of the applicant. Neither of the parties cited any previous court decisions indicating whether or not the provisions on contractual obligations and liability were applicable to a pastor’s ecclesiastical service. The Court is consequently of the opinion that there appears to have been no clear case-law in the matter. In the applicant’s case the domestic courts were called on to decide whether his service agreement with the Calvinist Church fell within existing categories of contracts and whether any damage allegedly caused by the non-payment of his service allowance gave rise to contractual liability, that is, whether his situation came within the scope of sections 277 and 318 of the [old] Civil Code.

51. The Court therefore considers that, at the outset of the proceedings, the applicant could have claimed to be entitled to the fulfilment of contractual obligations or to redress for damage sustained on account of a breach of contract under civil law. The respondent Government’s assertion that there was no arguable right for the purposes of Article 6 § 1 because of the Supreme Court’s decision (according to which an agreement concluded under ecclesiastical law was not amenable to judicial review) can be of relevance only for future allegations by other claimants. The Supreme Court’s judgment did not make the applicant’s claim retrospectively unarguable (see paragraph 15 above). The Court is thus satisfied that the applicant had, at least on arguable grounds, a claim under domestic law and that there was a genuine and serious dispute over the existence of the rights asserted by him.

52. It is not disputed that the civil proceedings were decisive for the determination of the rights asserted by the applicant.

53. Lastly, the Court notes that the rights were based on provisions of the [old] Civil Code relating to the performance of contracts and to liability for a breach of contract (see, for a comparable situation, *Stichting Mothers of Srebrenica and Others*, cited above, § 120). Furthermore, the applicant’s claim was of a pecuniary nature. The rights that were the object of the dispute must therefore be considered to be of a “civil” nature (see, for other rights of a pecuniary nature, *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, 10 July 1998, § 61, *Reports* 1998-IV, and *Sierpiński v. Poland*, no. 38016/07, §§ 87 and 90, 3 November 2009).

54. Accordingly, Article 6 § 1 is applicable to the proceedings brought by the applicant before the Hungarian civil courts. The Court therefore

dismisses the respondent Government's preliminary objections on this point.

55. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The applicant

56. The applicant maintained that he had a "civil right" within the meaning of Article 6 § 1. In his view, ecclesiastical service involved a complex legal relationship which should be interpreted under both ecclesiastical and State law. He argued that State legislation applied to the ecclesiastical relationship, in particular in that his earnings were subject to income tax (see paragraph 20 above) and social security contributions, and his pension would be paid out of the State pension fund. He maintained that there was no reason to hold otherwise in other matters of a pecuniary nature arising from the ecclesiastical service. Any issue of a purely economic nature fell within the ambit of State legislation, to be adjudicated by State courts. Church autonomy should prevail only with respect to issues relating to religious doctrines and the exercise of religion.

b. The Government

57. Contesting the applicability of Article 6 § 1 of the Convention, the Government referred to the Court's decision in the case of *Dudová and Duda v. the Czech Republic* ((dec.), no. 40224/98, 30 January 2001)). They relied on the judgment of the Supreme Court according to which the applicant's service did not fall under the provisions of the Civil Code. According to the Government, the applicant's claim had no legal basis in domestic law, since it derived solely from ecclesiastical law.

Should the Court come to a different conclusion, the Government argued that the margin of appreciation afforded to States in limiting an individual's access to a court had not been exceeded.

58. The Government maintained, in particular, that the right of access to a court was not an absolute one. In their view the very nature of the right relied on by the applicant called for deference on the State's side, in order neither to interfere with the autonomy of the Church nor to assess the legitimacy of ecclesiastical law. The determination of a claim of unjustified dismissal from ecclesiastical service would have required the State courts to interpret and apply ecclesiastical law, which was beyond their powers.

59. Moreover, the restriction on the applicant's right of access to a court was inherent in the Hungarian system of separation of the State and the Church. The Government maintained that there was a manifest lack of consensus on the State-Church relationship across Europe, and that each of the States enjoyed a wide margin of appreciation in ensuring a fair balance between the relevant conflicting rights, namely the right of access to a court and freedom of religion.

60. The Government further considered that the immunity of churches from State jurisdiction in ecclesiastical matters was necessary for the efficient and unimpeded functioning of the various Churches, for the protection of their right to freedom of religion and for their institutional autonomy.

61. Alternatively, the Government submitted that the applicant, when entering into ecclesiastical service, must have been aware of the internal laws of the Hungarian Calvinist Church, and the fact that disputes relating to his service would fall under the jurisdiction of the ecclesiastical courts. Thus, he should be considered as having waived his right of access to a State court.

c. The third-party intervener

62. Alliance Defending Freedom emphasised the importance of the principle of the institutional autonomy of faith groups, in conformity with the State's duty of neutrality and impartiality.

63. The organisation referred to the notion of the heightened duty of loyalty, as recognised by European Union law under Article 4 (2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Also referring to the Guidelines for Review of Legislation Pertaining to Religion or Belief adopted in 2004 by the OSCE/ODIHR and the Venice Commission, it highlighted that Churches and religious organisations should be given heighted protection against "intervention in internal religious affairs by ... imposing bureaucratic review or restraint with respect to religious appointments". In the organisation's view, the adjudication by the Court of a dispute within a religious community would entail placing the applicant's rights under the Convention above the Church's right to freedom of religion.

2. *The Court's assessment*

a. General principles

64. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). This "right to a court", of which the right of

access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his or her civil rights is unlawful and complains that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6 § 1 (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 44, Series A no. 43; *Roche*, cited above, § 117; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 229, ECHR 2012).

65. The right to a court also includes the right to a determination by a tribunal of the matters in dispute, both for questions of fact and for questions of law (see *Le Compte, Van Leuven and De Meyere*, cited above, § 51; and *Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58). Where there is a serious and genuine dispute as to the lawfulness of an interference with the exercise of a civil right, concerning either the very existence or the scope of the asserted civil right, Article 6 § 1 entitles the individual to have this question of domestic law determined by a tribunal (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 81, Series A no. 52; *Z and Others*, cited above, § 92; and *Markovic and Others*, cited above, § 98). The individual must thus have a clear, practical opportunity to challenge an act that constitutes interference with his or her rights (see *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B).

66. However, the right of access to a court secured by Article 6 § 1 is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim pursued (see, among many others, *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93; *Z and Others*, cited above, § 93; *Markovic and Others*, cited above, § 99; *Sabeh El Leil v. France* [GC], no. 34869/05, § 47, 29 June 2011; and *Stanev*, cited above, § 230).

b. Application of these principles in the instant case

67. The applicant contended that the Supreme Court's ruling that the State courts had no jurisdiction had deprived him of access to a court. He maintained that the duty of the Calvinist Church to fulfil its obligations, that is, to pay the overdue service allowance, derived from the [old] Civil Code. He conceded that the State authorities could not enforce the internal ecclesiastical rules, but asserted that they should have applied and enforced State law.

68. The Court notes at the outset that the applicant was not prevented from bringing his claim before the domestic courts. Indeed the case was litigated up to the Supreme Court. The Supreme Court examined whether the applicant's claim had a basis in the [old] Civil Code. The court's assessment thus primarily concentrated on the legal issue whether the Calvinist Church owed the applicant any contractual obligation pursuant to the relevant provisions of the [old] Civil Code on agency contracts. In order to determine the applicable rules, the court examined the legal characteristics of civil law contracts as well as the purpose of the agreement established between the applicant and the respondent Calvinist Church and the elements thereof. It concluded that the contract between the applicant and the Calvinist Church was not a contract regulated by civil law, but that the pastoral "relationship" was regulated by ecclesiastical law.

69. The Supreme Court's decision was thus based on an interpretation of domestic law and on an application of that law to the facts of the case. In this respect, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 110, 3 October 2014, and *Delfi AS v. Estonia* [GC], no. 64569/09, § 127, ECHR 2015). It is not the Court's function to take the place of the national courts. Rather, apart from ascertaining whether the effects of the interpretation of domestic law by the domestic courts are compatible with the Convention (see, among others, *Markovic and Others*, cited above, § 108; and *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 51, ECHR 2015), it is the Court's role to ensure that the decisions of those courts are not flawed by arbitrariness or are not otherwise manifestly unreasonable (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

70. 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 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 (see, *mutatis mutandis, Z and Others,* cited above, § 101).

71. Thus, the Court considers that the inability of the applicant to obtain an adjudication of his claim against the Calvinist Church did not flow from immunity, either *de facto* or in practice, of the Church, or any another procedural obstacle, but from the applicable principles governing the substantive right to fulfilment of contractual obligations and to

compensation for breach of contract, as defined by the relevant rules of domestic law (see, *mutatis mutandis*, *Z and Others*, cited above, § 100, and *Müller v. Germany* (dec.), no. 12986/04, 6 December 2011).

72. It is true that the Supreme Court adopted a decision, rather than a judgment, and that as a result of that decision, the examination of the case was formally discontinued. Moreover, the decision was qualified as being based on the Hungarian courts' lack of jurisdiction (see the reference in the Supreme Court's decision to sections 130(1)(a) and 157(a) of the Code of Civil Procedure, in paragraph 15 above). However, the Court cannot overlook the fact that the legal question which was decisive for the applicant's claim to succeed was in fact duly examined by the Supreme Court, which eventually held that there was no basis for the action in State law. In essence, the Supreme Court thus fully addressed the point raised by the applicant. For the purpose of compliance with the requirements of Article 6 § 1, the form of the court's decision (discontinuation of the proceedings without rendering a final judgment on the merits) is not so important (see *Balakin v. Russia*, no. 21788/06, § 52, 4 July 2013).

73. Lastly, the Court notes that the Supreme Court held that the applicant could make a claim under ecclesiastical law before the relevant bodies of the Calvinist Church, and that such a claim would not come within the jurisdiction of the State courts. Since the applicant's actual claim before the domestic courts was not based on ecclesiastical law, this was an observation made by the Supreme Court in passing (*obiter dictum*). The Court would nevertheless point out that excluding claims based on ecclesiastical law from the jurisdiction of State courts does not violate Article 6 § 1 of the Convention. Indeed, such claims do not give rise to a dispute over rights recognised by domestic law, so Article 6 § 1 is not applicable (see *Dudová and Duda*, cited above; *Baudler v. Germany* (dec.), no. 38254/04, 6 December 2011; *Roland Reuter v. Germany* (dec.), no. 39775/04, 6 December 2011; and *Dietrich Reuter v. Germany* (dec.), nos. 32741/06 and 19568/09, 17 January 2012).

74. In conclusion, although the Supreme Court held that the State courts had no jurisdiction to examine the applicant's claim, it did in fact examine that claim, based on the existence of an agency contract, in the light of the relevant domestic legal principles of contract law. It found that there was no contractual relationship between the applicant and the Calvinist Church. This decision cannot be considered arbitrary or manifestly unreasonable. In these circumstances, the applicant cannot argue that he was deprived of the right to a determination of the merits of his claim (see *Markovic and Others,* cited above, § 115).

75. Accordingly, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

76. The applicant further complained under Article 14 read in conjunction with Article 6 § 1 of the Convention that he had been denied access to a court on account of his position as a Calvinist pastor.

Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

77. The Government submitted that, assuming that pastors and other groups of citizens with regular employment contracts were in comparable situations, any distinction between them as to the exercise of the right of access to a court could be justified on the grounds of differences between the conditions of their service and, more specifically, the autonomy granted to the Church to regulate its internal affairs.

78. The Court considers at the outset that its conclusion that the contested decision of the Supreme Court did not amount to a violation of Article 6 § 1 (see paragraph 75 above) does not preclude finding a violation of Article 14 of the Convention.

79. While it is true that the guarantee laid down in Article 14 has no independent existence in the sense that under the terms of that Article it relates solely to "rights and freedoms set forth in [the] Convention", a measure that is in itself in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe this Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature (see the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, Series A no. 6, pp. 33-34, § 9; *Rekvényi v. Hungary* [GC], no. 25390/94, § 67, ECHR 1999-III; and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 159, ECHR 2008).

80. The considerations underlying the Court's conclusion that the applicant's right of access to a court was respected have already taken into account his special status as a pastor litigating an alleged breach of the agreement governing his ecclesiastical service. These considerations are equally valid in the context of Article 14 and, even assuming that a pastor is in a position comparable to that of other employees or agents, justify the difference of treatment complained of (see, *mutatis mutandis*, *Rekvényi*, cited above, § 68).

81. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint of a violation of Article 6 § 1 of the Convention, in so far as it concerns the employment proceedings leading to the decision of the Pest County Regional Court of 27 April 2007, inadmissible;

2. *Declares*, by a majority, the complaint of a violation of Article 6 § 1 of the Convention, in so far as it concerns the civil proceedings leading to the decision of the Supreme Court of 28 May 2009, admissible;

3. *Declares*, by a majority, the complaint of a violation of Article 14 read in conjunction with Article 6 § 1 of the Convention inadmissible;

4. *Holds*, by four votes to three, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 1 December 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint partly concurring and partly dissenting opinion of Judges Raimondi, Keller and Kjølbro;

(b) joint dissenting opinion of Judges Sajó, Vučinić and Kūris.

G.R.A.
S.H.N.

JOINT PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGES RAIMONDI, KELLER AND KJØLBRO

1. Like our colleagues, we voted for declaring the applicant's complaint concerning the first set of proceedings (the employment proceedings) inadmissible for failure to exhaust domestic remedies (see paragraphs 31-32 of the judgment). In addition, the applicant also failed to comply with the 6 month rule in Article 35 of the Convention as regards these proceedings.

2. However, unlike our colleagues who find the complaint about the second set of proceedings (the civil law proceedings) admissible (3 of them finding that there has been a violation of Article 6 § 1 of the Convention, and 1 of them finding that there has been no violation of Article 6 § 1 of the Convention), we voted for declaring the second set of proceedings inadmissible as being incompatible with the Convention *ratione materiae*.

3. As we find Article 6 § 1 inapplicable to the second set of proceedings, we voted (together with Judge Lemmens) for finding no violation of Article 6 § 1 of the Convention, but we do not share the views expressed in the Court's judgment for a finding of no violation of Article 6 § 1 of the Convention (see paragraphs 67-75 of the judgment). Furthermore, it goes without saying that we also disagree with the Court's reasoning in paragraphs 39-55 (on the applicability of Article 6 § 1 of the Convention).

4. In its judgment, the Court finds no violation of Article 6 of the Convention, as the applicant had access to a court which assessed the merits of his civil law claim (see paragraph 74 of the judgment). In our view, the Court's assessment does not take sufficient account of the applicant's complaint to the Court and the claim invoked by the applicant before the domestic courts.

5. In our view, the applicant is not complaining that he did not have access to a court to have a ruling on whether his claim against his former employer, the Hungarian Calvinist Church, had to be decided on the basis of ecclesiastical law (thereby falling within the jurisdiction of the ecclesiastical courts) or civil law (thereby falling within the jurisdiction of the domestic courts). Rather, the applicant is complaining that the domestic courts did not adjudicate the merits of his claim against the Hungarian Calvinist Church based on civil law (see paragraphs 3, 21 and 56 of the judgment). In other words, in the applicant's view, he had a claim against the Hungarian Calvinist Church based on civil law which he vainly sought to have assessed on its merits by the domestic courts.

6. It is not disputed that the applicant's claim for payment of a sum of money was of a civil nature, and the question therefore arises whether the applicant, in the specific circumstances of the case, had a claim which was recognised by domestic law, at least on an arguable basis. In our view and as we explain below, that question has to be answered in the negative.

7. In seeking to answer this question it is important to recall the Court's case-law according to which Article 6 § 1 does not guarantee any particular content for (civil) "rights" in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned. Its guarantees extend only to rights which can be said, at least on arguable grounds, to be recognised under domestic law (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 117, ECHR 2005-X). 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 (see *Roche*, cited above, § 120). In particular, this Court would need strong reasons to differ from the conclusion reached by those courts by substituting its own views for those of the national courts on a question of interpretation of domestic law and by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Roche*, cited above, § 120).

8. The applicant had been serving as a pastor in the Hungarian Calvinist Church, but he had been suspended and subsequently removed from service. In the applicant's view he had a claim against the Hungarian Calvinist Church following the dismissal. The question therefore arises whether the claim invoked by the applicant before the domestic courts was, at least on arguable grounds, recognised under Hungarian law.

9. When the applicant took up the position of pastor in the Hungarian Calvinist Church, his rights and obligations as well as his remuneration were set out in the appointment letter issued by the parish presbyters (see paragraph 7 of the judgment). Furthermore, the applicant's suspension and removal as well as entitlement to service allowance were adjudicated by the ecclesiastical courts (see paragraph 8-9 of the judgment).

10. As the applicant was dissatisfied with the outcome of the ecclesiastical proceedings and the compensation granted, he instituted employment proceedings before domestic courts (paragraphs 10-11 of the judgment). However, the Labour Court discontinued the proceedings as the court had no jurisdiction to adjudicate the applicant's claim. In the view of the Labour Court, the applicant's service as a pastor was regulated by ecclesiastical rules, and not by labour law. Therefore, State courts had no jurisdiction to decide on the applicant's claim. This ruling was upheld by the appeal court.

11. As the applicant was dissatisfied with the ruling in the employment proceedings, he instituted a second set of proceedings this time basing his claim on civil law (paragraphs 12-15 of the judgment). The applicant based his pecuniary claim on provisions on enforcement of contracts and breach of contractual obligations (respectively Section 277(1) and 478(1) of the Civil Code). However, the civil-law proceedings were discontinued by the Supreme Court. The 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. On the contrary, as indicated by the Supreme Court, the applicant could make a claim under the ecclesiastical law before the relevant bodies of the Calvinist Church.

12. In addition, it follows clearly from the Constitutional Court's decision from 2003 (see paragraph 19 of the judgment), adopted prior to the applicant's dispute with the Hungarian Calvinist Church, 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. If the relationship is not governed by State law, but ecclesiastical law, the State courts lacks jurisdiction to adjudicate the dispute.

13. Therefore, having regard to the nature of applicant's complaint (access to a court to have the merits of his claim decided), the basis for the applicant's service as a pastor (an appointment letter issued by the parish presbyters) and domestic law as interpreted by the domestic courts both prior to the applicant's dispute (the Constitutional Court's decision from 2003) and during the proceedings instituted by the applicant (both the employment proceedings as well as the civil-law proceedings), the applicant's dispute with the Hungarian Calvinist Church did not concern a right, that at least on arguable grounds was recognised under domestic law. Therefore, and as Article 6 cannot be interpreted as creating civil rights, that are not recognised under domestic law, the provision is incompatible with the Convention *ratione materiae* and should have been dismissed under Article 35 § 4 of the Convention.

14. This would, in our view, have been fully in accordance with the Court's case-law under Article 6 and more specifically with its case-law in cases concerning employment disputes between priests and churches regulated by ecclesiastical laws (see *Dudová and Duda v. the Czech Republic* (dec.), no. 40224/98, 30 January 2001; *Ahtinen v. Finland*, no. 48907/99, §§ 39-43, 23 September 2008; *Baudler v. Germany* (dec.), no. 38254/04, 6 December 2011; *Roland Reuter v. Germany* (dec.), no. 39775/04, 6 December 2011; and *Dietrich Reuter v. Germany* (dec.), nos. 32741/06 and 19568/09, 17 January 2012).

15. We voted for declaring the applicant's complaint under Article 14 of the Convention inadmissible. However, unlike our colleagues we do not find the complaint manifestly ill-founded, but rather incompatible with the Convention *ratione materiae*. As Article 6 of the Convention does not, in our view, apply, Article 14 of the Convention cannot be invoked either (see *Petrovic v. Austria*, 27 March 1998, § 22, *Reports of Judgments and Decisions* 1998-II, *Haas v. the Netherlands*, no. 36983/97, § 45, ECHR 2004-I, and *Baka v. Hungary*, no. 20261/12, § 117, 27 May 2014).

JOINT DISSENTING OPINION OF JUDGES SAJÓ, VUČINIĆ AND KŪRIS

1. We respectfully disagree with the finding of no violation of Article 6 § 1 of the Convention in this case. In the further text, we deal, successively, with the (i) facts of the case; (ii) the general principles that had to be applied in this case; (iii) an alternative to the reasoning offered in this case; (iv) the broader ramifications of the judgment; and (v) its contradictory and paradoxical character.

I

2. The applicant is a former pastor of the Hungarian Calvinist Church. His remuneration was set out in an appointment letter issued by the parish presbyters. He was removed from service, as a disciplinary measure, by the first-instance ecclesiastical court. (The fact that the applicant was removed from service allegedly for, *inter alia*, telling the media that State subsidies had been paid unlawfully to a Church establishment, could merit separate consideration, but the applicant raised this issue neither before the domestic courts nor before this Court.) The removal was upheld by the ecclesiastical court of second instance, which terminated the applicant's service more than ten months after the disciplinary proceedings had been initiated against him. Even prior to the removal, the applicant's service had been suspended pending a decision on the merits, for a maximum of sixty days, and the applicant had been informed that he was entitled to only a half of his service allowance during the period of his suspension.

3. The applicant took his case to the labour court, seeking payment of the remainder of his service allowance and other benefits to which, in his view, he should have been entitled during the period of his suspension; he also sought the payment of the whole service allowance from the date on which his sixty days' suspension ended until the date of termination of his service. The applicant based his claims on the analogy, if not the equivalence, of ecclesiastical service to employment. In support of his argument, he provided the legal opinion given by the Ministry of Finance and the Tax Authority that the "church salary" was considered as income deriving from employment within the meaning of the Personal Income Tax Act. The labour court, however, was not persuaded by this opinion and held that in the dispute between the (former) pastor and the church, labour law was not applicable. That decision was upheld by the appellate court.

4. Instead of applying for review of this decision to the Supreme Court, the applicant lodged a civil-law claim for damages against the Calvinist Church. He asserted that his services to the church amounted to an agency contract, as provided for in civil legislation, and that he was entitled to a fee for the corresponding services. His claim, thus, was in essence a request to

enforce the contract which had been breached by the church by failing to fulfil its contractual obligations. This time, therefore, the applicant based his case not on labour but civil legislation. Again, the claim was dismissed by the court of first instance on the grounds that, in that court's view, no contractual relationship had been established between the parties under civil law. The appellate court upheld that dismissal, adding that the Calvinist Church had no standing in the proceedings, since the applicant had been appointed by the local parish. The Supreme Court quashed that judgment, however, and discontinued the civil proceedings on the basis that the applicant could not pursue his claims in the State courts, but could do so in the ecclesiastical courts.

5. Whereas the applicant, by not applying to the Supreme Court for review of the appellate court's decision in his labour case, has not exhausted domestic remedies with respect to the employment proceedings, he also had an arguable civil claim, which was rejected by the highest State court, within whose jurisdiction civil claims fall. The claim was rejected on the fundamental premise that precisely because they had originated in his pastoral service, the applicant's rights relating to his remuneration fell outside the State court's jurisdiction.

6. The Chamber majority, by finding no violation of Article 6 § 1 in the applicant's case, has unambiguously upheld the position of the Supreme Court and the other domestic courts. The majority reasoning is based on the same fundamental premise: where a State hands over jurisdiction to an ecclesiastic court, as a matter of principle it cannot overstep its margin of appreciation, and the State courts' dismissal of a claim on the sole ground that it originates in an ecclesiastic law can be justified not only under the national legislation but also under the Convention.

7. We find this reasoning very disturbing, to say the least. It appears that, in Hungary, a (former) clergyman can find no judicial avenue for pursuing his pecuniary claims against an ecclesiastic authority – and presumably not only that of the Calvinist Church. The State courts admit that they simply do not have jurisdiction in such cases. They are considered as matters internal to a specific church. Neither labour law nor civil law is applicable in such cases. The interpretation by the Constitutional Court to the effect that "there can ... be ... legal relationships specified by the laws of the State and governed by the laws of the State, including the relevant remedy possibilities", and that "[r]ights and obligations originating in legal relationships based on State laws may be enforced by means of State coercion" (see paragraph 19 of the judgment) appear to be a dead letter.

8. Even though this Court cannot replace the domestic courts in interpreting and applying national law, the discrepancy between the said doctrinal provision of Hungarian constitutional law (as well as the legal opinion of finance and tax authorities, cited above in paragraph 3) and the State courts' practice is quite striking. The practice in question raises doubts

as to whether the tenet *ubi ius, ibi remedium* has been deprived of the *remedium* element.

II

9. The general principles applied in the present case are laid out extremely laconically in paragraphs 64–66 of the judgment. In short, these principles are limited to repeating a number of truisms, namely that under Article 6 § 1: (i) everyone who has an arguable claim relating to his or her civil rights and obligations has a right to bring this claim before a court or a tribunal; (ii) the individual must have a clear, practical opportunity to challenge an act that constitutes interference with his or her rights; (iii) the right of access to a court is not absolute, but may be subject to limitations, - in this field the Contracting States enjoy a certain margin of appreciation; however, such limitations must pursue a legitimate aim and be proportionate to that aim, and in particular they must not restrict or reduce the access to a court in such a way or to such an extent that the very essence of this right is impaired. Full stop.

10. This is clearly too little – and also one-sided. Nevertheless, even these lean doctrinal provisions beg the question whether the absence of any judicial avenue provided by the State to a (former) clergyman who wishes to pursue a pecuniary claim against an ecclesiastic authority, if that claim originates in pastoral service (that is to say stems from a document issued by an ecclesiastic authority), does not restrict or reduce the access to a court in such a way or to such an extent that the very essence of that person's right to court is impaired. One can legitimately ask whether the said absence of State judicial remedies does not render the Convention right to a court fictitious and illusory. However, in the present case the finding of no violation of Article 6 § 1 is based on the majority's acceptance of such absence of a judicial remedy as a normal state of affairs.

11. Meanwhile, the Court's case-law on the imperatives of Article 6 § 1 is considerably richer. It could and should have been far more broadly reflected in the "general principles" sub-section of the judgment. Had that been the case, it would have led to the opposite finding of that reached by the majority.

12. First of all, paragraph 66 of the judgment rightly points out that the right to a court may be subject to legitimate restrictions. In pursuance of this general tenet, the Court's case-law development has led to two different types of results. If the restriction pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved, no violation of Article 6 will arise (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 93, ECHR 2001-V). Thus, the Court has found no violation of Article 6 in cases where the applicants' inability to pursue a civil action flowed from the applicable

principles governing the substantive right of action in domestic law (see *Markovic and Others v. Italy* [GC], no. 1398/03, ECHR 2006-XIV; and *Z and Others*, cited above). Moreover, as the Court has stated on many occasions, when it is called upon to rule on a conflict between two rights that are equally protected by the Convention, it must weigh up the interests at stake (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 123, ECHR 2014 (extracts); and *Schüth v. Germany*, no. 1620/03, § 53, ECHR 2010).

13. In the present case, this balancing exercise concerns the applicant's right of access to a court on the one hand, and the right of religious organisations to autonomy on the other. The State is called upon to guarantee both rights. If the protection of one leads to an interference with the other, the State has to choose adequate means to make this interference proportionate to the aim pursued. Although the State has a wide margin of appreciation in these matters, a sufficient degree of protection nevertheless has to be afforded to the applicant (see, *mutatis mutandis, Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 160, ECHR 2013 (extracts), and *Siebenhaar v. Germany*, no. 18136/02, § 40, 3 February 2011).

14. As the Court has stated in the context of employment claims lodged by civil servants, "there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, firstly, that a civil-servant applicant does not have a right of access to a court under national law and, secondly, that the exclusion of the rights under Article 6 for the civil servant is justified" (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II).

15. As regards the autonomy of faith groups, religious communities traditionally exist in the form of organised structures. Respect for the autonomy of religious communities precludes any discretionary power on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §§ 62 and 78, ECHR 2000-XI), to oblige a religious community to admit or exclude an individual or to entrust someone with a particular religious duty (see *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 146, 14 June 2007), or to act as an arbiter between religious communities (see *Sindicatul "Păstorul cel Bun",* cited above, § 165). On the other hand, a mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to render an interference with its members' rights compatible with the requirements of the Convention. The religious community must also

show, in the light of the circumstances of the individual case, that the alleged risk is "real" and "substantial" and that the impugned interference does not go beyond what is necessary to eliminate that risk and does not serve any other purpose unrelated to the exercise of the religious community's autonomy. The national courts must ensure that these conditions are satisfied, by conducting an in-depth examination of the circumstances of the case and a thorough balancing exercise between the competing interests at stake (see, *mutatis mutandis*, *Sindicatul "Păstorul cel Bun",* cited above, § 159). Consequently, if a religious community or organisation fails to convincingly demonstrate that the State's interference poses a real threat to its autonomy, it cannot demand that the State refrain from regulating, by means of that State's law, the relevant activities of that community. In this regard, religious communities cannot be immune from the State's jurisdiction.

III

16. The applicant contends that the decision of the Supreme Court prevented his claims from being decided on the merits because of what is considered by the respondent Government to be non-interference with the internal affairs of the Calvinist Church.

17. The present application should be distinguished from the cases of *Z and Others*, *Markovic and Others* (both cited above) and *Müller v. Germany* ((dec.) no. 12986/04, 6 December 2011), in which the applicants were afforded access to a court but that access was limited in scope, as it did not lead to decisions on the merits. In the first two of these cases, the applicants' claims were examined fairly in the light of the domestic legal principles applicable to the substantive law (see *Z and Others,* cited above, §§ 100-101; and *Markovic and Others,* cited above, §§ 114-116). In the third case, the Court held that it could take cognisance of the applicant's claim to the extent that it concerned the validity of the impugned measure, but not of its lawfulness (see *Müller,* cited above). Thus the domestic courts' decisions in these cases were merely indicative of the extent of the courts' power of review.

18. In the present case, however, the domestic court's decisions to block the applicant's ability to pursue a claim against the Calvinist Church were not based on any interpretation of the law of contractual liability but solely on the consideration that broadly speaking, disputes arising from the applicant's service fell exclusively under ecclesiastical jurisdiction. No substantive review of those claims took place.

19. It was therefore necessary to ascertain whether or not these proceedings could be taken as embracing the requisite exercise of balancing the competing interests of the applicant under Article 6 with those of the Calvinist Church under Article 9 of the Convention.

20. The Government argued that by entering into ecclesiastical service the applicant "waived" his right to a court in respect of disputes arising from that relationship. There can be no doubt that by taking up that service the applicant agreed to be loyal to the Calvinist Church. However, one cannot interpret his signature on his service letter as a personal and unequivocal undertaking not to institute, under any conditions, civil actions against the church.

21. One should not overlook the summary character of the domestic courts' reasoning to decline jurisdiction in the applicant's case. The Supreme Court's assessment of the applicant's arguments was confined in essence to stating that he should seek justice before the ecclesiastical courts. Therefore, it cannot be said that the applicant's right of access to a court was balanced against the interests of the church in any substantial manner. Moreover, and in particular, no consideration was given to whether – and to what extent – the applicant's claim was liable to threaten the church's autonomy, if at all, and whether the interference with the applicant's rights under Article 6 was necessary to eliminate such a risk.

22. The subject matter of the applicant's civil claim was neither the appointment to nor the termination of his service. It was a claim of a purely pecuniary nature relating to the non-payment of remuneration for the period of suspension and after the term of suspension expired. The applicant's action before the civil courts was in essence based on his argument that his church service was akin to a contract under the Civil Code and that therefore the legal consequences of a breach of contract ought to apply in an analogous manner. The domestic courts discontinued the proceedings on the ground that the right on which he relied arose not from a legal relationship regulated by the Civil Code but from an appointment to the pastoral service by the relevant church authorities under ecclesiastical law. This line of reasoning was not germane to the applicant's argument in that it in no way answered (other than pointing to the ecclesiastical appointment underlying the matter) his contention that there was an analogy between a civil-law contract and his church service.

23. In such a situation as the applicant's, where the claim covers nothing more than the value of work performed or service provided, mere reliance by the national courts on the fact that the legal relation between the parties originated in ecclesiastic law is insufficient to meet the requirements of Article 6. A claim for due payment during one's period of suspension has very little, if anything, to do with the church's independence, in particular since it did not, in the light of the circumstances of the present case, impose any probable or substantial risk on the religious community's autonomy (see *Fernández Martinez* [GC], no. 56030/07, § 132, ECHR 2014). A distinction must therefore be drawn between the applicant's case and cases involving decisions where the general principle of exclusion is based on the Court's agreement with the domestic courts' finding that the judicial

determination of issues such as the continuation of a priest's or pastor's service within the church would be contrary to the principles of autonomy and independence of churches (see, for example, *Dudová and Duda v. the Czech Republic* ((dec.), no. 40224/98, 30 January 2001), and *Ahtinen v. Finland*, (no. 48907/99, §§ 42-43, 23 September 2008).

24. Any finding to the contrary would result in a situation where the mere fact that a (former) clergyman's service originates in ecclesiastic law would leave that person stranded in a legal no-man's land between State law and church law – even if the claim in question is of an exclusively pecuniary character and falls within the scope of the civil-law guarantees which are due to every citizen, as enshrined by Article 6.

25. To sum up, it is more than doubtful that it would be possible at all to show that (and how) the settlement, by a State court, of the pecuniary dispute between the applicant and the Calvinist Church could pose a "real" and "substantial" risk to that church's autonomy (see paragraph 11 above). The very fact that the domestic courts did not sufficiently explain the reasons why the interests of the church outweighed those of the applicant reveals that the courts failed to weigh the rights of the applicant against those of the employing church in a manner compatible with the Convention.

This alone merits the finding of a violation of Article 6 § 1.

IV

26. The present judgment is not limited to the applicant's situation, but has broader ramifications, at least in theory. It follows from the judgment that the Convention approves of a situation whereby a category of persons, namely (former) clergymen, can be deprived of the right to a court even when their claims against the church are of a purely pecuniary nature. At the easy hand of this Court, the maxim "Render unto Caesar the things that are Caesar's, and unto God the things that are God's" (Mt 22:21) has become obsolete, as now even pecuniary disputes no longer relate to things that are "Caesar's".

27. Hitherto the Court was unwilling to leave black holes of any sort in the Convention right to a court (see, *mutatis mutandis*, *Cudak v. Lithuania* [GC], no. 15869/02, §§ 54-75, ECHR 2010). Now, by this judgment, the Court has itself created a black hole – a gap in the system of the protection of individuals under the Convention. This is most disappointing.

28. Of importance is also the "geographical" dimension of these ramifications, as the said potential deprivation pertains not only to Hungary but to any member State which resorts to disowning its jurisdiction in favour of an ecclesiastic one, thus discriminating against some members of its society.

29. Two of us, i.e. Judges Sajó and Vučinić, considered that since the majority found no violation of Article 6 § 1 it was unnecessary to consider

the case under Article 14 of the Convention (which prohibits "discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"). At the same time, one of us, Judge Kūris, voted against point 3 of the operative part of the judgment, because he found this aspect to be a fundamental element of inequality of treatment (see, *mutatis mutandis*, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45).

30. Irrespective of this difference in opinion as to whether the violation of Article 14 had to be explicitly considered in this case, we are concerned about the potential of discrimination against (former) clergymen under the veil of church autonomy. The finding in this case naturally and legitimately prompts questions as to what other rights of (former) clergymen set out in ecclesiastic documents could be sacrificed to absolutist church autonomy, as perceived by the majority. Would such rights include pension rights? Other social security rights? Health insurance rights? The right to privacy under Article 8 of the Convention? What about property rights under Article 1 of Protocol No. 1 to the Convention: could such claims be excluded from the national courts' civil jurisdiction? What would happen to the prohibition under Article 4 of the Convention: would a (former) clergyman's claim, hopefully only hypothetical, relating to the alleged breach of the said prohibition, fall outside the jurisdiction of the Hungarian labour courts?

These questions sound provocative, but they were themselves provoked by the doctrinal position underlying the finding in this case. As already mentioned, this doctrinal position qualifies a purely pecuniary dispute as ecclesiastical and grants unilateral power to ecclesiastical authorities in jurisdictional matters. Thus, it allows for the creation of a dual legal system wherein elementary State sovereignty is denied with regard to some legal disputes and, consequently, for deprivation of people of protection of their rights by the State. Moreover, some churches (unlike the Hungarian Calvinist Church) may even not have a system of ecclesiastical courts or tribunals. What would then be left of the State's obligation under Article 6, whose notion of "tribunal" now seems to encompass all variety of ecclesiastical dispute resolution bodies?

V

31. One of the salient contradictions of the present judgment is as follows. According to the judgment the Supreme Court was not mistaken in deciding that the State courts had no jurisdiction to examine the applicant's civil claim. At the same time, the judgment pays tribute to the fact that the Supreme Court "in fact" examined this claim (see paragraph 74), even though the Supreme Court expressly "discontinued" the examination of the

case on the ground of the ecclesiastical origin of the legal relationship. However, the result of that "examination" is that *de facto* the Supreme Court has no jurisdiction to examine the claim. What kind of "examination" is it which ends with a realisation that examination is legally impossible?! The majority failed to distinguish between an examination of the possibility of examining the applicant's claim (i.e. examination of the limits of the Supreme Court's own jurisdiction) and the examination by the Supreme Court of the claim itself.

32. Another contradiction in this judgment should also be pointed out. The Court has found – unanimously! – that the applicant, by not applying to the Supreme Court for review of the appellate court's decision, failed to exhaust the last available State remedy in his labour dispute with the church (see paragraph 32 of the judgment). At the same time it is obvious that it would be pointless for the applicant to apply to the Supreme Court, because in the applicant's civil case it (rightly, according to the logic of the majority) held that claims originating in the "pastoral service relationship, regulated by ecclesiastical law", have to be decided by ecclesiastical courts. Moreover, the Supreme Court even explicitly relied on the same "conclusion" reached by the labour court in the applicant's labour case (see paragraph 15 of the judgment).

33. Even assuming (as we have reluctantly done) that the applicant has failed to exhaust the last available (at least in theory) avenue in pursuing his labour-law claim, which is a prerequisite for bringing this particular claim before this Court, we find it difficult to comprehend a position which, on the one hand, approves of the Supreme Court's self-exclusion from cases originating in pastoral service and, on the other hand, tells the applicant that that avenue is still available. We fail to see how this suggestion can be consistent with the requirements, as reiterated through the years in thousands of judgments and decisions of this Court, that the existence of the domestic remedies that have to be exhausted under Article 35 § 1 of the Convention must be "sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness" (see, among many other authorities, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; *Aksoy v. Turkey*, no. 21987/93, §§ 51-52, ECHR 1996-VI; and *Akdivar and Others* [GC], no. 21893/93, § 66, ECHR 1998-II), and that a remedy which has to be exhausted must be "an effective one available in theory and in practice at the relevant time, that is ... accessible, ... capable of providing redress in respect of the applicant's complaints and [offer] reasonable prospects of success" (see, among many other authorities, *Akdivar and Others*, cited above, § 68; Sejdovic v. Italy [GC], no. 56581/00, § 46, ECHR 2006-II; and *Scoppola v. Italy* [GC], no. 10249/03, § 71, 17 September 2009).

34. Paradoxically enough, in the present case the four-to-three majority which has found no violation of Article 6 § 1 is completely different from

the four-to-three majority which found that the “civil” complaint is partly admissible (see also the other joint separate opinion of the three judges). Such a non-pluralist judgment (where the finding of a violation of the Convention is in fact a one-to-six finding with the “one” constituting the decisive “majority”) cannot have the necessary authority.

35. Given the distribution of votes and especially the individual judicial opinions behind them, it would be desirable to refer the case to the Grand Chamber.

36. Under Article 30 of the Convention, in order to be examined by the Grand Chamber, the case has to meet one of the following two criteria: (i) a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto”; or (ii) “the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court” (Article 30 of the Convention). This case meets both criteria. As to the first criterion, the serious problem underlying the dispute at hand is the relationship between State law and ecclesiastical law, the disowning of the State’s jurisdiction in favour of the ecclesiastical one, and the exclusion of a category of individuals from the protection of Article 6. As to the second criterion, the discordance of this judgment not only with “a” judgment of the Court but with its overall reasoning and with both the letter and the spirit of the Convention has already been extensively commented on in this opinion.

37. We still have some hope that the situation will be rectified.