

A Nun Needs a Home. The Jurisdiction to Examine a Dispute Concerning the Status of Monastic Premises

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1. The Procedure

On 5.3.2026 the ECtHR issued an Advisory Opinion, following a request submitted by Ukraine's Supreme Court under Art. 1 of Protocol 16 to the ECHR.³ The preliminary procedure introduced in 2018, with Protocol 16, aims to enhance judicial dialogue between the ECtHR and national authorities, facilitate the interpretation and application of the ECHR within the adjudication framework of the national judicial systems of member states, and establish guidelines towards national authorities on similar issues. Advisory Opinions are non-binding, can only be requested with regard to cases pending before national courts and may only be submitted by the highest national courts and tribunals. Under articles 1 and 2 of Protocol 16, the ECtHR confines itself only to points deriving directly from the proceedings pending on the domestic level and does not extend to any questions submitted that are not directly connected to the sub judice issues of each case.⁴

2. The Factual Background

The dispute under examination concerned a nun's (named in the Advisory Opinion as 'F') admission to a monastery, following an oral agreement between her and the Spaso-Preobrazhenskyi (Holy Transfiguration) Monastery ('the monastery') of the Ukrainian Greek Catholic Church ('UGCC'). The agreement was subsequently revoked, due to her leaving the premises after a conflict over

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³ (GC), unanimous Advisory Opinion, request no. P16-2025-001 by the Ukrainian Supreme Court, 5.3.2026, ('USC AO').

⁴ Advisory Opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement [GC], request no. P16- 2023-001 by the Conseil d'État of Belgium, § 61-64, 14.12.2023.

differences of opinion with the leaders of the religious organisation. In particular, F entered the convent in 2004 and formally became a nun after taking her perpetual vows in 2009. She remained in the religious community up until 2017. She was registered with public authorities as a resident of the monastery, which was the land owner, an obligation prescribed by national law.⁵ In 2017 the UGCC's Major Archbishop decided to dissolve the convent due to alleged violations of church regulations. This decision was followed by the appointment of an administrator for the management of the convent's affairs in preparation of the establishment of a new religious community in the monastery's premises, a decision later upheld by the Pope in 2019.

In May 2017, F and a number of nuns left the monastery on the backdrop of a brewing conflict between them and the appointed administrator. Several appeals were made thereafter before the Church authorities, regarding the lack of prior consultation or election of the administrator. When, in early 2018, they attempted to return to the monastery they were made aware of the fact that the locks had been changed and that they were barred from entering the premises. F was then sanctioned by the Church authorities for disobedience and was issued a warning. By 2020, she had effectively dismissed off her monastic state all together, and a new religious community was established in the monastery's premises.

In September 2020, the monastery filed an application with a civil court of first instance, seeking a declaratory judgment against F pertaining to the loss of her status as a resident and of her right to access its premises. This was needed, so as to be able to deregister F as a resident with public authorities. The monastery's proposition was that F's right to use a cell in the monastery had its basis on an 'easement/servitude' arising from an oral agreement between the two parties, a right deriving directly and entirely from her status as a member of the religious community. Accordingly, by leaving the convent, F had also waived/terminated the easement. F subsequently filed a counter application, seeking the reestablishment of her right to have unimpeded access to her former cell.

⁵ Freedom of Movement and Free Choice of Residence in Ukraine Act (2003). Section 6 of the Act provided, until 30.11.2021, that any person who moved to a new place of residence had to register it as such by submitting documents to the relevant registration authority.

3. Domestic Court Proceedings

In September 2021, the first instance court rejected the monastery's application and allowed F's counter application citing the ECtHR's ruling in *Kryvitska and Kryvitskyy*.⁶ After arriving to the conclusion that the monastery had not sufficiently proved F had left the premises on her own accord, but rather as a result of growing tensions within the community and was subsequently barred from returning, it held that F's cell fell within the definition of *home* under article 8 of the ECHR, and that her rights under article 8 prevailed against those of the monastery.

On appeal, the first instance judgement was quashed on the ground that civil courts had no jurisdiction over disputes arising within areas covered by canon law. F then appealed to the Civil Court of Cassation claiming a divergence in domestic case-law on the jurisdictional/competence issue. The Court of Cassation upheld the first instance court's ruling, determining that a monastic cell falls within the scope of the protection of article 8 ECHR,⁷ and that therefore the dispute was governed by civil law and that the civil courts enjoyed jurisdiction. Remitting the case for a retrial before the Appellate Court, the Court of Cassation noted that, in accordance with the ECtHR's previous case-law,⁸ the applicability of the principle of autonomy of religious organisations was not absolute and did not, on principle, preclude the need for judicial review, so as to ensure compliance with the rights guaranteed under the ECHR. It was further held that, by submitting the application before the civil court, the church authorities had effectively acknowledged that the dispute could not be resolved by the application of canon law; the monastery thus withdrew the application for declaration it had initially lodged.

The Appellate Court, after affirming that F was still registered as a resident of the monastery, held that she had a continuous link to the premises and had not left them voluntarily, nor after an

⁶ *Kryvitska and Kryvitskyy v. Ukraine*, 30856/03, 2.12.2010. The case concerned two Ukrainian nationals, residing in Kyiv, who had their tenancy registration annulled and subsequently evicted from a flat they had lawfully occupied for a decade. The ECtHR found that there had been a violation of article 8 ECHR, noting that it attaches particular weight to the procedural safeguards afforded to that individual in the course of the decision-making process, § 44.

⁷ Citing *Kryvitska and Kryvitskyy v. Ukraine*, fn. 5 above, and *Buckley v. UK*, 20348/92, 29.9.1996.

⁸ *Fernández Martínez v. Spain* [GC], 56030/07, 12.6.2014, and *Károly Nagy v. Hungary* [GC], 56665/09, 14.9.2017.

independent decision on her part. Subsequently, her rights under article 8 ECHR outweighed those of the monastery. It further found that the principle of autonomy of religious organisations had not been interfered with, as the dispute was governed by civil and not ecclesiastical law. The monastery responded with the lodging of another cassation appeal before the civil court branch of the Ukrainian Supreme Court, again setting forth the argument that in view of the autonomy principle, civil courts had no jurisdiction over disputes arising as a result of the application of canon law, as allegedly was the case of F's expulsion. F's access and occupancy of her monastic cell had its foundation on, and was subject to her being accepted and remaining a member of the religious community, a relationship formed and based solely on canon law.⁹ It was argued that, if civil courts enjoyed jurisdiction over the dispute, this would amount to a violation of the principles of freedom of religion and of the organisational life of the religious community.

The Civil Court of Cassation opted to refer the case to the Grand Chamber of the Supreme Court, considering the legal issues at hand as of an exceptional nature. It was within this context, that the Supreme Court decided to refer the case to the ECtHR seeking an advisory opinion on the applicability of civil law and the jurisdiction of civil courts, a question it deemed fundamentally interrelated with both the scope of the protection guaranteed under article 6 ECHR, the question whether a monastic cell falls under the definition of a *home* within the meaning of article 8 ECHR, and also the balancing of these rights with the protections warranted under article 9 ECHR. The Supreme Court considered that the facts of the case before it differed significantly from the ECtHR's previous case-law, such as, *inter alia*, *Fernández Martínez* and *Károly Nagy*,¹⁰ since the determination of the rights of a religious organisations had never before been examined in connection with an individual's housing rights. The first question submitted by the Ukrainian Supreme Court involved the scope of the protection enshrined under article 8 ECHR, and, in particular, if a monastery (monastic cell) falls within the definition of a *home*, whereas the second question involved the jurisdictional issue of whether a civil court has jurisdictional authority over disputes arising between a monastery and a nun, where the first party claims violation of a right

⁹ Setting forth arguments as to the nature of monasteries as places of worship, spiritual excursions, formulation of close-knit communities with limited access to outsiders.

¹⁰ Fn. 7 above.

enshrined in the ECHR, whereas the other party invokes the principle of a religious organisation's autonomy and the applicability of ecclesiastical law.¹¹

4. The ECtHR Advisory Opinion

4.1. The 1st Question

As to the first question, the ECtHR reiterated that the concept of 'home' under article 8 ECHR has a broad meaning, autonomous of any classification adopted under national law.¹² The assessment was carried out with reference to the factual circumstances of each case, which determine the existence (or lack thereof) of a sufficient and continuous link to a specific place¹³ and the essential scope of protection warranted by article 8, namely, the protection of the individual against arbitrary interference by public authorities.¹⁴ In establishing whether F had a *sufficient and consistent link* (having in mind that, *prima facie*, there indeed existed elements indicative of such link, *inter alia*, F's wish to return, and the fact that she had left her belongings behind), it was necessary to determine the legal foundation of her occupancy; that is, if it was based on civil law or if it exclusively derived from her status as a member of the religious community in question. In the latter instance, the requesting court should particularly take into account that the principle of the autonomy of religious organisation lies in the heart of the protection afforded by article 9 ECHR.¹⁵

The ECtHR observed that, in accordance with its established case-law, state authorities are precluded from interfering with a religious community's freedom to autonomously determine the manner in which new members are admitted or existing members are excluded from the

¹¹ USC AO § 9.

¹² *Ibid.*, §§ 54 -55. See also *Chiragov and others v. Armenia* [GC], 13216/05, 16.6.2015, § 206 .

¹³ USC AO § 55. See also *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 et al, 9.7.2025, § 1151, *Winterstein and others v. France*, 27013/07, 17.10.2013, § 141 with further references therein; *Prokopovich v. Russia*, 58255/00, 18.11.2004, § 36.

¹⁴ USC AO § 54. See also *National Federation of Sportspersons 'Associations and Unions (FNASS) and others v. France*, nos. 48151/11 and 77769/13, 18.1.2018, § 154.

¹⁵ USC AO § 56 & 58.

community.¹⁶ If an individual raises objections or disagreement over organisational or religious doctrine matters, their right under article 9 ECHR is exercised through their freedom to remove themselves from the religious community.¹⁷ Moreover, under Article 1, Protocol 1 ECHR, a religious organisation has the right to peaceful enjoyment of their property, with the ECtHR having noted, in several instances in the past, the close link between the right of peaceful enjoyment of property and the protection safeguarded under article 9 ECHR, that guarantees the right of religious organisations to manage their property without any unjustified restriction by state authorities.¹⁸

Another consideration for the domestic courts should be that, in this particular case, there potentially coexisted *conflicting* claims to a home: F's cell was an integral part of a monastery, a place that housed an enclosed community of members of a religious group who practiced their vocation through their common life together. The monastery was, therefore, the shared home of all members of the convent that, at a given time, occupied its premises. Within this context, recognising a separate right to a home for F, might raise issues of interference with the protection guaranteed by article 9 ECHR, in conjunction with article 1, Protocol 1 ECHR, namely the religious organisation's right to manage and use their place of worship.¹⁹

In light of the above, the ECtHR concluded that the premises of a convent or a monastery, including those of a monastic cell, can be considered a *home* under article 8 ECHR, read in the light of article 9, when it is established that there exist substantial and continuous links to the premises. If such links are only of a religious nature, the status of the religious group occupying the premises becomes increasingly important. The ECtHR also noted that, although a proportionality analysis carried out by an independent tribunal is a requirement for any individual at risk of losing their home in cases

¹⁶ USC AO § 60. See also *Sindicatul "Păstorul cel Bun v. Romania* [GC], no. 2330/09, 9.6.2013, §§ 136 and 137, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, 14.6.2007, §§ 146 and 150, and earlier *X v Denmark* (1976) 5 DR 157, 158.

¹⁷ *Mirojubovs and others v. Latvia*, no. 798/05, 15.9.2009, § 80.

¹⁸ USC AO § 63. See also *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, nos. 412/03 and 35677/04, 22.1.2009, §§ 173-74, and *Midyat Mor Gabriel Monastery Foundation v. Türkiye*, 3.10.2023, no. 13176/13, §§ 36-68.

¹⁹ USC AO §§ 61-64.

involving state or socially owned accommodation, this does not automatically apply to disputes between private parties.²⁰

4.2. The 2nd Question

The ECtHR clarified that its reply to the first question does not automatically address the second question.²¹ It noted that the jurisdictional issue, as framed by the Supreme Court, was a matter of domestic law and for national courts to determine. However, the ECtHR would consider the applicability of article 6 § 1 ECHR to the proceedings pending before the Supreme Court. The core legal issue at hand was whether by virtue of the provisions of article 6 ECHR, F was entitled to have her case determined by a domestic court that satisfies the various requirements set therein as interpreted by the ECtHR's case-law.²² By reference to a few previous judgements,²³ relating to the applicability of article 6 and its intersection with religious autonomy, the ECtHR clarified that the Ukrainian Constitutional Court was erroneous in its assumption that a proportionality analysis is always required. The decisive issue was, ultimately, if the proceedings involved a right that was recognised, at least on arguable grounds, in domestic law.²⁴

Citing the Grand Chamber's previous ruling in *Károly Nagy*, where a priest had sought pecuniary damages against church authorities for his removal from pastoral service before the national courts, the ECtHR recalled that it had been decided that article 6 ECHR was not applicable, because on the basis of the relevant domestic law and well established case-law of the Hungarian Constitutional Court, relations and disputes governed by canon law could not be litigated in civil courts. This was based on the distinction made under Hungarian law between relations governed by ecclesiastical law, which religious organisation had the right to manage internally, and relations governed by civil law. Therefore, a religious organisation did not enjoy an unfettered immunity against any and all

²⁰ Ibid, § 67. *F.J.M. v. UK* (dec.), no. 76202/16, 6.11.2018, §§ 37-46.

²¹ Ibid, § 71.

²² Ibid, § 69-70.

²³ Ibid, §§ 77-81, *Dudová and Duda v. the Czech Republic* (dec.), 40224/98, 30.6.2001, *Ahtinen v. Finland*, 48907/99, 23.9.2008, and *Țîmpău v. Romania*, 70267/17, 5.12.2023.

²⁴ Ibid, § 82.

kinds of civil claims. Accordingly, the applicability of article 6 ECHR lies exclusively on the nature of the applicants' legal relationship with a religious organisation.²⁵

The ECtHR concluded that its case-law was clear in demonstrating that the applicability of article 6 depends primarily on whether the dispute concerns a right recognised, at least arguably, by domestic law. If the Supreme Court had reached the conclusion that F could not, at least on arguable grounds, claim an interference with her right to a home within the context of the specific circumstances of the case, then article 6 would be inapplicable, since the domestic courts would not be required to examine and determine the case on its merits.²⁶ If, reversely, it was decided that such a right could be arguably invoked, then F was entitled to have her claim be determined in compliance with the requirements of a fair trial under article 6 ECHR.²⁷

5. Comments

5.1. Can the Principle of Autonomy Override Prior Consent to Civil Court Jurisdiction?

One of the particularities of this case lies in the fact that the church authorities were the first to invoke the jurisdiction of the civil courts. The Church only introduced the principle of autonomy, as an objection to the civil courts jurisdiction, at the appellate level. Viewed from this lens, two issues are raised: firstly, whether by procedurally invoking the civil courts jurisdiction the Church had effectively accepted that substantive civil law was -at least to a certain degree- applicable, and secondly, whether the principle of autonomy, viewed in the context of the collective freedom of religion civil right can override, or completely nullify, a competing, individual right, without prior proportionality and balancing analysis. Provided that the Church did not merely consent to take part in, but actually initiated the civil court proceedings, shouldn't article 6 ECHR become relevant, at least from a *ratione materiae* perspective, even without prior identification of an article 8 ECHR infringement, or irrespective of such infringement? Moreover, if the domestic courts bear the

²⁵ Fn. 7 above, §§ 72-75.

²⁶ USC AO § 85.

²⁷ USC AO § 88.

responsibility to assess whether on account of the facts of the case, the dispute between F and the monastery is of a civil or an ecclesiastical law nature, doesn't this element alone effectively satisfy the 'arguability' criterion?

The argument of the Church was based on consent to religious norms over joining a convent/monastery and that, with revoking such consent, the privileges afforded were also revoked. Shouldn't then, the same argument be invoked against the church in this case, considering it was the party that initiated the proceedings? The Church filed an application before a civil court, claiming that the eruption of the religious relationship had consequences in the realm of obligations set under civil law, i.e. the registration of home address. If F is to be considered as having waived her rights, by way of voluntary participation in the convent, why should the same standard not apply to the church with regard to the filing of an application before a civil court against its former member?

5.2. State Positive Obligations under Article 8 (?) and the Applicability of Article 6

In *Martínez*, which the Grand Chamber discarded on the premise that it was irrelevant, the applicant was a Catholic priest and a Catholic religion and morality teacher, employed by the State, whose employment contract had not been renewed on the grounds that he had failed in his duty to teach *without risking scandal*, by publicly displaying his situation as a *married priest*. The majority of the Grand Chamber noted, in a near split decision (9 votes to 8), that the element of the applicant being employed by the State and not a religious organisation differentiated this particular case²⁸ from its three previous decisions in *Siebenhaar*,²⁹ *Schüth*,³⁰ and *Obst*³¹, where the applicants were church employees. In the latter three cases, the ECtHR's assessment had been carried out through the lens of the state's positive obligations to render the protection guaranteed under article 8 ECHR effective, underlining that these obligations may also entail the adoption of measures designed to

²⁸ USC AO §§ 109-113.

²⁹ *Siebenhaar v. Germany*, [18136/02](#), 3.2.2011.

³⁰ *Schüth v. Germany*, [1620/03](#), 23.9.2010.

³¹ *Obst v. Germany*, [425/03](#), 23.9.2010.

secure respect for private life even in the sphere of the relations of private actors amongst themselves.³²

The fact that Martinez had claimed an interference with his rights by the State, under article 8 ECHR, on the premise that he was a government employee, was, in the ECtHR's eyes, an element that did in fact increase the level of scrutiny both domestic courts and the ECtHR were required to apply in their proportionality assessment, but not to the point that could fundamentally affect the obligations and limitations imposed by way of a person's voluntary participation in a religious organisation, and the duty of loyalty upheld within the bounds of such a relationship. Ultimately, the ECtHR held, that the State has an obligation under the ECHR to respect an individual's right to private and family life and the autonomy of religious organisations to equivalent measure, and therefore has to strike a fair balance between the conflicting interests at stake, by applying a proportionality analysis, and to that respect it is afforded with a wide margin of appreciation.³³

In both *Schüth* and *Obst* the ECtHR had commended the introduction of a procedure in Germany, through which church employees were able to bring their case before a labour court, with the jurisdiction to decide whether their dismissal was lawful under domestic labour law, while also having regard to canon law. This was deemed to fulfill, on principle, its positive obligations under article 8 ECHR. In *Schüth* the ECtHR found that there had been a violation of article 8, after concluding that the proportionality analysis undertaken by the domestic courts resulted in giving undue gravity to the church's collective right, and that a more detailed examination was required when weighing the competing rights and interests at stake. The fact that an employee, who had been dismissed by a Church employer, had limited opportunities of finding another job, and that the applicant did not appear to have challenged the position of the Catholic Church on adultery in any public way, but had only failed to observe it, were important factors that had not been given appropriate weight.

³² USC AO §§ 54 -59.

³³ *Ibid*, § 56.

Conversely, in *Obst* the ECtHR concluded that there had been no violation of article 8, finding that the national labour courts, had, in contrast to *Schüth*, weighed the competing rights between two private actors in a reasonable manner and within the limits of the wide margin of appreciation afforded to them on these issues. It was thus held that article 8 ECHR did not require the State to afford the applicant a higher degree of protection.³⁴ This approach was, in essence, later solidified in *Martinez*. The decisive factor for the different outcome in *Schüth*, as opposed to all the other cases discussed, appears to be the validity of the argument proposed by the responding religious organisations, and in *Martinez* the State, at the domestic level, that the applicants' dismissals had been based on the breach of duty they had voluntarily undertaken to remain loyal to the Church and its internal rules. Their dismissal was, therefore, considered a necessary measure for the protection and the preservation of the Church's credibility. The weight given to an outward, public manifestation of infidelity, effectively, an employee of a religious organisation expressing, or even implicitly indicating disregard or refusal of adherence to religious norms, is indicative of the ECtHR reluctance to set any substantial limitations to the principle of religious autonomy, at least to the extent that it perceives the breach of a contrasting right or interest protected under article 8 of a minor or limited importance. But this was the result of a proportionality analysis, which was carried out after assessing and accepting the applicability of both article 8 and article 9 ECHR.

In *Karoly Nagy*, the Grand Chamber considered the applicability of article 6 ECHR, in a case involving an action for compensation that a pastor had filed against the Reformer Church of Hungary before the labour court. The pastor had been discharged because of statements he had made to a local newspaper. The labour court dismissed the case on the ground that the dispute fell under ecclesiastical law. A second action brought before the civil court, was also dismissed on the same ground and was later upheld by the Hungarian Supreme Court. The Grand Chamber, dismissing the case as inadmissible, underlined that the Hungarian legal and jurisprudential framework did not allow claims arising from disputes concerning the application of ecclesiastical law to be brought before civil courts. Therefore, the applicant did not have a *right*, at least on arguable grounds, recognised under domestic law. The logic was that, if the ECtHR had considered the application

³⁴ See similar approach in *Siebenhaar*, § 46.

admissible, it would create, through the process of interpreting article 6 ECHR, a substantive right, which lacked legal basis in the defendant State.

This approach, which seems to be upheld in the Advisory Opinion under review, is not fully aligned with the ECtHR's approach in *Siebenhaar, Schüth and Obst*, where the introduction of a review procedure under German law was considered as a measure upholding the State's positive obligations under article 8 ECHR. It is submitted that it is also not aligned with *Martinez*, as the Grand Chamber held that article 8 was applicable, i.e. passed the admissibility stage, prior to it being rejected on its merits. The application was, therefore, only rejected after a careful balancing assessment, without any prior examination as to whether it corresponds to a right already guaranteed under domestic law. Whereas, the argument that the ECtHR should avoid to create a domestic substantive right through the process of interpretation holds some weight, it is noted that the interpretation of the ECHR should ensure its effectiveness, by giving it effect consistent with its context, as well as with its objects and purposes.³⁵ Since article 8 entails substantive positive obligations, declaring that article 6 ECHR is inapplicable, without considering whether the State ought to have fulfilled its positive obligations in order to introduce a substantive right in its domestic legislation, leaves a gap in the protection of individuals by the ECHR.

³⁵ See, in detail, G.A. Serghides, *The Principle of Effectiveness and its Overarching Role in the Interpretation and Application of the ECHR*, Strasbourg, 2022.