

Press Statement: TEASA on the Autonomy of the Church

The Alliance Defending the Autonomy of the Church in South Africa (ADACSA) has filed an application for admission as a “friend of the Court” (Amicus Curiae) in the important case of Gaum vs the Dutch Reformed Church. This case is being heard by the Johannesburg High Court on August 21st and concerns a decision by the DRC Synod in 2015 to permit (although not oblige) its ministers to solemnise same-sex civil unions and to remove the celibacy requirement for gay and lesbian ministers, which was subsequently reversed by the same Synod in 2016.

The applicants are alleging that the 2016 decision should be set aside and corrected by the Court due to procedural irregularities. They are further alleging that the DRC’s decision amounts to unfair discrimination against gay and lesbian people and, for this reason, it is unconstitutional and should be set aside and corrected by the Court. The application by ADACSA was precipitated by the Commission for Gender Equality (CGE), who have also applied as an Amicus Curiae to ask the Court to go even further by asking the court to find that, from a constitutional point of view, no church or religious grouping should have any discretion at all to decide whether or not they solemnize same-sex civil unions/marriages.

“We view this intervention by the CGE with deep concern”, said Moss Nthla, General Secretary of The Evangelical Association of South Africa (TEASA), one of the founder members of ADACSA. “The position they have adopted potentially challenges the right and ability of each denomination, church or religious grouping to govern their internal affairs according to their own interpretation of their religious doctrine.”

While ADACSA is not adopting a position for, or against, same-sex relationships/marriages, it believes that the CGE’s application represents a severe infringement of the s. 15 Constitutional rights to religious freedom because it would completely undermine the autonomy of the religious community as a whole. Should the Court agree with the CGE’s position, it would effectively mean that churches and religious organisations could be forced to adopt certain “ideologically biased” doctrinal positions, even if such positions went directly against their religious convictions and beliefs

ADACSA recognizes that the State can intervene in the affairs of any religious institution to protect vulnerable members from readily discernible or serious harm, like physical or sexual abuse of a child, or financial fraud by church officials). However, the Constitution guarantees religious institutions a certain degree of institutional autonomy, which is vital to an open, democratic and conscience-honouring society.

“The European Court of Human Rights (ECtHR) has repeatedly held that “the autonomous existence of religious communities is indispensable for pluralism in a democratic society” and most democratic nations agree that interfering with religious associations harms, rather than promotes, a democratic society”, says Teresa Conradie, Chairperson of the Christian Lawyers Association (CLA). “ADACSA is therefore contending that South African law should remain consistent with this position, as well as with the Constitutional Court and the Supreme Court of Appeal’s previous statements to the effect that our courts should not become entangled in determining doctrinal issues, which should fall within the exclusive realm of the Church.”

“Given that the Constitution does not recognise a hierarchy of rights and that both sexual orientation and religious freedom have the same status as “equality rights”, where they may appear to be in tension, the proper interpretation of the court should be to harmonise them and reconcile them with one another so that one does not intrude upon the other”, adds Michael Swain, Executive Director of FOR SA. “It should never be a “winner takes all” situation where a court suggests that there can be only one acceptable viewpoint with respect to the moral debate regarding the nature of marriage in South Africa.”

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