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European Court of Human Rights to examine Hungary's church law

CERF Institute (14.10.2012) - The Strasbourg Court of Human Rights has sent its questions regarding Hungary's church laws to the Hungarian government and started to examine the legislation, news website index.hu said on Wednesday.

Several religious organisations have turned to Strasbourg over the new laws which have reduced the number of recognised churches in Hungary.

The Court had asked the government to state whether rights to a free practice of religion had been infringed in connection with the new law.

Index.hu said altogether 17 organisations who lost their church status as a result of the law have turned to the Court.

The Human Resources Ministry told Hungarian National News Agency in a statement on Wednesday that the Strasbourg court expected an answer from Hungary until January 23 next year.

Contrary to press reports, one of the aims of the Hungarian church law was to eliminate abuse of a church status, rooted in a law from 1990, under which any organisation applying for a church status was automatically granted the title, the statement said.

It added that the ministry continued to be open for dialogue with religious organisations.

According to the ministry, the Hungarian legislation is "one of the most generous" such laws in Europe, which does not curb religious freedom and "maintains the religious diversity of Hungarian society".

Hungary's parliament passed the church law on December 30 last year. The number of religious organisations with church status dropped from over 300 to 14, index.hu said.

The law had been axed by the Constitutional Court in December last year for procedural reasons, but parliament reopened it for debate and passed essentially the same law at an extraordinary session at the end of the year.

The church law has been criticised in the European Union, as well as by US Secretary of State Hillary Clinton.

Daniel Karsai, the legal representative of six organisations, said the government had four months to respond to the questions from Strasbourg and that a verdict would be passed by May or June next year.

The Hungarian Civil Liberties Union (TASZ) will represent nine religious organisations in the Strasbourg case, index.hu said.

The Ombudsman turned to the Constitutional Court because of the provisions of the Law on Churches

Cerf Institute (13.08.2012) - According to the opinion of the Commissioner for Fundamental Rights the legal provisions regulating the recognition of churches are in contrary to the principle of separation of power, to the right to fair procedure and to the right to legal remedy. After analysing the initiatives of many religious organisations Szabó Máté turned to the Constitutional Court.

The Ombudsman finds the provision contrary to the Fundamental Law, which not considering the constitutional principle of separation of power among government branches allows the Parliament to decide by itself and on church status recognition without the right to an appeal.

The close relation to freedom of religion makes it indispensable that the decision on the recognition of the church, on rendering the religious status meets all guarantees protecting fundamental rights. If it is at the discretion of the decision-maker to give the religious status, then the aspects of deliberation have to be regulated by Act. The Act lacks such principles and provisions. The refusal should be reasoned, but the Act also lacks the requirement of reasoning in case of refusal. Thus we would never learn the reason of the refusal - stated Szabó Máté. Legal remedy has to be guaranteed against the decision on church status and the current regulation lacks it.

The Ombudsman emphasises that on the basis of the principle of separation of power the Parliament cannot exercise tasks, during which it makes political decisions affecting fundamental civil rights without having appropriate constitutional guarantees.

Fundamental rights are violated by the new Hungarian Church Law

HCLU (05.07.2012) - Representing 9 churches the Hungarian Civil Liberties Union has filed a motion to the Constitutional Court and to the European Court of Human Rights.

The Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary has established one of the greatest curtailment of privileges since the transition in 1989. In defence of 9 churches, deprived of their legal status, the HCLU, seeking remedies, has turned to the CC and to the ECtHR. Regarding the new rules on the CC a law can be challenged before the Court upon only a single complaint and in exceptional cases.

However, the Church Law violates the main aspects of all the churches' and citizens' rights to freedom of thought, conscience and religion, to due process, to seeking remedies and the requirements of the rule of law, established in the Fundamental Law of Hungary. The ground of the application to the ECtHR is, similarly, the situation in which the confiscation of right flows from the law itself. According to the application, the law is contrary to the applicants' rights to a fair trial, to an effective remedy, to the freedom of thought, conscience and religion and breaches the prohibition of discrimination set forth in the European Convention of Human Rights.

- The Church Law has deprived existing religious communities from their settled rights and legal status as a church. Moreover, as a result of the failures of the legislative procedure, churches had only one day to prepare for the application of the much more restrictive and much less clearer provisions of the new law.
- Lack of the right to a fair trial and to an effective remedy is a direct consequence of the fact that the parliament, instead of the court, has the right to recognise an association as a church, since the parliament has no duty to justify its decision and there is no higher instance to review that. (In the HCLU's view the constitutional complaint cannot be regarded as an effective domestic remedy.)
- The Church Law curtails the right to the freedom of thought, conscience and religion since a) it creates too narrow a criteria for the recognition of a religious association as a church; meanwhile b) it provides possibilities too wide for the parliament to refuse recognition; c) by the definition of the concept of "religion" it does not ensure the state's duty of fairness and impartiality regarding the plurality of ideas and beliefs; and finally d) it does not ensure the principle of the separation of church and state, since the recognition procedure is dominated by political parties' interests.

The law discriminates certain beliefs by the arbitrary definition of the concept of "religion" and by the recognition of certain churches, picked up arbitrarily, without the application of the criteria settled in the law. The privileged treatment has lacked the sufficient and reasonable justification.

New Hungarian law on religion and compatibility with EU equal treatment legislation

Parliamentary question for written answer to the Commission by Michael Cashman (S&D), Ulrike Lunacek (Verts/ALE), Sophia in 't Veld (ALDE), Raül Romeva i Rueda (Verts/ALE), Sirpa Pietikäinen (PPE), Kinga Göncz (S&D), Zita Gurmai (S&D), Csaba Sándor Tabajdi (S&D) and Baroness Sarah Ludford (ALDE)

Subject: New Hungarian law on religion and compatibility with EU equal treatment legislation

In Hungary, Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities came into force recently. This act provides that 'since church institutions are ideologically committed, they may determine such conditions concerning recruitment and the establishment, maintenance and termination of the legal relationship of employment as are necessary to preserve their specific identity' (Article 12(2)).

This wide-ranging provision appears to significantly increase some employers' margin of appreciation for discrimination in comparison with Article 4(2) of Directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupation. In particular, it appears that the aforementioned law:

- disregards the criterion 'genuine, legitimate and justified occupational requirement', as set forth in Directive 2000/78/EC, and
- extends the exemption to grounds other than religion and belief, in breach of Directive 2000/78/EC.

In the light of the above, can the Commission explain in detail whether Act CCVI of 2011 on the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Denominations and Religious Communities is compatible with EC law, and in particular with Directive 2000/78/EC? If it is not, will the Commission undertake legal action to bring these texts in line with the *acquis*?

***Answer given by Mrs Reding on behalf of the Commission
2 April 2012***

The Employment Equality Directive 2000/78/EC⁽¹⁾ prohibits discrimination on grounds of religion or belief, disability, age, or sexual orientation in employment and occupation.

Article 4 of the directive provides for limited derogations in specific cases. Article 4(1) of the directive allows, under strict conditions, differences of treatment where a particular characteristic related to a ground covered by the directive is a 'genuine and determining occupational requirement' for the job in question.

Article 4(2) of the directive allows Member States to provide that churches and religious organisations can require that the person employed is of the same religion where this is justified by the nature of the job in question. The exemption under Article 4(2) concerns only differences of treatment by religious organisations on grounds of religion or belief.

According to the case-law of the Court of Justice of the European Union, exceptions to the principle of equal treatment, such as those in Article 4 of Directive 2000/78/EC, have to be interpreted narrowly.

Member States' legislation on conditions of recruitment, the termination of the employment relationship and other working conditions must comply with the principle of equal treatment, as put into effect by Directive 2000/78/EC.

The Commission will contact the Hungarian authorities for further information and to examine whether Hungarian law is in conformity with Directive 2000/78/EC.

(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p.16.

European Commission justice head says will probe Hungarian church law further

MTI (12.04.2012)- The European Commission will contact the Hungarian authorities for further information about Hungary's church law and to assess whether it is in conformity with a relevant EU directive, justice commissioner Viviane Reding said in answer to a written question on Wednesday.

The question was submitted by three members of the European Parliamentary delegation of Hungary's main opposition Socialist Party. It said that Hungary had recently adopted legislation on the right to freedom of conscience and religion and on the legal status of churches, religious denominations and religious communities which, according to the MEPs, "disregards the criterion 'genuine, legitimate and justified occupational requirement', as set forth in Directive 2000/78/EC," and extends the exemption to grounds other than religion and belief, in breach of the directive.

The question was signed by Hungarian MEPs Kinga Góncz, Zita Gurmai and Csaba Tabajdi, as well as British MEP Michael Cashman of the Progressive Alliance of Socialists and Democrats, Austria's Ulrike Lunacek (Greens/ALE), Holland's Sophia in't Veld (ALDE), Catalanian Raul Romeva i Rueda (Greens/ALE), Finland's Sirpa Pietikäinen (PPE) and Britain's Baroness Sarah Ludford (ALDE).

In her written answer, Reding said the Employment Equality Directive prohibits discrimination on grounds of religion or belief, disability, age, or sexual orientation in employment and occupation. She added that under strict conditions, the directive allows "differences of treatment where a particular characteristic related to a ground covered by the Directive is a 'genuine and determining occupational requirement' for the job in question."

Reding said that according to the case-law of the Court of Justice of the European Union, exceptions to the principle of equal treatment have to be interpreted narrowly and member states' legislation on conditions of recruitment, the termination of the employment relationship and other working conditions must comply with the principle of equal treatment.

"The Commission will contact the Hungarian authorities for further information and to examine whether Hungarian law is in conformity with Directive 2000/78/EC," she said.
Topics



On April 9 and 16, European political weekly newspaper New Europe in Brussels published an Open Letter to Hungarian Prime Minister Viktor Orbán signed by the leaders of four international human rights organizations and of discriminated Hungarian religious groups

Open Letter to Hungarian Prime Minister Viktor Orban

"NO" to the new law on religions

We, the undersigned, wish to make our voices heard and our concerns expressed with regards to the Hungarian Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Status of Churches, Religions and Religious Communities that restricts religious freedom.

The Act stripped Buddhists, Hindus, Muslims, and hundreds of other religious communities of their church status and forced them to undergo a highly arbitrary procedure should they wish to register as a religion.

Because of this legislation which we consider to be a violation of Hungarian Constitution and of fundamental human rights, dozens of religious denominations are deprived of fundamental rights they had acquired under the previous legislation:

- they are not included in the category of religious communities which will go on enjoying the same rights as before and are exempt from re-registration;
- they have to apply for re-registration and to this end to collect the personal data and the signatures of 1000 members instead of 100 previously;
- they cannot re-register through a court proceeding as before but have to submit their application to the Parliament and need a 2/3 majority vote;
- they have to go through a preliminary screening of a state authority (Ministry of Public Administration and Justice) implying an evaluation of their beliefs;
- they have no legal redress in case of rejection but will have to apply for the status of "religious association" under the law governing civil associations (also under revision) and if they fail to do so, they will be liquidated and their assets nationalised ;
- they will lose a number of tax exemption advantages while the registered communities will go on enjoying them;

The de-registration process will affect the support by religious groups to different communities and activities, including the care for homeless, the elderly, the poor, prisoners and minorities. It will affect amongst other things educational support, the provision of shelter and assistance to those disadvantaged in society as these religious communities will no longer have the proper legal framework from which to operate.

The Hungarian Evangelical Fellowship founded and led by Methodist Pastor Gabor Ivanyi, which provides food and shelter for some thousands of homeless people, lost its church status and is not entitled anymore for state support of its charitable work.

Jai Bhim Buddhist Community which contributes to social integration of young Roma adults and children, not only lost its religious recognition but was subjected to a police raid.

All of this is reminiscent of some long forgotten time and has no place in today's modern Europe.

On 19 March 2012, the Venice Commission of the Council of Europe published a 15-page Opinion about the new Hungarian Religion Law in which it expressed serious reservations (See [http://www.venice.coe.int/docs/2012/CDL-AD\(2012\)004-e.pdf](http://www.venice.coe.int/docs/2012/CDL-AD(2012)004-e.pdf)). It found that retroactively de-registering religious organizations offends international human rights standards. It also found that the Parliamentary vote on registration offends due process, withholds necessary procedural guarantees, and offends the obligation of state neutrality and objectivity. Moreover, it found the national security criteria to be in violation of ECHR and OSCE standards.

We hereby call for this legislation to be repealed and religious freedom being protected in the interest of all citizens of Hungary.

Willy Fautre, Director of Human Rights Without Frontiers International (Brussels)

Joe Grieboski, Founder and President of the Institute on Religion & Public Policy (Washington)

Peter Zoehrer, Secretary General of Forum for Religious Freedom Europe (Vienna)

Rev. Drs. Wytske Dijkstra, Chair of External Relations Committee of International Association for Religious Freedom

Rajan Zed, President of Universal Society of Hinduism

Gibril Deen, President of Mahatma Gandhi Human Rights Organisation

Janos Nagy, President of the Confederation of Hungarian Small Churches

Janos Orsos, President of Hungarian Jai Bhim Buddhist Community

Jura Nanuk, Founder of the Central-European Religious Freedom Institute

Venice Commission delegation to visit Hungary next week

Politics.hu (20.02.2012) - A delegation of the Venice Commission is scheduled to visit Hungary next week to review laws on the legal standing of judges and their pay scale, the structure and management of the courts as well as the church law, a spokesman of the organisation told MTI on Tuesday.

The Venice Commission will form its position at the request of the Hungarian authorities, and is scheduled to finalise it at a meeting in mid-March, it said.

The delegation will consist of the commission's secretary Thomas Markert, members Jan Velaers from Belgium, Vojin Dimitrijevic from Serbia, Christoph Grabenwarter from Austria, Hanna Suchocka from Poland, Wolfgang Hoffmann-Riem from Germany, head of the constitutional department Schnutz Durr and legal advisor to the department on basic rights and democratic institutions Caroline Martin.

The commission will also examine some other Hungarian laws, the spokesman said.

In a letter addressed to Foreign Minister Janos Martonyi in January, Council of Europe Secretary General Thorbjorn Jagland suggested requesting that the Venice Commission provide opinions on laws relevant for the judiciary's independence, religious freedom and elections to parliament. He also suggested that Hungary should request the expertise of the Council of Europe on the media law.

Martonyi said in response that Hungary would be ready to consult with the Council of Europe's Venice Commission on recent legislation.

Evangelical Churches protest against the new religious law depriving 67 denominations of their registration

HRWF (24.02.2012) - On Sunday 25 February at 11 am, Hungarian Evangelical Churches will hold a religious service at the Kossuth Statue outside the Hungarian Parliament to protest against the new religious legislation which deprives 67 denominations of their registration and the rights attached to it.

"Preserving the rights of 17 churches is only sugar coating on the cyanide pill that strips 67 registered denominations of their rights acquired and practiced in good faith," says the press release published by the Autonomous Christian Church of Budapest, which also stresses that the chairman of the competent parliamentary committee, who was involved in the drafting of the new law, is known to have strong ties to a major denomination.

New Hungarian Constitution revokes nation's recognition of Islam & other religions

Ahul Bayt News Agency (04.01.2012) - The new Hungarian constitution withdraws official recognition and tax exempt status from over 300 religious denominations. Included on the new black list are: all denominations of Islam, Buddhism, and Hinduism, as well as several Catholic orders, Episcopalians, Jehovah's Witnesses, Mormons, Methodists and others.

The new constitution introduces a law on religious life in Hungary that only last month was struck down as unconstitutional by the nation's Constitutional Court.

The constitution - called new Basic Law - strips Bulgarians of many of their liberties and concentrates unprecedented power in the central government.

The passage of the new constitution marks the crowning achievement of Prime Minister Viktor Orban's center-right Fidesz party, 18 months into its rule. The party won 53 percent of the vote in the spring of 2010, resulting in 68 percent of the seats in parliament, enough to radically change Hungary's legal landscape.

Tens of thousands of Hungarians took to the streets of Budapest on Monday night to protest the country's new constitution, which in combination with other recent laws, severely curtails the independence of the country's central bank and courts, as well as slashing religious rights.

The crowd gathered outside as inside Prime Minister Orban and other leading government officials celebrated the new Basic Law inside the opera house. Hungarian President Pal Schmitt defended the document, saying that his countrymen should be proud of it. "The

constitution was born of a wide consultation, building on national and European values," he said in a speech at the celebration. "Our Basic Law defines the family, order, the home, work and health as the most important, shared scale of values."

Many of them, say critics, have been aimed at eliminating constitutional guarantees, including press freedoms, and solidifying Fidesz's hold on power. "This Basic Law basically unwinds the checks and balances that we created in 1989," Sandor Szekely, co-head of the Solidarity movement which organized Monday night's rally, told Reuters.

Also on Monday, a prominent group of former political dissidents who struggled against Communist rule prior to 1989 published a scathing critique of the Orban government and the new constitution. "Viktor Orban's government is intent on destroying the democratic rule of law, removing checks and balances, and pursuing a systemic policy of closing autonomous institutions, including those of civil society, with the potential to criticize its omnipotence," the open letter reads. "Never since the regime change of 1989 when the Communist dictatorship was crushed has there been such an intense concentration of power in the region as in present-day Hungary."

Peter Szijjarto, Mr Orban's spokesman, said that many criticisms of the new constitution were exaggerated or incorrect. "If anyone says the current Hungarian government wants to bring Hungary to a dictatorship, what can I say? No it does not," he said, "because it is a democratic government."

He insisted the new constitution was designed to replace a flawed basic law that, unlike in Hungary's neighbours, had remained in place in modified form since the fall of communism in eastern Europe two decades ago.

However, most international observers agree with the protestors, including leaders in Europe and America.

In the weeks prior to the New Year, both United States Secretary of State Hillary Clinton and European Commission President Jose Manuel Barroso wrote to Orban to request that he rethink portions of the constitution or other key bills that his party sought to pass.

Germany's opposition Social Democrats, in particular, have been outspoken. The document, Rolf Mützenich, the SPD's parliamentary spokesman on foreign affairs, told the German news agency DPA on Monday, is "a break with democratic traditions and legal standards in Europe. The annulment of powers belonging to the Constitutional Court, the questioning of minority decisions and the disregard of minority rights is a scandal."
