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Report on Hungarian law on Churches and its implications on freedom of religion

By Jura Nanuk, FOREF Coordinator for Central & Eastern Europe

FOREF (25.09.2013) - Current Hungarian legislation seriously violates numerous standards and recommendations of European and UN human right bodies regarding freedom of religion.

In summer 2011, Hungarian Parliament adopted the Law on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (in further text: Law) which stripped hundreds of religious communities from their status of recognized churches. Only fourteen communities – 12 Christian and two Jewish – were granted the right to keep their status.

All other religious communities in Hungary were forced to undergo an absurd and highly arbitrary re-registration procedure which, amongst a whole range of barriers, included a final obstacle of being voted on by the Parliament, as to whether each group is a religious organization or not.

Such procedures could hardly be much further away from international human rights standards and academically accepted determinations of what constitutes a religion.

The fact that only fourteen religious communities were automatically granted the status of religion by the new law, but Muslims, Hindus, Buddhists and hundreds of Christian denominations have been rejected - clearly shows how arbitrary and discriminatory the law was.

Although the original arbitrary list of 14 churches was latter extended due to increasing international pressure, it is clear that the Law and the consequent Amendments on the Constitution still don't guarantee the freedom of religion.

Providing that the religions can even overcome the administrative barriers and meet the arbitrary standards that were imposed on them through standards made up by government committees and imposed by civil servants, they will only be finally accepted if they can get a 2/3 majority vote by Members of the Parliament. As a journalist of Hungarian daily newspaper *Népszava* noted in an article about the Law, *"Gods are sitting in the Parliament and will be able to decide what is a religion and what is not"*.

Nine Hungarian churches which lost their church status – three reformed Jewish communities and six Christian denominations – filed a claim to European Human Rights Court in Strasbourg after exhausting all available domestic legal remedies (*ECHR Application no. 70945/11, Hungarian Mennonite Christian Church and Jeremias Izsak-Bacs against Hungary and 8 other applicants*). At the present, the case is still ongoing, prolonged by several changes of the Law as well as latest Amendments on the

Constitution which demanded further clarification from the Hungarian Government and responses from the claimant churches.

It is interesting to note that the Law was twice rejected by Hungarian Constitutional Court, but both times Hungarian Government managed to uphold it with questionable legal maneuvers. First time, in December 2011, after Hungarian Constitutional Court rejected the Law based on a procedural mistake, the Government withdrew it, and submitted the same Law just a few days latter with minor changes, none of which contributed to religious freedom.

Next time, in February 2013, the Constitutional Court again rejected the Law, on the basis that the Law failed to stipulate that detailed reasons must be provided when a request for the church status is refused, no deadlines are specified for the Parliament's actions, and no legal remedy is offered. The Court also stated that granting church status by parliamentary vote can result in political decisions. Hungarian Parliament then decided to incorporate parts of the Law in the Constitution itself. This unheard of manoeuvre rendered Constitutional Court unable to examine the Law, as the Law was technically incorporated in to the Constitution itself, so it cannot be said that it is unconstitutional.

This move didn't pass unnoticed and Hungary was again receiving harsh criticism for violating fundamental rights. In June 2013, the Venice Commission of Council of Europe in its report regarding the parts of the Fourth Amendment concerning religious communities, stated among other things the following:

"The Venice Commission is worried about the absence in the Act of procedural guarantees for a neutral and impartial application of the provisions pertaining to the recognition of churches."

"According to the latest information at the disposal of the rapporteurs, Parliament adopted a Bill of Recognition on 29 February 2012, with 32 recognized churches. It is entirely unclear to the rapporteurs and to the outside world, how and on which criteria and materials the Parliamentary Committee and Members of Parliament were able to discuss this list of 32 churches, to settle the delicate questions involved in the definition of religious activities and churches supplied in the Act, within a few days, without falling under the influence of popular prejudice."

One in a series of arbitrary criteria that religious communities must satisfy before they are voted upon by Parliament, is the request that they don't represent any threat to national security. Churches which would be rejected because they would allegedly represent threat to national security, would not be informed why they are considered as a threat or what should they change or improve, and they would have no legal remedy available.

Such "national security" criteria is in direct contradiction with 2004 OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by OSCE/Office for Democratic Institutions and Human Rights, adopted by Venice Commission. In the Guidelines it is clearly stated that *"'national security' is not permissible limitation under European Convention on Human Rights article 9.2 or International Covenant on Civil and Political Rights article 18.3"*.

Just ten days ago, the 5th Amendment on the Constitution was accepted by the Hungarian Parliament which was supposed to handle the criticism of the Law and the 4th Amendment. Hungary's State Secretary of Justice, Robert Repassy, announced that the government would adjust the recent, highly controversial amendments to the country's Constitution adopted by the Parliament in March 2013. Repassy admitted that the modifications contained in the 5th Amendment of the Constitution were initiated as a result of pressure from the European Union and various human rights organizations, which had criticized the March 2013 revisions as violating certain fundamental rights.

It is obvious is that the Government didn't introduce any measures that would improve the situation of the religious freedom in Hungary. The 5th Amendment was nothing but a failed attempt to make it seem as if Hungary had listened to its critics while actually not changing anything.

In the recent report about the 5th Amendment on the Law, Human Rights Watch stated the following:

"The Hungarian government's largely cosmetic amendments show it's not serious about fixing the human rights and rule of law problems in the constitution It's come to the point where the European Council and the European Commission need to make clear there will be consequences for Hungary, and to move from talk to action.

"While allowing any religious group to refer to itself as a "church," the amendments do not address the discrimination against churches the government has not recognized. A parliamentary committee, instead of an independent body, confers recognition, which is necessary for a church to apply for government subsidies."

Recommendations

We demand that the degree of freedom of religion in Hungary is restored to its pre 2011 level and that the legislation concerning freedom of religion in Hungary is adjusted with European and UN guidelines and recommendations.

We believe that the legislation violating fundamental human rights should not be ignored as it can serve as dangerous precedent and a bad example that other countries in the region might follow.

Opinion on the Fourth Amendment to the Fundamental Law of Hungary

Excerpt of Opinion 720/ 17 June 2013 about the recognition of churches

(17.06.2013) -

C. The recognition of churches (Article 4)

30. Article 4 of the Fourth Amendment amends Article VII of the Fundamental Law and provides rules on the recognition of churches, according to which Parliament may recognise, in a cardinal act, "certain organisations engaged in religious activities as Churches, with which the State shall cooperate to promote community goals".²⁵ In addition, the amended Article VII.4 provides that "as a requirement for the recognition of any organisation engaged in religious activities as a Church, the cardinal Act may prescribe an extended period of operation, social support and suitability for cooperation to promote community goals".²⁶

31. The Venice Commission recalls that in its decision 6/2013²⁷, taken already on the basis of the Fundamental Law in force since 1 January 2012, the Hungarian Constitutional Court declared that some of the provisions of the Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities, were contrary to the Fundamental Law and annulled them. The Court criticised the lack of an obligation to provide an appealable reasoned decision in case of a rejection of the request for recognition. The decision by Parliament could thus result in a political decision rather than one based on the applicable criteria. In the absence of a deadline for Parliament to decide, no legal remedy

was available. The new provisions introduced by Article 4 result in the possibility to disregard decision 6/2013. CDL-AD(2013)012 - 9 -

32. While the original version of Article VII of the Fundamental Law had been found in line with Article 9 ECHR in the Opinion on the new Constitution of Hungary²⁸, it is the procedure of parliamentary recognition of churches that has been raised to the level of constitutional law in Article VII.2. The Commission had criticised this procedure in its Opinion on 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:

"72. The Venice Commission is worried specifically about the absence in the Act of procedural guarantees for a neutral and impartial application of the provisions pertaining to the recognition of churches²⁹ [38].

73. Requests for acceding to church status have to be submitted directly to the Religious Affairs Committee of the National Assembly, which, eventually, submits a bill regarding the recognition to the National Assembly. The Bill of Recognition has to be adopted by a two-third majority of the Assembly.

74. According to the latest information at the disposal of the rapporteurs, Parliament adopted a Bill of Recognition on 29 February 2012, with 32 recognized churches³⁹. It is entirely unclear to the rapporteurs and to the outside world, how and on which criteria and materials the Parliamentary Committee and Members of Parliament were able to discuss this list of 32 churches, to settle the delicate questions involved in the definition of religious activities and churches supplied in the Act, within a few days, without falling under the influence of popular prejudice.

76. The foregoing leads to the conclusion that the recognition or de-recognition of a Religious community (organization) remains fully in the hands of Parliament, which inevitably tends to be more or less based on political considerations. Not only because Parliament as such is hardly able to perform detailed studies related to the interpretation of the definitions contained in the Act, but also because this procedure does not offer sufficient guarantees for a neutral and impartial application of the Act. Moreover, it can reasonably be expected that the composition of Parliament would vary, i.e. change after each election, which may result in new churches being recognized, and old ones de-recognized at will, with potentially pernicious effects on legal security and the self-confidence of religious communities.

77. It is obvious from the first implementation of the Act, that the criteria that have been used are unclear, and moreover that the procedure is absolutely not transparent. Motives of the decisions of the Hungarian Parliament are not public and not grounded. The recognition is taken by a Parliamentary Committee in the form of a law (in case of a positive decision) or a resolution (in case of a negative decision). This cannot be viewed as complying with the standards of due process of law." 30

33. In the Background Document, the Hungarian Government insists on the fact that parliamentary recognition of churches does not prevent other religious communities from freely practising their religions or other religious convictions as churches in a theological sense in the legal form of an "organisation engaged in religious activities". CDL-AD(2013)012 - 10 -

34. In the Commission's view, this statement leaves doubts concerning its scope. It must be kept in mind that religious organisations are not only protected by the Convention when they conduct religious activities in a narrow sense. Article 9.1 ECHR includes the right to practice the religion in worship, teaching, practice and observance. According to the Convention, religious organisations have to be protected, independently of their recognition by the Hungarian Parliament, not only when they engage in religious activity

sensu stricto, but also when they, e.g., engage in community work, provided it has – according to settled case law – "some real connection with the belief"³¹. Article 9 in conjunction with Article 14 ECHR obliges the "State [...] to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom".³²

35. The Background Document does not address the issue of an appeal against non-recognition. The amended Article VII.2 refers to a remedy against the incorrect application of the recognition criteria: "The provisions of cardinal Acts concerning the recognition of Churches may be the subject of a constitutional complaint." During the meeting in Budapest, the delegation of the Venice Commission was informed that such a remedy would be introduced, but that it would be limited to the control of the recognition procedure in Parliament. It seems that such a Bill is currently being discussed in the Hungarian Parliament but was not submitted to the Venice Commission for an opinion. A merely procedural remedy is, however, clearly insufficient in view of the requirement of Article 13, taken together with Article 9 ECHR. Article VII.2 of the Fundamental Law provides substantive criteria and a review of the procedure applied does not allow for a verification of whether these criteria were followed by Parliament.

36. The Fourth Amendment to the Fundamental Law confirms that Parliament, with a two-thirds majority, will be competent to decide on the recognition of churches. In addition, the new criterion "suitability for cooperation to promote community goals" lacks precision and leaves too much discretion to Parliament which can use it to favour some religions. Without precise criteria and without at least a legal remedy in case the application to be recognised as a Church is rejected on a discriminatory basis, the Venice Commission finds that there is no sufficient basis in domestic law for an effective remedy within the meaning of Article 13 ECHR.

23 CDL-AD(2012)028, Amicus Curiae Brief on the Law on determining a criterion for limiting the exercise of public office, access to documents and publishing, the co-operation with the bodies of the state security ("Lustration Law") of "the former Yugoslav Republic of Macedonia", adopted by the Venice Commission At its 93rd Plenary Session (Venice, 14-15 December 2012), para. 17.

In this respect it worth to repeat what the Polish Constitutional Court held in its decision on the Polish lustration law: "the goal of lustration shall consist, above all, in the protection of democracy against reminiscences of totalitarianism, while the secondary goal thereof, subordinated to the realisation of the primary goal, shall be the individual penalisation of persons who undertook collaboration with the totalitarian regime".

24 See also the opinion of Messrs. Delpérée, Delvolvé and Smith.

25 Article VII.2 of the Fundamental Law.

26 Article VII.4 of the Fundamental Law.

27 Decision 6/2013 of 1.3. 2013.

28 "...Also, as stated by the Venice Commission in its 2004 Guidelines for Review of Legislation Pertaining to Religion and Belief, "[l]egislation that acknowledges historical differences in the role that different religions have played in a particular country's history are permissible so long as they are not used as a justification for ongoing discrimination" (Chapter II.B.3). Against this background, Article VII is in line with Article 9 ECHR.", CDL-AD(2011)016, para. 73.

29 [38] See ECtHR, Metropolitan Church of Bessarabia v. Moldova, para. 116: "in exercising its regulatory power [...] in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial."

30 CDL-AD(2012)004, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012).

Top Hungary court throws out religious recognition law

Global Post (28.02.2013) - Hungary's constitutional court annulled Tuesday part of a controversial law that ended official recognition and state funding for scores of religious communities.

The law had notably excluded Islamic, Buddhist and Hindu congregations, prompting heavy criticism from the international community.

"The Court believes that the regulations on obtaining status and recognition was unconstitutional and dependent on political decisions made in parliament," it said in a statement.

It also criticised the fact that parliament was not required to explain its decisions on whether a religious community obtained official status or not, and the lack of a right to appeal.

"The regulations must be transparent and objective," the court said.

The decision is retroactive and all the religions that were deprived of their status must have their recognition restored, it said.

Parliament approved a law in December 2011 that reduced the number of recognised faiths from over 300 to just 14.

Among the recognised faiths were so-called traditional religions like the Catholic, Reformed, Evangelical and Orthodox churches as well as Judaism.

But Islamic, Buddhist and Hindu congregations were excluded.

Tuesday's decision was the court's latest challenge to Prime Minister Viktor Orban's government, which has increasingly accentuated Hungary's Christian heritage, drawing up a new constitution that cites God and refers to marriage as a union between man and woman and to life as beginning at conception.

In January it annulled a law on electoral procedures and voter pre-registration which was widely predicted to tilt general elections in 2014 in favour of Orban's right-wing Fidesz party.

pmu/ssw/br

<http://www.globalpost.com/dispatch/news/afp/130226/top-hungary-court-throws-out-religious-recognition-law>

Hungarian Church Law is deemed unconstitutional

HCLU (27.02.2013) - The latest decision of the Constitutional Court (CC) was established partly due to the constitutional complaints submitted by the HCLU. The decision states that the main provisions of the Church Law, which came into effect last year, are in serious violation of fundamental rights and the principles of the rule of law. This decision,

however, is not expected to remedy the harm suffered by the denominations concerned, because the Fundamental Law of Hungary is proposed to amend with the annulled provisions by the Parliament.

The CC held several points of the act on religious communities, churches and their rights – effective as of January 1st, 2012 – to be unconstitutional and annulled the regulation. Among others, the CC examined the HCLU's constitutional complaint submitted on behalf of nine churches. The HCLU welcomes the Court's decision, as the Church Law, which came into effect one day after its promulgation, deprived more than 300 churches of their legal status, subjected their recognition as churches to discriminative conditions and broke the century-old principle of the separation of Church and State.

According to the HCLU, the most important element of the decision is that it reinstates the procedure of the recognition of churches to the courts, instead of the legislative body. The recognition of churches by the Parliament was arbitrary, depended on the political will of the governing parties and lacked due process and the right of appeal, since the Parliament was not obligated to justify its decision and there was no legal remedy available against this decision. The HCLU's position – in opposition of the Constitutional Court's reasoning – is that only a procedure before the court can be constitutional, where the examination of the teachings, the tradition and the history of the religious community is excluded, and where the negative decisions may be challenged.

The HCLU welcomes the fact that the CC retroactively banned the application of the unconstitutional provisions. In this situation, a government, which respects the requirements of the rule of law, should do everything in order to remedy the financial and moral damage caused by the unconstitutional provisions, and not only in the case of those churches which have turned to the CC, but also those which have not chosen that option.

However, it cannot be ignored that the time elapsed preserved the undue conditions irreversibly, since the Church Law came into effect more than a year ago. Churches, deprived of their legal status, were forced to transform into a civil association or to cease their activity as a church; hence the implementation of the CC's decision would need further legislative intervention. The HCLU would also like to remind that the Parliament, instead of creating legislation that ensures freedom of religion and religious equality, is about to bring back the currently annulled regime of recognition by amending the Fundamental Law for the fourth time.
