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Response to MEP Gyorgy Holvenyi's letter to The Economist and Human Rights Without Frontiers

David Baer (13.10.2014) - Mr. Holvenyi's writes to defend a church law that the ECtHR has found to breach the European Convention and which the Hungarian government refuses to amend. He would thus have us believe that religious communities in Hungary enjoy religious freedom even as they are not protected by the rule of law.

Mr. Holvenyi urges that we stick to the facts. The fact is that in 2011 the government of Hungary retroactively "deregistered" religious communities already recognized as churches under Hungarian law. The fact is that in 2013 Hungary's Constitutional Court found this deregistration procedure unconstitutional. The fact is that after 2013 the government of Hungary blatantly ignored the Court's decision, refusing to treat unconstitutionally deregistered religious communities as legal churches. The fact is that in 2014 the European Court of Human Rights found that Hungary's unconstitutional church law also violated the right of religious freedom and the European Convention. The fact is that the Hungarian government has still not, as of this day, acted to abide by the European Court's decision.

Mr. Holvenyi knows these facts, because prior to being an MP in the European Parliament he was the state undersecretary responsible for dealing with the churches in Viktor Orbán's government. As undersecretary, Holvenyi worked closely with Zoltan Balog, Minister of Human Capacities, to obstruct implementation of the Constitutional Court's decision so as to deny deregistered religious communities their constitutional rights. Just this past month, Peter Paczolay, the president of Hungary's Constitutional Court, lamented openly in a public address that the Court's decision on Hungary's church law had never been respected or implemented. Mr. Holvenyi bears direct responsibility for this. Thus, to listen to him aver that Hungary's deregistered churches enjoy religious freedom is a little like listening to man caught stealing his neighbor's shirt and pants aver that his neighbor has the freedom to wear underwear.

Religious communities in Hungary enjoy religious freedom the way NGO's in Hungary enjoy freedom of association. Denied equality under the law and subject to opaque regulations, deregistered religious communities, like unpopular NGO's, are subjected to arbitrary and expensive audits, hindered or prevented from raising money, attacked in the government controlled media, and harassed by local officials. Mr. Holvenyi, a

member of the European Parliament, should know that when citizens aren't equal under the law they aren't equally free.

Instead of defending Hungary's indefensible church law, perhaps Mr. Holvenyi should encourage the government of his country to respect the rule of law, uphold its international commitments, and abide by the European Convention.

David Baer
Texas Lutheran University
USA

Response to the Erasmus blog post "A slippery Magyar slope", September 25th 2014

Member of European Parliament Gyorgy Holvenyi (10.10.2014) - The recent post of The Economist's blog Erasmus on religious freedom in Central Europe ("A slippery Magyar slope" by B. C., September 25th 2014) makes several misleading statements and offers a rather personal interpretation of the existing legal regulations on churches in Hungary.

Basic aspects on the registration process of churches have not been detailed in your blog post. Firstly, all associations dealing with religious activities are registered solely by the courts in Hungary. A politically highly neutral system. These communities operate independently from the state, according to their own principles of faith and rituals.

The blog post makes references on "incorporated churches" in Hungary. It is crucial to know that the category of "incorporated churches", as you call it, does not affect religious freedom at all. It is simply about financial aspects such as state subsidies for churches running social activities for the common good of the society.

It must be pointed out that many European countries apply legal distinctions between different religious organisations for various reasons. Quite often it is the Parliament who is entitled to grant them a special status (e.g. in Lithuania, Belgium). Besides, there are a number of European countries where the constitution itself places an established religion above the rest of the religious communities (e. g. in Denmark, Finland, Greece, Malta). For the record, it needs to be mentioned that the Parliament is involved in special recognition processes of the churches at different later stages also in Austria, Denmark, Portugal or Spain. In general, the European Union leaves the rules on the foundation of churches in the Member States' competence.

As the post correctly recalls, the original Hungarian regulation on churches of 1990 was probably the most permissive in Europe. Uniquely in the world, more than 300 registered churches operated in Hungary for decades, enjoying the widest range of financial entitlements provided by the state, with no respect to their real social activities. The amended Church Act provides for a complete freedom of conscience and religion in Hungary, at the same time it eliminates errors of the uniquely permissive regulation.

When looking at international commentaries of the issue let us focus on the facts again. The relevant opinion of Venice Commission on the issue of religious freedom in Hungary stated that the Hungarian regulation in place "constitutes a liberal and generous framework for the freedom of religion." The resolution of the Constitutional Court in Hungary referred to in your blog post did not make any reference to the freedom of religion in Hungary. On the contrary, the government's intention with the new legislation was widely acknowledged by the Court. The US State Department's report on religious

freedom of 2013 does underline that the Fundamental Law and all legislation in Hungary defends religious freedom. Facts that have been disregarded by the author of your post.

Last but not least, the alliances of the non-incorporated churches in Hungary recognised and declared in a joint statement with the responsible Hungarian minister that they enjoy religious freedom in Hungary.

In contrast to the statements of your article, incorporated churches in Hungary include the Methodists: the United Methodist Church in Hungary is a widely recognised and active community in Hungary, as well as internationally. The fact is that Mr Iványi's group has not been included in the UMC itself and is not recognised at all by the international Methodist bodies. Describing it as a "highly respected" church is again a serious factual mistake, reflecting a lack of information on the issue.

Coming finally to the issue of the European Court on Human Rights' decision: some of the member judges formed special opinions to the appeal of the affected churches. Although the Hungarian government is challenging the decision, at the same time it started negotiations with the appealing communities on the remedy process.

In conclusion, I would highly recommend that your blogger B.C. pay wider attention to the facts to better understand regulations on church affairs that have been in place in Europe for decades and centuries.

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EPP Group

A slippery Magyar slope

The Economist (25.09.2014)

<http://www.economist.com/blogs/erasmus/2014/09/religious-freedom-and-central-europe> - Restrictions on religious freedom do not necessarily involve draconian actions like imprisoning pastors, flogging alleged "blasphemers" or bulldozing places of worship. Liberty of faith can be curbed in much milder ways, and it is still something that needs careful watching. To take one example, the Hungarian government has been taken by task by the American State Department, by its own constitutional court, and mostly recently by the European Court on Human Rights (ECHR) over a religion law which makes the status of churches subject to political caprice.

The story starts in 2011 with the passage of an ill-named law on "the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Denominations and Religious Communities." As Aaron Rhodes, a religious freedom campaigner, put it, this replaced a fair system (creating a level playing field for all faiths) with a bad one. The law stopped treating religious communities equally and brought in a tiered system that distinguishes between so-called incorporated churches, which enjoy many legal advantages, and less fortunate religious groups with fewer entitlements.

The troubling thing was that getting recognition as an "incorporated church" required a two-thirds majority in Parliament. So what should be a simple administrative decision was turned into a political one, in which legislators have to assess the merits of a religion. The government insisted that the law was necessary to stop opportunistic cults or "business churches" from establishing themselves with no other aim but taking advantage of the favourable tax regime that religious groups enjoy. But critics said the legislation amounted to killing a fly with a sledge-hammer.

As a result of the law, at least 200 religious communities, including Methodists, Pentecostals, Seventh Day Adventists, Reform Jews, Buddhists and Hindus faced a downgrading of their status. One of the people who fell foul of the law was Gabor Ivanyi (pictured above), who runs a highly respected Methodist church as well as schools and homeless shelters. His church was closed by the communist authorities in 1977, but he surprised to find himself in legal no-man's-land under a democratic government.

In February 2013, Hungary's Constitutional Court ruled that 67 groups had been deregistered unconstitutionally. However the government seems to have ignored the ruling. A government ministry rejected the written requests of at least four deregistered bodies to be added to the list of incorporated churches.

Hungary's populist government has suffered two fresh defeats over the issue this year. In April, the ECHR ruled that forcing the re-registration of legally recognised churches was a violation of human rights. Hungary tried appealing to the court's Grand Chamber but that move has just been [turned down](#). The court said the Hungarian government must negotiate compensation for damages with the nine churches that brought the complaint.

At a diplomatic gathering in Poland next week, the [Forum for Religious Freedom Europe](#), a Vienna-based campaign group headed by Mr Rhodes, will take Hungary to task over the law and ask why the Budapest government has paid so little attention to successive scoldings from international and domestic courts. That is a question worth posing. Nobody is going to be clapped in irons or tortured because of Hungary's religion law, but it sets a dubious precedent-especially at a time when the European Union, to which Hungary belongs, is supposed to be spreading the ideal of religious freedom round the world.

Hungarian government continues to disregard ruling on Church law by European Court of Human Rights

Christian Democracy (12.06.2014) / <http://www.christiandemocracy.org/archives/150> - A parliamentary Committee on Justice held a hearing today in Budapest to determine whether the applications of five religious communities for church status should be forwarded to Parliament, which would need to approve the applications with a 2/3 super-majority vote. The five religious communities in question were deprived of church status in 2011, when Hungarian Prime Minister Viktor Orbán's parliament passed a new law on the status of churches. The Committee on Justice will determine next week whether the five religious communities in question are "suitable for cooperation with the state in promoting community goals," a condition for church recognition laid down in the new law. By insisting that it would evaluate religious communities on the basis of their "suitability for cooperation," the Committee on Justice appears to be signaling its intention to ignore a recent ruling of the European Court of Human Rights, which found Hungary's church law in breach of the European Convention on Human Rights.

In February 2013, Hungary's Constitutional Court found significant portions of the church law unconstitutional and restored the church status of numerous religious communities. Orbán's government refused to recognize the legal implications of the ruling, and later amended the Hungarian constitution in an attempt to overturn the decision. In April 2014, the European Court of Human Rights (ECtHR) ruled that by stripping churches of their legal status, Hungary's church law violated the right of religious freedom and was in breach of the European Convention. The ECtHR also ordered the Hungarian government to pay reparations to those churches which had brought their complaint to the

Strasbourg court. A spokesman for the Hungarian government, in an early reaction to the decision, stated that Hungary has no obligation to adhere to rulings of the European Court. One of the religious communities present at today's hearing, Pastor Iványi's Hungarian Evangelical Fellowship, not only had its legal status restored by Hungary's Constitutional Court, but also was among the Hungarian churches which won their case in Strasbourg. When a member of the Committee of Justice pointed this out, the chairman of the committee, György Rubovszky, insisted that Hungarian Evangelical Fellowship had been deprived of its church status legally.

Hungarian government moves against religious minorities in disregard of ruling by the European Court of Human Rights

CERFI (10.05.2014) - Enjoying a 2/3 majority in Parliament after being freshly reelected by 44% of the popular vote, the government of Prime Minister Viktor Orbán took new steps to restrict religious freedom just weeks after the European Court of Human Rights ruled Hungary's law on religion was in breach of the European Convention of Human Rights. Enacted in 2011, Hungary's religion law stripped most religious communities in the country of legal status, and stipulated that future church status could only be bestowed by Parliament with a 2/3 majority vote. In April 2013 the European Court found that the law violated the right of religious freedom.

In disregard of the Court's decision, Hungarian Minister of Human Resources, Zoltán Balog, recently issued an official decision ruling one of the churches deregistered by the religion law, the Church of God United Pentecostal Church (Isten Gyülekezete Egyesült Pünkösdi Egyház), unsuitable for recognition as an incorporated church. The Church of God United Pentecostal has been operating in Hungary since the early twentieth century and is affiliated with United Pentecostal Church International, headquartered in St. Louis, Missouri. In support of his decision, Minister Balog referred to an unnamed government appointed expert on religion, who declared in a written opinion that the Hungarian Church's relationship with United Pentecostal International was invalid. Church of God United Pentecostal Church in Hungary, which previously filed a lawsuit to prevent the government from liquidating its property, is appealing the Minister's most recent decision.

The Church of God United Pentecostal requested Dr. David Baer, a professor of religion at Texas Lutheran University, to write an opinion contesting that of the anonymous government expert. Dr. Baer's opinion is published below.

Opinion of Dr. David Baer, a professor of religion at Texas Lutheran University

14 April 2014

TO WHOM IT MAY CONCERN:

I write this letter per the request of Assembly of God United Pentecostal Church (Isten Gyülekezete Egyesült Pünkösdi Egyház) (hereinafter IGY) to express my professional opinion on the question of whether IGY satisfies the conditions for recognition as an incorporated church set forth in Act CCVI of 2011.

1. My professional credentials are as follows.

Currently I hold a position as Associate Professor of Theology and Philosophy at Texas Lutheran University, USA. I received a Ph.D. in Theology from the University of Notre Dame, USA in 1999 with subsidiary concentrations in the sociology of religion and the history of theology. I received an MA in Theology from the University of Notre Dame,

USA in 1995; a Masters of Theological Studies from Emory University, USA in 1992; and a BA from Oberlin College, USA in 1990.

In 1996, I received a Fulbright Fellowship to conduct research in Hungary. In 2007, I received a Fulbright Fellowship to teach at Károli Gáspár University of the Reformed Church. Between 2003 and 2009 I served on the editorial board of the journal *Religion in Eastern Europe*. Currently I serve on the executive board of *Forum Religionsfreiheit Europa* and in an advisory capacity to the *Central-European Religious Freedom Institute*.

I have been publishing scholarly articles on topics related to religion in Hungary, in both English and Hungarian, since 1998. In 2006, I published a monograph, *The Struggle of Hungarian Lutherans under Communism* (Texas A&M University Press). In 2013 I received an Individual Advanced Research Opportunities Grant funded by the US Department of State to support research on religious communities in Hungary. As part of my research I engaged in field studies of IGY. This field work included observing worship services, interviewing church members, familiarizing myself with IGY's history and bylaws, and establishing direct communication with IGY's affiliate in the United States, United Pentecostal Church International (hereinafter UPCI).

2. As a professional scholar of religion with an extensive research background in Hungary, I disagree with the opinion of the expert appointed by the Minister of Human Resources to evaluate the application for registration as an incorporated church submitted by IGY.

Specifically, I would like to express my disagreement with the expert's opinion concerning IGY in relation to the conditions for recognition set forth in Act CCVI of 2011 14/A § (1) points a) through c). I believe that had the expert referred in his/her opinion to all of the documents enclosed with IGY's application for registration, had s/he interviewed members of IGY and UPCI as I have done, and had s/he adhered to accepted methodological standards for sociological research, s/he would have been unable to arrive at the conclusion s/he did.

2.1. In my professional judgment, IGY is indisputably a member church of UPCI.

The expert appointed by the Minister of Human Resources disputes this. S/he acknowledges IGY has a history of close collaboration with UPCI; s/he acknowledges that UPCI and IGY have jointly purchased worship houses in Hungary; s/he acknowledges that IGY's bylaws explicitly refer to an active connection with UPCI; and s/he acknowledges that UPCI posted photos on Facebook of the funeral of IGY President Sándor Horváth. The expert nevertheless concludes that this close relationship amounts only to "cooperation," and does not meet the standard needed to qualify as a member church.

Unfortunately, the methodology employed by the government expert to arrive at this evaluation is fundamentally flawed. The expert's methodology is in contradiction of *OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief* (adopted by the Venice Commission at its 59th Plenary Session, (Venice, 18-19 June 2004)). According to those guidelines, the state has "a duty to remain neutral and impartial." Among other things, this "excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed." Furthermore, "In general, the neutrality requirement means that registration requirements that call for substantive as opposed to formal review of the statue or character of a religious organization are impermissible." (*OSCE/ODHR Guidelines*, page 11). The state's obligation to adopt an impartial and neutral stance toward different religions was emphasized by the Venice Commission in its *Opinion on Act CCVI of 2011* (adopted 16-17 March 2012), pars. 38, 61, 72, and again in its *Report on the Fourth Amendment to the Fundamental Law of Hungary* (adopted 14-15 June 2013), par. 34. The importance of state neutrality was also reiterated by the European Court of Human Rights in its decision, *MAGYAR KERESZTÉNY MENNONITA EGYHÁZ AND OTHERS v. HUNGARY*, par.

76. Further, the preamble to Act CCVI of 2011 affirms the principle of state neutrality toward worldviews.

In keeping with the requirement of state neutrality, the task of the government expert was not to evaluate the *quality* of the relationship between IGY and UPCI, but to ascertain the nature of that relationship *according to the religious self-understanding of the two churches*. To assess that self-understanding the expert had at his disposal two signed and notarized statements from the General Superintendent of UPCI in Hazelwood, MO, USA stating explicitly that IGY is a member church of UPCI. Had the expert chosen to interview the leadership of IGY or communicate with the leadership of UPCI in the United States, s/he could have easily verified this. However, the expert, while acknowledging that these two churches have a long history of collaboration, asserts that this does qualify them as member churches. In asserting this, the expert rejects the religious self-definition of IGY and UPCI, and applies his/her own substantive evaluation of the relationship between the two churches.

The expert does not explain the scientific methodology s/he uses to substitute UPCI's self-definition with his/her private definition. Indeed, the expert does not even offer a definition of "member church." Instead, the expert employs an unspecified and value-laded substantive conception of "member church" to dismiss the self-definition of the religious communities in question. This kind of biased substantive evaluation cannot be reconciled with the principle of scientific objectivity. Nor can it be reconciled with the principle of state neutrality toward religious worldviews. For these reasons, the opinion of the government appointed expert must be rejected.

Defining the nature of the church is essentially a theological question. Within the Christian tradition, a tradition to which IGY and UPCI belong, the church is usually defined by a branch of theology known as ecclesiology. Different Christian churches have different ecclesiological teachings. For example, the Roman Catholic Church has what is sometimes called a mono-episcopal ecclesiology. According to this teaching, the bishops stand in visible and historic succession with Christ's apostles at the head of local churches, which are in communion with each other and with the bishop of Rome to form the church catholic. By contrast, Lutheran ecclesiology rejects the idea of visible historic succession. Lutheran ecclesiology holds that the church is constituted solely by the Word of God and made visible in local congregations, whose unity is discernable by virtue of true teaching and proper administration of the sacraments. These different ecclesiological teachings mean that the criteria for defining "member church" within these two religious communities are different. Lutheran churches which belong to the Lutheran World Federation believe they exist in "full communion" with each other, even though they do not share episcopal succession and even though their forms of polity are different. The Roman Catholic Church does not accept this definition of full communion.

According to Roman Catholic self-understanding, the unity of the church requires episcopal succession and excludes certain forms of polity. Therefore, to assess whether two Lutheran churches are member churches one must employ different criteria than those employed when assessing whether two Roman Catholic churches share a common membership.

According to its webpage, UPCI has a congregational and presbyterian ecclesiological structure (<http://www.upci.org/about-us/about-us>). This ecclesiological self-understanding was both confirmed and explained to me by David K. Bernard, General Superintendent of UPCI in personal correspondence. As Mr. Bernard explained it, local churches are organized according to a congregational structure, with local assemblies and an elected pastor. Those local congregations are joined at a national level according to a modified presbyterian principle, which means that ministerial delegates from local congregations meet to vote on decisions and policies. The national churches, in turn, are members of the Global Council of UPCI, of which IGY is a member. All member churches

of UPCI accept the "International Articles of Faith" and follow the "Global Council Policies." According to UPCI's theological self-understanding, this means all members of the Global Council of UPCI belong to the same church.

The story of IGY's relationship with UPCI begins in 1981, with a meeting between Sándor Ungvári, at that time President of IGY, and György Szabolcs. György Szabolcs is a Hungarian émigré, residing in the United States, whose family fled Hungary in 1956. During a visit to Hungary in 1981, Szabolcs attended an underground worship service in Tatabánya led by Sándor Ungvári. The two men recognized in each other a common Pentecostal spirit. Afterwards, Szabolcs returned to Hungary on a yearly basis, strengthening and deepening the relationship between IGY and UPCI. In 1989 Szabolcs was stationed in Vienna as a missionary of UPCI. In 1990 he moved to Hungary with his family, where they lived for the next ten years. During these years Szabolcs worked with the leadership of IGY to bring its organizational structure into line with that of UPCI. Among other things, IGY adopted UPCI's "International Articles of Faith" and incorporated them into its bylaws.

György Szabolcs is a Hungarian citizen who carries a Hungarian passport. He is also a member of IGY. Today he sits on the Global Council of UPCI as a delegate from Hungary and Europe, something indicated in the official minutes of a meeting held by UPCI's Global Council in Kuala Lumpur, Malaysia on 8-10 November 2000. The relationship between IGY and UPCI is clearly not manufactured to satisfy the conditions set down in Act CCVI of 2011; indeed the relationship precedes Act CCVI of 2011 by 30 years. IGY shares with UPCI the same "International Articles of Faith" and has a representative on UPCI's Global Council. According to their own theological self-definition, IGY and UPCI are member churches. As an objective and neutral scholar of religion, I cannot call this religious self-understanding into question. Therefore, I conclude that IGY satisfies the conditions for registration laid down in Act CCVI of 2011 14/A § (1) points a) through c).

2.2. In my professional opinion, IGY is a church with a 100 year history.

The government expert disputes this, noting that because UPCI was established in 1945, it cannot demonstrate a 100 year organizational history ("A nemzetközi szervezet 100 éves múltjának igazolása is nehézségekbe ütközik"). In this instance the problem arises from the fact that the appointed expert has not attended carefully to the text of the law. Act CCVI of 2011 does not stipulate that the international organization must be 100 years old. The law stipulates at 14 § ca) that a religious community applying for recognition must have a 100 year international history, and then stipulates at 14/A § (1) points a) through c) that various types of international church membership are sufficient to demonstrate a 100 year history. The stipulation is not that the international church organization itself must be 100 years old. Rather membership in an international church organization is taken as evidence of a 100 year international history.

In point of fact, very few international Protestant church organizations are 100 years old. Many of them were established after WWII as an outgrowth of the ecumenical movement. For example, the Lutheran World Federation, an international organization of which the Lutheran Church in Hungary is a member, was established in 1947. No one should infer from this that the history of the Lutheran Church begins in 1947. Much to the contrary, Lutheran history extends back almost 500 years to the start of the Protestant Reformation. Again, to use another example, the World Communion of Reformed Churches, which lists the Reformed Church in Hungary as a member, was established only in 2010. From this fact one cannot rightly infer that the history of the Reformed Church is less than twenty year old. Rather, the World Communion of Reformed Churches is the result of years of ecumenical work among Reformed churches around the world, whose common history extends back to John Calvin. In general, international church organizations are not established *ex nihil*, but are preceded by a common history. Therefore, membership in such organizations should be taken as

evidence that a church shares an older and common history with churches in other parts of the world

Even at the national level, Protestant churches frequently do not have an organizational structure that is 100 years old. The Evangelische Kirche in Deutschland, for example, was established in 1948, but this hardly means Protestantism in Germany is less than 100 years. The Evangelical-Lutheran Church in America was established in 1988; the Presbyterian Church, USA was established in 1983; the United Methodist Church was established in 1968.

None of these were new religious movements at the time of their establishment. Rather, each church was formed through the merger of earlier churches, which themselves had histories extending back to yet earlier churches.

UPCI, the church of which IGY is a member, was established in 1945. UPCI's organizational structure is therefore older than any of the churches mentioned in the preceding paragraph. According to UPCI's webpage, the church was established through the merger of two earlier Pentecostal churches, which themselves grew out of a Pentecostal movement which started in Topeka, Kansas in 1901 (<http://www.upci.org/about-us>). UPCI is therefore part of a Christian Pentecostal movement which is more than 100 years old.

As concerns the conditions of recognition laid down in Act CCVI of 2011, IGY appears no less qualified for recognition than the Hungarian Pentecostal Church (Magyar Pünkösdi Egyház), which is currently registered as an incorporated church. In fact, both churches share the same history, which begins in Hungary around 1926 with a Pentecostal movement that was heavily influenced by Hungarian émigrés in America returning to Hungary to evangelize. Based on 2011 census data, the membership of both churches appears to be less than 0.1% of the total population. However, IGY is the demonstrable member of an international Pentecostal church. It therefore satisfies the conditions laid down in 14/A § (1) a) through c).

In my professional opinion as a scholar of religion, IGY satisfies the conditions for recognition as an incorporated church set forth in Act CCVI of 2011 14 § points a) through f).

Respectfully submitted,

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Religious communities' loss of full church status breached their rights to freedom of religion and freedom of association

Magyar Keresztény Mennonita Egyház and Others v. Hungary – Second Section Judgment (Merits)

Registrar of the European Court (08.04.2014) - In today's Chamber judgment in the case of **Magyar Keresztény Mennonita Egyház and Others v. Hungary** (application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12,

54977/12 and 56581/12), which is not final¹, the European Court of Human Rights held, by a majority, that there had been: **a violation of Article 11 (freedom of assembly and association) read in the light of Article 9 (freedom of thought, conscience and religion)** of the European Convention on Human Rights.

The case concerned the new Hungarian Church Act. Following its entry into force in 2012, the applicant religious communities lost their status as registered churches which had previously entitled them to certain monetary and fiscal advantages for their faith-related activities.

The Court found in particular that the Hungarian Government had not shown that there were not any other, less drastic solutions to problems relating to abuse of State subsidies by certain churches than to de-register the applicant communities. Furthermore, it was inconsistent with the State's duty of neutrality in religious matters that religious groups had to apply to Parliament to obtain reregistration as churches and that they were treated differently from incorporated churches with regard to material benefits without any objective grounds.

Principal facts

The applicants are various religious communities, some of their ministers and some of their members. Prior to the adoption of a new Church Act, which entered into force in January 2012, the religious communities had been registered as churches in Hungary and received State funding. Under the new law, which aimed to address problems relating to the exploitation of State funds by certain churches, only a number of recognised churches continued to receive funding. All other religious communities, including the applicants, lost their status as churches but were free to continue their religious activities as associations.

Following a decision of the Constitutional Court, which found certain provisions of the new Church Act to be unconstitutional – in particular the fact that only incorporated churches were entitled to one percent of the personal income tax which could be earmarked by believers as donations – new legislation was adopted in 2013, under which religious communities such as the applicants could again refer to themselves as churches. However, the law continued to apply in so far as it required the communities to apply to Parliament to be registered as incorporated churches if they wished to regain access to the monetary and fiscal advantages to which they had previously been entitled.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association) read in the light of Article 9 (freedom of thought, conscience and religion) of the Convention, the applicants complained of their deregistration under the new law and of the discretionary reregistration of churches. They also relied on Article 14 (prohibition of discrimination) read in conjunction with Article 9 and Article 11, complaining that they were discriminated against on account of their status as religious minorities.

Furthermore, they relied on Article 1 of Protocol No. 1 (protection of property) read alone and in conjunction with Article 14, complaining about the loss of State subsidies as they no longer had church status. Finally, they relied in particular on Article 6 § 1 (right to a fair hearing), alleging that the procedure of deregistration and reregistration had been unfair.

The application was lodged with the European Court of Human Rights on 16 November 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 11 read in the light of Article 9

The Court considered that the deregistration of the applicants as churches had constituted an interference with their rights under Articles 9 and 11. It was undisputed that this interference had been prescribed by law, namely the 2011 Church Act. The Court was prepared to accept that the measure could be considered to have served the legitimate aim of preventing disorder and crime for the purpose of Article 11, notably by attempting to combat fraudulent activities by certain churches.

As regards the question of whether the measure had been “necessary in a democratic society” within the meaning of Article 11, the Court considered that while Article 9 and 11 required the State to ensure that religious communities had the possibility of acquiring legal capacity as entities under civil law, there was no right for religious organisations to have a specific legal status. However, the Court underlined that distinctions in the legal status granted to religious communities must not portray some of them in an unfavourable light in public opinion. It noted that in many countries the denomination as a church and State recognition were the key to social reputation without which a religious community might be seen as a suspicious sect. The Court therefore could not overlook the risk that the adherent of a religion might feel no more than tolerated – but not welcome – if the State refused to grant recognition and support his or her religious organisation, which it had previously enjoyed, whilst extending such recognition and support to other denominations.

As a result of the new Church Act, the applicant communities had lost their status as churches eligible for privileges, subsidies and donations. While the Hungarian Government argued that the Constitutional Court’s decision on the Act had remedied their grievances, the applicant communities found that they could not regain their former status unimpaired. In the Court’s view, it was important that the applicant communities had been recognised as churches at the time when Hungary adhered to the European Convention on Human Rights, and they had remained so until 2011. The Court recognised the Hungarian Government’s legitimate concern as to problems related to a large number of churches formerly registered in the country, some of which abused State subsidies without conducting any genuine religious activities. However, the Government had not demonstrated that the problem it perceived could not be tackled with less drastic solutions, such as judicial control or the dissolution of churches proven to be of abusive character.

Concerning the possibility open to the applicant communities of re-registration as fully incorporated churches, the Court noted that the decision whether or not to grant recognition lay with Parliament, an eminently political body. The Court considered that a situation in which religious communities were reduced to courting political parties for their favourable votes was irreconcilable with the State’s duty of neutrality in this field. The Hungarian Government had not given any reason why it was necessary to scrutinise afresh already active churches from the perspective of dangerousness for society, nor had they demonstrated any element of actual danger emanating from the applicant communities.

Regarding the loss of material benefits as a result of the Church Act, the Court noted that Article 9 did not confer on the applicant communities or their members an entitlement to secure additional funding from the State budget. However, subsidies which were granted in a different manner to various religions called for the strictest scrutiny. The withdrawal of benefits following the new Church Act in Hungary had only concerned certain denominations, including the applicant communities, as they did not fulfill certain criteria put in place by the legislator, notably as to the minimum membership and the duration of their existence. Referring to a report by the European Commission for Democracy through Law ("Venice Commission") on the Church Act, the Court agreed with the report's finding that it was an excessive requirement for a religious entity to have existed as an association internationally for at least 100 years or in Hungary for at least 20 years. The Court underlined that the State's neutrality required that distinctions in recognition, partnership – for example for outsourcing public-interest tasks – and subsidies were based on ascertainable criteria, such as a community's material capacity. However, there were no objective grounds for the difference in treatment as regards the income-tax-based donations of one percent, which were intended to support faith-based activities and to which only incorporated churches were entitled.

The Court concluded that those elements jointly enabled it to find that the measure imposed by the Church Act had not been "necessary in a democratic society". There had accordingly been a violation of Article 11 read in the light of Article 9.

Other articles

Having regard to its findings under Article 11 read in the light of Article 9, the Court considered that there was no cause for a separate examination of the applicants' complaints under Article 14 read in conjunction with Article 9 and Article 11, or from the standpoint of Article 1 of Protocol No. 1 read alone or in conjunction with Article 14. Furthermore, the Court did not consider it necessary to examine separately the admissibility or the merits of the complaint under Article 6 § 1.

Just satisfaction (Article 41)

The Court held, by a majority, that the finding of a violation constituted sufficient just satisfaction in respect of the claims of non-pecuniary damage of five of the individual applicants. Furthermore, the Court held, by a majority, that the remaining questions of the application of Article 41 were not ready for decision. It therefore reserved that question and invited the parties to notify the Court within six months of the date when the judgment becomes final of any agreement that they may reach.

Separate opinions

Judge Spano, joined by Judge Raimondi, expressed a dissenting opinion, which is annexed to the judgment.

See full judgments at

<http://www.strasbourgconsortium.org/common/document.view.php?docId=6192>

and other documents of the European Court at

<http://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=953>
