



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

**CASE OF MAGYARORSZÁGI EVANGÉLIUMI
TESTVÉRKÖZÖSSÉG v. HUNGARY**

(Application no. 54977/12)

JUDGMENT
(Just satisfaction)

STRASBOURG

25 April 2017

FINAL

25/07/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

**In the case of Magyarországi Evangéliumi Testvérközösség
v. Hungary,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President*,

András Sajó,

Nona Tsotsoria,

Paulo Pinto de Albuquerque,

Krzysztof Wojtyczek,

Egidijus Kūris,

Gabriele Kucsko-Stadlmayer, *judges*,

and Marialena Tsirli, Section Registrar,

Having deliberated in private on 4 April 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in nine applications (nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by various religious communities active in Hungary, and their ministers and members (see Annex), on 16 November 2011, 3 and 24 April, 25 and 28 June, and 19 and 29 August 2012, respectively. Given that the applications raised the same issue in essence, the Court decided to join them in accordance with Rule 42 § 1 of the Rules of Court.

2. In a judgment delivered on 8 April 2014 (“the principal judgment”), the Court declared application no. 41463/12 inadmissible and held, as regards the remaining applications, that in removing the applicants’ church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure and in treating the applicants differently from the so-called incorporated churches in certain aspects, the authorities had disregarded their duty of neutrality *vis-à-vis* the applicant communities. The Court found a violation of Article 11 of the Convention read in the light of Article 9 (see *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, ECHR 2014 (extracts)). The principal judgment became final on 8 September 2014.

3. On 28 June 2016 the Court delivered a partial judgment (“the partial judgment”) concerning the just satisfaction claims of several of the applicants (see *Magyar Keresztény Mennonita Egyház and Others*

v. Hungary (just satisfaction) – Partial judgment, nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41553/12, 54977/12 and 56581/12).

However, in view of the continuing negotiations between the Government and Magyarországi Evangéliumi Testvérközösség (in the framework of which they had already concluded a partial agreement, see paragraph 10 of the partial judgment), the Court reserved the questions related to the claims of the last-mentioned applicant and invited the parties to notify it, within six months of the adoption of the judgment, of any agreement reached.

4. On 30 December 2016 the applicant informed the Court that, in the course of the negotiations with the Government, the parties' experts had reached an agreement on 1 July 2016. However, that agreement was not ratified by the Government. As a consequence, the applicant submitted claims for just satisfaction. On 15 February 2017 the Government submitted observations on those claims.

THE LAW

5. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Preliminary considerations

6. At the outset, the Court notes the content of the partial agreement concluded between the parties on 26 June 2015 with respect to certain losses incurred until 31 December 2014.

The relevant paragraphs of the partial agreement provide as follows:

“2. The parties agree ... that the just satisfaction shall cover – beside legal costs and default interest – compensation for the losses incurred on the applicant's side which had a causal link to the breach of the [Convention] as established by [the principal judgment], to the extent and in so far as the damage has not yet been compensated from other State sources.

3. The parties agree that the following heads of pecuniary damage fall under the scope of point 2:

(a) loss of personal income tax donations made according to section 4/A of Act CXXVI of 1996 ..., the amount of which shall be calculated on the basis of the number and the total sum of donations actually made in the last [year] in favour of the applicant ...

(b) loss of the supplementary subsidy provided for by subsections (3) and (4) of section 4 of the [Church Funding Act cited in paragraph 33 of the principal

judgment], the amount of which shall be calculated on the basis of the donations taken into account under point (a) above ...

(c) loss of the subsidy [for the purposes of] religious teaching provided for by section 7(3) of the [Church Funding Act], the amount of which shall be calculated on the basis of the actual data ...

(d) loss of the complementary subsidies provided for by sections 5 and 6 of the [Church Funding Act] ...

(e) loss of [salary supplement] paid to the staff employed by the church institutions providing public-interest services ...

4. The parties agree that the amount of the damage sustained under the different heads enumerated in point 3 above, which has not been compensated from other State sources and which is due in the period ending 31 December 2014, is as follows:

(a) under the head mentioned in point 3(a) above, 91,674,727 Hungarian forints (HUF) ... in respect of donations made in 2012 and 2013;

(b) under the head mentioned in point 3(b) above, HUF 72,264,571 ... in respect of the supplementary subsidy based on donations made in 2012 and 2013;

(c) under the head mentioned in point 3(c) above, HUF 9,051,000 ...;

(d) under the head mentioned in point 3(d) above:

(da) in respect of complementary subsidies for social, child protection and child welfare institutions in the years of 2012 to 2014, HUF 737,351,991 ...;

(db) in respect of the balance adjustment of complementary subsidies following the adoption of the relevant Budget Implementation Acts, HUF 82,068,121 ...

(dc) in respect of subsidies which had not been paid to higher education institutions, HUF 26,495,000 ...;

(e) under the head mentioned in point 3(e) above, HUF 66,261,234 ...

5. The parties agree that the amount to be paid in respect of default interest on the damages enumerated in point 4 above is HUF 159,086,917 ...

6. The parties agree that the legal costs incurred by the applicant amount to HUF 1,490,000

...

8. The parties note that they could not reach an agreement concerning the legal basis and amount of the damage allegedly caused by the lack of access to grants obtainable from the State budget, European Union sources or internationally financed programmes via individually assessed calls for project proposals.

9. The parties agree to continue until 31 December 2015 their negotiations in good faith concerning the reparation of the breach found by the [principal judgment]. For the reparation of the losses incurred between 1 January 2015 and the date of resolution of the dispute, they shall follow the principles laid down in the present agreement.

10. The parties shall inform the [Court] that, in the light of point 8 above, their agreement is to be considered a partial one, covering the losses incurred until 31 December 2014.”

7. It appears to the Court that, following the Constitutional Court’s decision no. 6/2013 of 1 March 2013 (see paragraph 18 of the principal

judgment), the applicant applied for it to be recognised by Parliament (for an outline of the amended recognition procedure, see paragraph 31 of the principal judgment). The Minister responsible for religious affairs and the Parliamentary Committee for National Security both decided in the applicant's favour. However, the Parliamentary Committee on Religious Affairs took the view that the applicant did not have sufficient social support and therefore considered that the conditions for parliamentary recognition had not been met. Following these examinations, on 11 July 2014 the Parliamentary Committee on Religious Affairs submitted to Parliament both a bill for the granting of incorporated church status and a motion for refusal of the request, in order for it to decide whether to recognise the applicant's church status or refuse its request. It appears from the parliamentary database that the issue was never discussed in Parliament.

8. The Court further notes that on 10 November 2015 members of the Fidesz-KDNP governing coalition submitted a bill with a view to amending the 2011 Church Act, partly in order to resolve the situation of those churches which had been adversely affected by the entry into force of the legislation in 2012 and in respect of whom the Court had found a violation in the principal judgment. However, the bill was rejected by Parliament on 15 December 2015. As a result, the applicant's situation has remained unchanged since the principal judgment was delivered.

B. Damage

1. The parties' submissions

(a) The applicant

9. The applicant's claims for just satisfaction essentially consisted of two parts.

10. On the one hand, the applicant requested compensation for the period starting 1 January 2015 in respect of heads of damage already acknowledged by the Government in the partial agreement mentioned in paragraph 6, which only covered the period until 31 December 2014.

On the other hand, the applicant maintained its claim for compensation in respect of the damage caused by its lack of access to grants obtainable from the State budget, European Union sources or internationally financed programmes via individually assessed calls for project proposals open to incorporated churches only (see point 8 of the partial agreement).

The details of the applicant's claims were as follows:

11. In respect of the loss of personal income tax donations and the corresponding supplementary State subsidy (see paragraph 25, fourth sentence, as well as section 4 of the Church Funding Act cited in paragraph 33 of the principal judgment) the applicant claimed for the years

2015 and 2016 a total of HUF 146,623,938, that is to say approximately 488,750 euros (EUR).

12. In respect of the loss of State subsidies intended to support the applicant's social and educational institutions, the applicant claimed for the years 2015 and 2016 a total of HUF 860,956,072 (approximately EUR 2,870,000).

13. In respect of the loss of subsidies for the purposes of religious teaching, it claimed for the years 2015 and 2016 a total of HUF 6,034,000 (approximately EUR 20,100).

14. It also claimed for the years 2015 and 2016 HUF 45,588,943 (approximately EUR 152,000) in respect of the loss of salary supplement paid to the staff employed by church institutions providing public-interest services.

15. Out of the amounts enumerated in paragraphs 11 to 14 above, totalling HUF 1,059,202,953 (approximately EUR 3,530,700), HUF 450,158,032 (approximately EUR 1,500,500) was to be ascribed to the losses allegedly sustained in 2015, whereas HUF 609,044,921 (approximately EUR 2,030,200) concerned those arising in 2016.

16. In respect of the damage sustained in 2015 and 2016, the applicant claimed interest, at a rate equal to double the marginal lending rate of the Hungarian National Bank, from 1 July 2015 (as regards the losses incurred in 2015) and 1 July 2016 (as regards the losses incurred in 2016) respectively. According to the applicant's calculations, as at 31 December 2016 that interest amounted to HUF 14,031,424 (approximately EUR 46,800) for the damage sustained in 2015 and HUF 4,482,570 (approximately EUR 15,000) for 2016, respectively.

17. Arguing that the violation found by the principal judgment would most probably continue to exist as the Government had not shown any intention to resolve its legal situation in conformity with the Convention, the applicant also requested just satisfaction for the damage likely to arise in 2017. In this respect, the applicant claimed the average of the 2015 and 2016 amounts, namely HUF 529,601,476 (approximately EUR 1,765,300).

18. In respect of the damage caused by the lack of access to grants obtainable via calls for project proposals managed and assessed by different State authorities or State funds, the applicant submitted that, prior to the loss of its church status it regularly obtained considerable amounts of finance for its activities via such calls for projects. In response to a request for information concerning the years 2010 and 2011, the applicant informed the Court that, in the two-year period preceding the entry into force of the new Church Act in 2012, it had requested HUF 654,943,833 (approximately EUR 2,180,000) in calls for projects open to churches and had obtained a total of HUF 507,719,974 (EUR 1,700,000) in grants, which corresponded to a success rate of 77.5 %.

19. The applicant also submitted that the grants which incorporated churches could apply for in the years 2012 to 2014 via such calls for projects amounted to a total of at least HUF 1,046,200,000 (approximately EUR 3,487,000) per church. Given its success rate in previous years, the applicant was of the view that it could have expected to obtain at least HUF 500,000,000 (approximately EUR 1,667,000) in those three years, and it requested the same amount for the next three-year period, namely the years 2015 to 2017.

20. The applicant thus requested HUF 1,000,000,000 (approximately EUR 3,333,300) for the years 2012 to 2017 under this head.

21. In total, it claimed HUF 2,607,318,423 (approximately EUR 8,691,000), all heads combined (see paragraphs 15, 16, 17 and 20 above).

(b) The Government

22. The Government submitted, on a general note, that it considered well-founded only the claims that concerned State subsidies intended to support faith-related activities, the supplementary State subsidies for public-interest tasks (social care and education) which were actually performed by the applicant, as well as the default interest on those sums.

23. According to the Government, the agreement reached between the parties following the partial judgment of 28 June 2016 (see paragraph 4 above) concerned 2015 only and entitled the applicant to HUF 429,563,449 (approximately EUR 1,431,900), excluding default interest, instead of the HUF 450,158,032 (approximately EUR 1,500,500) requested by it (see paragraph 15 above).

24. The Government also submitted that, using the calculation method agreed on by the parties, the default interest for the damage sustained in 2015 would amount to HUF 12,569,213 (approximately EUR 41,900) instead of the HUF 14,031,424 (approximately EUR 46,800) claimed (see paragraph 16 above). As regards the default interest on the remaining part of the applicant's claims, the Government were of the view that it should not be taken into account since the amounts concerned would, if at all, be due only in the future because of a post-financing system.

25. As to the applicant's claims for 2016 and 2017, the Government considered them premature, speculative and unsubstantiated. They argued, in particular, that the applicant had failed to justify the 40% increase in its claims for annual subsidies (from 2015 to 2016, see paragraph 15 above). Moreover, the Government stressed that the extent of the alleged damage at issue depended mostly on the number of persons actually enjoying the applicant's services. In their view, the applicant could only speculate that they would continue to provide those services to the same number of people until the end of 2017.

26. In respect of the applicant's complaint concerning the lack of access to grants obtainable via calls for project proposals open to incorporated churches, the Government did not find any causal link between the violation of the applicant's Convention rights and those alleged losses. Moreover, they submitted that the applicant had not taken part in any calls for projects open to organisations performing religious activities (as opposed to incorporated churches – for the difference between those terms see paragraphs 23 and 25 of the principal judgment). They were therefore of the view that the applicant could not be considered to have had a genuine intention to seek a subsidy for any specific project.

2. *The Court's assessment*

(a) **General principles**

27. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States that are parties to a case are, in principle, free to choose the means whereby they will comply with a judgment in which the Court has found a breach. If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see, among many authorities, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B; *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 32-33, ECHR 2000-XI; and *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 80, ECHR 2014).

28. There must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. In appropriate cases, this may include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegue and Jabardo v. Spain* (Article 50), 13 June 1994, § 16-20, Series A no. 285-C; and *Kurić*, cited above, § 81). In a similar vein, a real loss of opportunities may also warrant monetary compensation (see, *mutatis mutandis* and among other authorities, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 219-220, ECHR 2012; *Gawęda v. Poland*, no. 26229/95, § 54, ECHR 2002-II; *Elsholz v. Germany* [GC], no. 25735/94, § 70, ECHR 2000-VIII; and *Artico v. Italy*, 13 May 1980, § 42, Series A no. 37).

29. Where a loss of earnings (*lucrum cessans*) is alleged, it must be conclusively established and must not be based on mere conjecture or probability (see *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 219).

However, a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicants may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved, the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary losses, which it is necessary to award each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see, *mutatis mutandis*, *The Sunday Times v. the United Kingdom (no. 1)* (Article 50), 6 November 1980, § 15, Series A no. 38; and *Kurić*, cited above, § 82).

(b) Application of these principles to the present case

30. The Court notes that there was no dispute between the parties on the point that the applicant should receive compensation for the damage sustained in 2015 in respect of the heads enumerated in paragraphs 11 to 14 above, notably for the loss of personal income tax donations and the corresponding supplementary State subsidy, the loss of State subsidies intended to support the applicant's social and educational institutions, the loss of subsidies for the purposes of religious teaching and the loss of salary supplement paid to the staff employed by church institutions providing public-interest services.

31. Although the parties appeared to agree on the principles of a calculation method to be applied for the purposes of compensation in those respects, they disagreed as to the exact amount of the damage (see paragraphs 15 and 23 above). Nevertheless, the Court notes that the applicant's claim was accepted by the Government as regards 2015 to the extent of HUF 442,132,662 (approximately EUR 1,473,800), including interest.

32. As regards the applicant's claims under the same heads in respect of 2016 and 2017, the Government contested them as premature, speculative and unsubstantiated (see paragraph 25 above). As to the claim concerning 2016, they took issue with an allegedly unjustified increase in comparison with what had been requested for 2015. With regard to the claim concerning 2017, they challenged the assumption underlying it, notably that the applicant would certainly continue to provide its services to the same number of people until the end of 2017 as it had done before.

33. However, the Court observes that the Government did not call into question, at least as regards the period that preceded the submission of their observations on 15 February 2017, that the applicant had continued its various activities after 2015. Nor did they argue that the applicant's

activities had actually decreased, in terms of the number of persons enjoying the various social and educational services or otherwise, in that period.

34. In the light of the foregoing, the Court finds it reasonable to award just satisfaction for the period between 1 January 2015 and the adoption of the present judgment in respect of heads of damage acknowledged by the Government in the partial agreement mentioned in paragraph 6. As regards the level of that just satisfaction, the Court considers it appropriate to calculate a yearly amount which is commensurate with the average of what was requested by the applicant and accepted by the Government in respect of 2015 (see paragraphs 15 and 23 above).

35. As regards the alleged loss resulting from the applicant's lack of access to grants obtainable via calls for project proposals open to incorporated churches (a claim challenged by the Government in its entirety, see paragraphs 18 to 20 and 26 above), the Court observes that, prior to the entry into force of the 2011 Church Act, the applicant successfully participated in such calls for projects and obtained grants to finance its public-interest services (see paragraph 18 above as well as, conversely and in the context of other churches, paragraph 59 of the partial judgment). Furthermore, the Court observes that such grants have remained available for incorporated churches under the 2011 Church Act (see paragraph 19 above). The Court notes that the applicant's submissions concerning its finance obtained via such grants in the period preceding the entry into force of the 2011 Church Act and the amount of finance available to incorporated churches in the 2012 to 2014 period were not called into question by the Government. Rather, their argument was based on the alleged lack of a causal link between the violation found in the principal judgment and the damage alleged by the applicant.

36. However, the Court accepts that the applicant would have continued to obtain at least some amount of similar grants with regard to its continued public-interest activities (see paragraph 33 above), had it not been for the interference that was at issue in the principal judgment, notably the entry into force of the 2011 Church Act and the resulting loss of the applicant's church status.

37. The Court does not find persuasive the Government's objection concerning the applicant's alleged lack of genuine intention to seek a subsidy for its projects (see paragraph 26 above). Taking into account the applicant's ongoing legal disputes with the Government and its difficulties in achieving a satisfactory resolution to its legal situation following the decision of the Constitutional Court and the principal judgment (see paragraphs 7 and 8 above), the Court finds it unreasonable to reproach the applicant for an alleged reluctance in applying for grants for "organisations performing religious activities" – all the more so given that it has specifically challenged its categorisation as such an organisation.

38. The Court is of the view that the damage resulting from the applicant's lack of access to grants obtainable via calls for projects is of an inherently uncertain nature, since it depends on a large number of imponderables. At the same time, it is satisfied that a real loss of opportunities existed on the applicant's side, which had a causal link to the violation found in the principal judgment and warrants monetary compensation.

39. In these circumstances, the Court finds it appropriate to determine the level of just satisfaction at its discretion, having regard to what is equitable (see paragraph 29 *in fine* above), in the form of a lump sum award covering, globally, both the heads of damage acknowledged by the Government in the partial agreement concluded by the parties (see paragraph 34 above) and the applicant's real loss of opportunities (see paragraph 38 above).

On an equitable basis, the Court therefore awards the applicant EUR 3,000,000, all heads combined.

C. Costs and expenses

40. The applicant claimed EUR 2,250 for costs and expenses incurred before the Court. This sum corresponds to fifteen hours of legal work, billed at an hourly rate of EUR 150.

41. The Government contested this claim.

42. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed, that is to say EUR 2,250.

D. Default interest

43. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Holds

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted

into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 3,000,000 (three million euros), plus any tax that may be chargeable, in respect of pecuniary damage;
- (ii) EUR 2,250 (two thousand two hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President