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

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

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 final[1], 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 re-registration 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.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

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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.

The judgment is available only in English.

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