Information Note on the Court's case-law No. 173

April 2014

Magyar Keresztény Mennonita Egyház and Others v. Hungary - 70945/11, 23611/12, 26998/12 et al.

Judgment 8.4.2014 [Section II]

Article 11

Article 11-1

Freedom of association

Applicant churches required to re-register for incorporate status in order to regain material benefits from the State: *violation*

Facts – Under the 2011 Church Act, which was enacted with a view to addressing problems related to the exploitation of State funds by certain churches, a two-tier system of church recognition was put in place. A number of churches were by virtue of the law considered to be incorporated and thus entitled to continue enjoying certain monetary and fiscal advantages from the State for the performance of faith-related activities.

The applicants are all religious communities or ministers or members of such communities. The applicant churches, which prior to the adoption of the 2011 Act had been registered as churches and were in receipt of State funding, were not included among the churches automatically treated as incorporated. Following a ruling of the Constitutional Court, religious associations or communities such as the applicants could continue to function as churches and to refer to themselves as churches. However, the 2011 Act continued to apply in so far as it required churches such as the applicants to apply to Parliament to be registered as incorporated churches if they wished to regain access to the monetary advantages and benefits. Whether or not a particular church could be incorporated depended on the number of its members and the length of its existence as well as proof that it did not represent a danger to democracy.

Law – Article 11 (read in the light of Article 9): The deregistration of the applicants as churches constituted an interference with their rights under Articles 9 and 11. The measure had a basis in the 2011 Act and pursued the legitimate aim of preventing bodies claiming to be involved in religious activities from fraudulently obtaining financial benefits from the State. The Court went on to consider whether the interference had been necessary in a democratic society.

There was no right under Article 11 read in conjunction with Article 9 for religious organisations to have a specific legal status. The State was only required to ensure that they had the possibility of acquiring legal capacity as entities under civil law. The Court could not, however, overlook the fact that adherents of a religion might feel no more than tolerated – but not welcome – if the State refused to recognise and support their religious organisation, whilst extending such recognition to other denominations. Such a situation of perceived inferiority went to the freedom of manifesting one's religion. Moreover, it had not been demonstrated that less drastic solutions to the problem perceived by the authorities – such as the judicial control or dissolution of churches proven to be of an abusive character – had not been available. The outcome of the impugned

legislation had been the stripping of existing and operational churches from their legal framework, sometimes with far-reaching material and reputational consequences.

A two-tier system of church recognition might as such fall within the States' margin of appreciation and such a scheme normally belonged to the historical-constitutional traditions of countries sustaining it. However, the Government had not adduced any convincing evidence to demonstrate that the list of the incorporated churches under the 2011 Act fully reflected Hungarian historical tradition. The refusal of registration for failure to present information on the contents of the teachings might be justified by the necessity to determine whether the denomination seeking recognition presented any danger for a democratic society. However, the applicants had lawfully operated in Hungary as religious communities for several years and there was no evidence that any procedure had ever been put in place to challenge their existence on grounds of their operating unlawfully or abusively. The reasons for requiring their re-registration should have therefore been particularly weighty and compelling.

It is true that the freedom to manifest one's religion or beliefs did not confer on the applicant churches or their members an entitlement to secure additional funding from the State budget. However, privileges obtained by religious societies facilitated their pursuance of religious aims and therefore imposed an obligation on State authorities to remain neutral when granting them. Where the State had voluntarily decided to provide such rights to religious organisations, it could not take discriminatory measures in granting, reducing or withdrawing such benefits. Furthermore, States had considerable liberty in choosing the forms of cooperation with religious communities, including the possibility of reshaping such privileges by legislative measures. However, State neutrality required that the choice of partners be based on ascertainable criteria to prevent situations in which the adherents of a religious community felt like second-class citizens, for religious reasons, on account of the less favourable State stance on their community. In the present case, the withdrawal of benefits had concerned only certain denominations, including the applicants.

The Court found no indication that the applicant churches were prevented from practising their religion as legal entities. Nevertheless, under the legislation, certain religious activities performed by churches were not available to the religious associations, which had a bearing on the latter's right to collective freedom of religion. For this reason, such differentiation did not satisfy the requirements of State neutrality and was devoid of objective grounds for the differential treatment.

The Court concluded that, by removing the applicants' church status altogether rather than applying less stringent measures, establishing a politically tainted re-registration procedure whose justification was open to doubt, and treating the applicants differently from the incorporated churches not only as regards the possibilities of cooperation but also when it came to securing benefits for the purposes of faith-related activities, the authorities had neglected their duty of neutrality *vis-à-vis* the applicant churches. These elements, jointly and severally, meant that the impugned measure could not be said to have corresponded to a "pressing social need".

Conclusion: violation (five votes to two).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage for five individual applicants. Question concerning the applicant communities reserved.

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