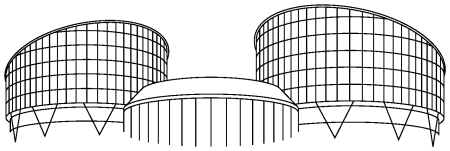

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

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)

JUDGMENT
(*Merits*)

STRASBOURG

8 April 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Magyar Keresztény Mennonita Egyház and Others v. Hungary,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 18 February 2014,

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 the Republic of 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 allegedly active in Hungary, their ministers and members, on 16 November 2011, 3 and 24 April, 25 and 28 June, 19 and 29 August 2012, respectively.

2. The applicants were represented by Mr D. Karsai (application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12 and 56581/12), Mr L. Baltay (application no. 41553/12) and Mr Cs. Tordai (application no. 54977/12), lawyers practising in Budapest, Gyál and Budapest, respectively.

The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicants alleged that the de-registration and the discretionary re-registration of churches amounted to a violation of their right to freedom of religion and was discriminatory, under Article 11, read in conjunction with Articles 9 and 14 of the Convention. Under Articles 6 and 13, they alleged that the relevant procedure was unfair and did not offer any effective remedy. Moreover, several applicants alleged a violation of Article 1 of Protocol No. 1 as a result of the loss of State subsidies due to the loss of church status.

4. On 27 September 2012 the applications were communicated to the Government.

5. In respect of application no. 41463/12, the British Government did not exercise their right under Article 36 § 1 of the Convention to submit written comments in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are religious communities and individuals. Originally they lawfully existed and operated in Hungary as churches registered by the competent court in conformity with Act no. IV of 1990 ("the 1990 Church Act").

7. In application no. 70945/11, *Magyar Keresztény Mennonita Egyház* (Hungarian Christian Mennonite Church[1]) is a religious community active in Hungary since 1998. Mr J. Izsák-Bács is a Hungarian national who was born in 1959 and lives in Budapest. He is a minister of *Magyar Keresztény Mennonita Egyház*.

8. In application no. 23611/12, *Evangéliumi Szolnoki Gyülekezet Egyház* (Evangelical Szolnok Congregation Church) is a religious community active in Hungary since 1998. Mr P.J. Soós is a Hungarian national who was born in 1954 and lives in Budapest. He is a minister of *Evangéliumi Szolnoki Gyülekezet Egyház*.

This applicant community was involved in social tasks outsourced by the municipality of Szolnok, and had concluded an agreement with the State Treasury for services extended to the homeless. In 2011 the Treasury cancelled this agreement and granted the relevant subsidy only until 30 June 2011. As a consequence the applicant had to abrogate the related contract with the municipality, but was obliged to continue to perform its social service up until and including July 2011, which caused it damage in the amount of 691,407 Hungarian forints.

9. In application no. 26998/12, *Budapesti Autonóm Gyülekezet* (Budapest Autonomous Congregation) is a religious community active in Hungary since 1998. Mr T. Görbicz is a Hungarian national who was born in 1963 and lives in Budapest. He is a minister of *Budapesti Autonóm Gyülekezet*.

10. In application no. 41150/12, *Szim Salom Egyház* (Sim Shalom Church) is a religious community active in Hungary since 2004. Mr G.G. Guba is a Hungarian national who was born in 1975 and lives in Budapest. He is a member of *Szim Salom Egyház*.

[1] This and the ensuing translations are provided by the Registry.

11. In application no. 41155/12, *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* (Alliance of Hungarian Reformed Jewish Communities Church) is a religious community active in Hungary since 2007. Ms L.M. Bruck is a Hungarian national who was born in 1931 and lives in Budapest. She is a member of *Magyar Reform Zsidó Hitközségek Szövetsége Egyház*.

12. In application no. 41463/12, European Union for Progressive Judaism is a religious association with its seat in London. It acts as an umbrella organisation for progressive Judaist congregations in Europe. *Szim Salom Egyház* (see application no. 41150/12) and *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* (see application no. 41155/12) are among its members.

13. In application no. 54977/12, *Magyarországi Evangéliumi Testvérközösség* (Hungarian Evangelical Fellowship) is a religious community active in Hungary since 1981.

14. In application no. 56581/12, *Magyarországi Biblia Szól Egyház* ('The Bible Talks' Church of Hungary) is a religious community active in Hungary for over 20 years.

15. In application no. 41553/12, the applicants (*ANKH Az Örök Élet Egyháza* (ANKH Church of Eternal Life), *Árpád Rendjének Jogalapja Tradícionális Egyház* (Traditional Church of the Legal Basis of Árpád's Order), *Dharmaling Magyarország Buddhista Egyház* (Dharmaling Hungary Buddhist Church), *Fény Gyermekei Magyar Esszénus Egyház* ('Children of Light' Hungarian Essene Church), *Mantra Magyarországi Buddhista Egyháza* (Mantra Buddhist Church of Hungary), *Szangye Menlai Gedün A Gyógyító Buddha Közössége Egyház* (Szangye Menlai Gedun, Community of Healing Buddha Church), *Univerzum Egyháza* (Church of the Universe), *Usui Szellemi Iskola Közösség Egyház* (Usui Spiritual School Community Church), *Út és Erény Közössége Egyház* (Community of Way and Virtue Church)) are religious communities active in Hungary respectively since 1999, 2008, 2005, 2001, 2007, 1992, 1998, 2008 and 2007.

16. On 30 December 2011 Parliament enacted Act no. CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities ("the 2011 Church Act"). It entered into force on 1 January 2012, and was subsequently amended on several occasions, most recently on 1 August and 1 September 2013.

17. Apart from the recognised churches listed in the Appendix to the 2011 Church Act, all other religious communities, previously registered as churches, lost their status as churches but could continue their activities as associations. If intending to continue as churches, religious communities were required to apply to Parliament for individual recognition as such.

18. In decision no. 6/2013 (III. 1.), the Constitutional Court found certain provisions of the 2011 Church Act unconstitutional and annulled them with retrospective effect.

Meanwhile, several applicants filed requests for the responsible Minister to register them as churches, but these applications were refused on the ground that – despite the decision of the Constitutional Court – the 2011 Church Act precluded the registrations as requested.

19. After the Constitutional Court's decision, several applicants initiated procedures before the National Tax and Customs Administration ("NTCA") to regain their technical number which is necessary to remain entitled to the donations of 1% of income tax by citizens to churches. The NTCA suspended the procedure and invited the applicants to initiate a recognition procedure before Parliament, which, in the applicants' submissions, demonstrated further disregard for the Constitutional Court's decision.

20. Several applicants regained their nominal status as "churches" pursuant to the Constitutional Court's decision.

II. RELEVANT DOMESTIC LAW

A. Overview of development of the relevant legislation

21. Between 12 February 1990 and 31 December 2011, religious activities were regulated by Act no. IV of 1990 (the "1990 Church Act"), which defined religious communities with membership exceeding 100 persons as churches.

22. As of 1 January 2012, the 1990 Church Act was replaced by Act no. CCVI of 2011 (the "2011 Church Act"). Under the new law, religious communities could exist either as churches or as associations carrying out religious activities ("religious associations" according to the terminology used by the Constitutional Court). Only those entities qualified as churches which were listed in the Appendix of the 2011 Church Act, or else the ones qualified as churches by Parliament under certain conditions, originally until 29 February 2012. The constitutional basis of this regulation was provided by Article 21(1) of the Transitional Provisions of the Fundamental Law, which vested in Parliament the power to identify, in the relevant cardinal law, the recognised churches and determine the criteria for the recognition of churches additionally admitted in the future. Formerly registered churches could be transformed, upon request, into associations and carry on their activities as such; however, under the new rules they were not entitled to any budgetary subsidies. Originally (under the 1990 Church Act), there had been 406 registered churches; whereas the Appendix to the 2011 Church Act contained only 14. The Appendix, as in force as of 1 March 2012, enumerates 27 churches and church-alliances, resulting in altogether 32 churches. According to information published by the tax

authorities, these 32 churches do not fully coincide with the 32 most supported churches, if the latter are measured by the number of tax-subjects making voluntary tax donations in their favour.

On 28 December 2012 the Constitutional Court repealed, among others, those rules of the Transitional Provisions of the Fundamental Law which had granted Parliament the right to identify recognised churches. On 26 February 2013, it also annulled those provisions of the 2011 Church Act which had led to the applicants' deprivation, by the force of law, of their church status.

23. Partly in response to the above-mentioned Constitutional Court decisions, the power of Parliament to grant special church status was re-enacted into the Fundamental Law itself, notably by its Fourth Amendment, which entered into force on 1 April 2013. It introduced the terms "churches" and "other organisations performing religious activities", churches being those organisations with which the State co-operates for community goals and which the State recognises as such. In a similar vein, under the rules of the 2011 Church Act as amended with effect from 1 August 2013, the term currently in use is that of "religious communities"; this term includes "incorporated churches" (*bevett egyház*) as well as "organisations performing religious activities" (*vallási tevékenységet végző szervezet*). However, all these entities are entitled to use the word "church" (*egyház*) in their names.

24. Under the rules in force, for a religious community to become an "incorporated church", it must prove either 100 years of international existence or that it has functioned in Hungary for 20 years in an organised manner and must prove a membership which equals at least 0.1 per cent of the national population. Moreover, it has to prove its intention and long-term ability to co-operate with the State for public-interest goals. On the other hand, a group of individuals may become an "organisation performing religious activities", if it has at least ten members and is registered as such by a court.

25. The Fifth Amendment of the Fundamental Law (which entered into force on 1 October 2013) intended to emphasise, also on the constitutional level, the principle that everyone is entitled to establish special legal entities ("religious communities") designed for the performance of religious activities, and that the State may co-operate with some of those communities for community goals, bestowing on them the status of "incorporated church". To reflect the uniformity of "[incorporated] churches" and "other organisations performing religious activities" in terms of freedom of religion, those appellations were replaced by the global term of "religious communities" throughout the text of the Fundamental Law.

However, under the present rules of Hungarian law, incorporated churches continue enjoying preferential treatment, in particular in the field of taxation and subsidies. In particular, only incorporated churches are

entitled to the one per cent of the personal income tax earmarked by believers and the corresponding State subsidy. Moreover, in decision no. 6/2013. (III. 1.), the Constitutional Court identified, in a non-exhaustive list (see points 158 to 167 of the Decision in paragraph 34 below), several activities whose exercise is facilitated – in legal, economical, financial or practical terms – by the lawmaker in respect of incorporated churches, but not in respect of other religious communities: these examples include religious education and confessional activities within State institutions, the operation of cemeteries including confessional funerals, the publication of religious printed material as well as the production and marketing of religious objects.

Notwithstanding the fact that the applicants have nominally regained their legal status, they cannot benefit from preferential treatment in these aspects, which is only due to incorporated churches.

B. Constitutional provisions

26. The Fundamental Law of Hungary, as in force on 1 January 2012, stated:

Article VII

"(1) Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other conviction, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other conviction by performing religious acts, ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.

(2) The State and the churches shall be separate. Churches shall be autonomous. The State shall co-operate with the churches for community goals.

(3) The detailed rules for churches shall be regulated by a cardinal Act."

27. As of 1 April 2013, pursuant to the Fourth Amendment of the Fundamental Law of Hungary, the text of Article VII of the Fundamental Law was amended as follows:

Article VII

"(1) Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other conviction, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other conviction by performing religious acts, ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.

(2) Parliament may pass cardinal Acts to recognise certain organisations performing religious activities as churches, with which the State shall co-operate to promote community goals. The provisions of cardinal Acts concerning the recognition of churches may be the subject of a constitutional complaint.

(3) The State and churches and other organisations performing religious activities shall be separate. Churches and other organisations performing religious activities shall be autonomous.

(4) The detailed rules for churches shall be regulated by a cardinal Act. As a requirement for the recognition of any organisation performing 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."

28. As of 1 October 2013, pursuant to the Fifth Amendment of the Fundamental Law of Hungary, the text of Article VII of the Fundamental Law has been amended as follows:

Article VII

"(1) Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other conviction, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other conviction by performing religious acts, ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.

(2) In order to practise their religion, persons sharing the same principles of faith may establish religious communities in organisational forms defined by cardinal Act.

(3) The State and the religious communities shall be separate. Religious communities shall be autonomous.

(4) The State and the religious communities may co-operate to promote community goals. The cooperation is established by the decision of Parliament, upon request from the religious community concerned. Religious communities participating in such cooperation shall operate as incorporated churches. With a view to their participation in tasks promoting community goals, the State shall provide the incorporated churches with specific rights.

(5) Common rules about religious communities, as well as the conditions of cooperation, the incorporated churches and the detailed rules related to them shall be defined and regulated by a cardinal Act."

C. Statutory provisions

29. In its relevant provisions, the 2011 Church Act, as in force on 1 January 2012, reads as follows:

Religious activity

Section 6

"(1) In the application of this Act, religious activities are related to a worldview which is directed towards the transcendental, which has a system of faith-based principles and its teachings are directed toward existence as a whole, and which embraces the entire human personality and has specific codes of conduct that do not offend morality and human dignity.

(2) The following shall not be considered as religious activities *per se*:

a) political and lobbying activities;

b) psychological and parapsychological activities;

c) medical activities;

d) business-entrepreneurial activities;

e) pedagogical activities;

f) educational activities;

g) higher educational activities;

h) health care activities;

i) charity activities;

j) family, child or youth protection activities;

k) cultural activities;

l) sports activities;

m) animal protection, environment protection or nature conservation activities;

n) data processing activities which go beyond data processing necessary for faith-based activities;

o) social work activities."

Churches

Section 7

"(1) A church, religious denomination or religious community (hereinafter referred to as 'church') shall be an autonomous organization consisting of natural persons sharing the same principles of faith, shall possess self-government, and shall operate primarily for the purpose of exercising religious activities. In the application of this Act, religious denominations and religious communities shall also qualify as churches.

(2) Natural persons confessing the same principles of faith, with full capacity of action and residing in Hungary may establish a church for the exercise of their religion. ...

(4) Churches recognised by Parliament are listed in the Appendix to this Act."

Section 8

"The State may enter into agreements with churches which have considerable social support, preserve historical and cultural values and maintain pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural or sport institutions (hereinafter referred to as 'public interest activities') in order to ensure their operation."

Section 9

"... (2) The State may take into account the actual social role of churches and the public interest activities performed by them in the course of enacting additional rules of law related to the social role of churches, and while maintaining relations with them."

Section 14

"(1) The representative of an association which primarily performs religious activities (hereinafter referred to as 'association') is authorised to initiate the recognition of the represented association as a church by submitting a document signed by a minimum of 1,000 individuals applying the rules governing popular initiatives.

(2) An association shall be recognised as a church if:

a) the association primarily performs religious activities;

b) it has a confession of faith and rites containing the essence of its teachings;

c) it has been operating internationally for at least 100 years or in an organised manner as an association in Hungary for at least 20 years, which includes operating as a church registered under [the 1990 Church Act] prior to the entry into force of this Act;

d) it has adopted its statute, instrument of incorporation and internal ecclesiastical rules;

e) it has elected or appointed its administrative and representative bodies;

f) its representatives declare that the activities of the organisation established by them are not contrary to the Fundamental Law, do not conflict with any rule of law and do not violate the rights and freedoms of others;

g) the association has not been considered a threat to national security during its course of operation;

h) its teaching and activities do not violate the right to physical and psychological well-being, the protection of life and human dignity.

(3) Based on the popular initiative, the parliamentary committee dealing with religious affairs (hereinafter referred to as 'the committee') submits a bill regarding the recognition of the association as a church to Parliament. If the conditions defined in subsection (2) are not fulfilled, the committee shall indicate this in connection with the bill.

(4) At the request of the committee, the association shall certify the fulfilment of the conditions defined in points a)-f) of subsection (2). The committee shall request the position of the President of the Hungarian Academy of Sciences regarding the fulfilment of the conditions defined in points a)-c) of subsection (2).

(5) If Parliament does not support the recognition of an association as a church in accordance with the bill set out in subsection (3), the decision made in this regard shall be published in the form of a parliamentary resolution. A popular initiative aimed at recognising the association as a church cannot be initiated within a period of one year following the publication of this resolution."

Section 15

"The association shall qualify as a church as of the day of the entry into force of the amendment of this Act concerning the registration of the given association."

Section 19

"... (3) In order to realise their goals, churches shall be authorised to engage in activities, which do not qualify as business or entrepreneurial activities, and shall also

be authorised to engage in business or entrepreneurial activities besides their basic activities. Furthermore, they shall be authorised to establish businesses and NGOs, as well as to participate therein.

(4) The public interest activities and the institutions of churches shall be entitled to budgetary funds to the same extent as State and local government institutions performing similar activities. In these church institutions the content of employment shall conform to public employment in respect of wage, working time and rest periods.

(5) The central wage policy measures relating to employees of State and local government institutions shall cover the employees of church institutions referred to in subsection (4), with the same conditions.

(6) On the basis of rules of law churches may receive funding from the subsystems of general government, from programmes financed from EU funds or on the basis of international agreements, by way of application or outside the system of applications, on the basis of a specific decision. ...”

Section 20

“... (4) Excluding those listed in subsection (2) of section 6, the following shall not qualify as business or entrepreneurial activities in respect of churches:

a) operation of religious, pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural and sport institutions, as well as ... activities to protect the environment;

b) use of holiday homes by providing services to church personnel;

c) production or sale of publications or objects of piety which are necessary for religious life;

d) partial exploitation of real estate used for church purposes;

e) maintenance of cemeteries;

f) sale of immaterial goods, objects or stocks serving exclusively religious, pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural, sport or environmental protection activities, including the reimbursement of the cost of work clothes;

g) provision of services complementary to religious, pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural, sport or environmental protection activities, or the non-profit oriented use of appliances serving these activities;

h) production or sale of products, notes, textbooks, publications or studies undertaken in the course of performing public duties taken over from the State or the local government;

i) operation of pension institutions or pension funds set up for the purpose of self-support of church personnel.

(5) Revenues generated from activities listed in subsection (4) are in particular the following:

a) consideration, fees, reimbursement paid for services;

b) compensation, damages, penalties, fines and tax refunds connected to the activity;

c) financially settled non-repayable funding, grants received in connection with the activity; and

d) the portion of interest, dividend and yield paid by financial institutions and issuers on deposits and securities, made or acquired by means of unengaged funds, in proportion to the revenues generated by activities which do not qualify as business or entrepreneurial activities.

(6) Churches may be granted tax benefits and other similar benefits."

Section 23

"Churches, in particular church rites and the undisturbed performance of church government, as well as church buildings, cemeteries and other holy places shall enjoy enhanced protection by the law of regulatory offences and by criminal law."

Section 24

"(1) In instructive or educational institutions financed by the State or local government, churches may provide religious and moral education according to the needs of students and their parents; in institutions of higher education churches may carry out faith-based activities. ... The costs of religious and moral education shall be borne by the State, on the basis of a separate Act or of agreements concluded with the churches.

(2) Churches may perform pastoral services in the army, in prisons and hospitals, or other special ministries as laid down in rules of law."

Section 33

"(1) The Minister shall, within 30 days of the entry into force of this Act, register the churches listed in the Appendix to this Act, and the internal ecclesiastical legal persons determined by them under section 11.

(2) Churches listed in the Appendix and their internal ecclesiastical legal persons may operate as churches and as internal ecclesiastical legal persons regardless of the date of their registration under subsection (1). ..."

Section 34

"... (2) Until the expiry of Act no. C of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities, with the exception of rules governing popular initiative, Parliament shall, in view of provisions governing the recognition of churches set out under Act no. C of 2011 ..., make decisions in respect of the recognition of churches submitting applications for recognition to the Minister in accordance with this Act within the framework of the procedure set out under subsections (4) and (5) of section 14 by 29 February 2012.

(3) The Minister shall publish a list of churches specified above in subsection (2) on the Ministry's official website.

(4) If Parliament refuses to recognise a church in accordance with subsection (2), for the purposes of this Act and other relevant legislation that church shall qualify as an organisation pursuant to subsection (1) as of 1 March 2012, and sections 35-37 shall apply to it, with the proviso that :

a) recognition as a church may proceed on the grounds of a popular initiative launched one year after the publication of the parliamentary resolution referred to in subsection (5) of section 14;

b) procedural action defined in subsection (1) of section 35 may be launched up to 30 April 2012 and conditions set out in subsection (2) of section 37 may be fulfilled up to 31 August 2012;

c) the date of 30 April shall be taken into account during the course of the application of point b), subsection (3) of section 35;

d) the date of legal succession in accordance with subsection (1) of section 36 shall be 1 March 2012;

e) budgetary funding for ecclesiastical purposes may be granted to churches specified in subsection (2) up to 29 February 2012.

(5) The organisation:

a) may initiate its registration as an association in accordance with section 35, and

b) whereby it meets requirements provided for in this Act, it may initiate the recognition of the association as a church in accordance with the provisions set out in Chapter III."

Section 35

"(1) The organisation shall declare its intention to continue or discontinue its activities by 29 February 2012, and in the case of its intention to continue activities, it shall, in accordance with the rules concerning associations, initiate a change registration procedure in connection with which subsection (1) of section 37, section 38 and points a) and c) of section 63 of Act no. CLXXXI of 2011 on the Court Registration of Civil Society Organisations and Related Rules of Procedure shall apply, with the proviso that the meeting resolving on transformation shall be considered as the constituent assembly.

(2) Requirements for the organisation to be registered as an association must be fulfilled by 30 June 2012 at the latest with the proviso that if the organisation undertakes religious activities from 1 January 2012 within the same organisational framework defined in its internal ecclesiastical rules in effect on 31 December 2011, in the course of the court registration of the association and in connection with the requirements set out in point b) of subsection (4) of section 62 of Act no. IV of 1959 on the Civil Code, the court shall refrain from assessing whether the instrument of incorporation of the organisation complies with the legal provisions relating to the establishment and competence of the supreme body, administrative body and representative body. The failure to meet this deadline results in forfeiture of the right to register. ..."

Section 37

"(1) With the exception of cases defined in subsection (3), after the entry into force of this Act only churches listed in the Appendix may be granted budgetary subsidy for ecclesiastical purposes.

(2) For the purposes of Act no. CXXVI of 1996 on the Use of a Specified Amount of Personal Income Tax in Accordance with the Taxpayer's Instructions, the organisation shall be considered an association and shall be entitled to the one per cent

that can be offered to associations, provided that it complies with the conditions required by laws concerning associations by 30 June 2012.

(3) Based on an agreement, the State shall provide budgetary subsidy to the operation of the following institutions operated by the organisation on 31 December 2011:

a) up to 31 August 2012 in respect of public education institutions;

b) up to 31 December 2012 in respect of social institutions."

Section 38

"(1) While respecting the agreements concluded with churches engaged in public interest activities, the Government shall review these agreements and if appropriate, it shall initiate the conclusion of new agreements.

(2) Up to 31 December 2012, the Government may conclude agreements relating to the provision of budgetary funding, with organisations performing public duties which do not qualify as churches under this Act."

Section 50

"... (3) The following section 13 shall be added to the Church Funding Act:

> "Section 13: An organisation under subsection (1) of section 34 of the Church Funding Act shall be entitled, in 2012, to receive complementary funding specified under subsection (3) of section 4, provided it has been recognised as a church by Parliament up to 20 May 2012.""

Section 52

"Section 34 shall be replaced by the following provision:

> "Section 34 (1): With the exception of churches listed in the Appendix and their independent organisations established for religious purposes, organisations registered in accordance with [the 1990 Church Act] and their organisations established for religious purposes (hereinafter jointly referred to as organisation) shall qualify as an association as of 1 January 2012. ...""

30. The 2011 Church Act was amended on several occasions, in particular on 1 August 2013. According to these amendments, the criteria for an organisation performing religious activities to obtain "incorporated church" status remained similar to those introduced on 1 January 2012, with the following differences: if the organisation has been operating in Hungary, it has to prove a membership which equals at least to 0.1 per cent of the national population in Hungary (a requirement not applied to organisations which have been operating internationally); moreover, it has to prove its intention and long-term ability to co-operate with the State for public-interest goals; the co-operational ability of an organisation may be evidenced by its statute, the number of its members, its previous activities and the accessibility of those activities to a large group of the population.

31. The procedure of recognition as an "incorporated church" was also amended. A request for recognition must be submitted to the Minister in charge of religious affairs (instead of Parliament). The Minister examines

whether the organisation meets certain statutory criteria and adopts an administrative decision, which may be subject to judicial review. The final decision is communicated to the parliamentary committee dealing with religious affairs which, in turn, examines the organisation's intention and ability to co-operate with the State as well as the conformity of its teachings and activities with others' rights to physical and psychological well-being, the protection of life and human dignity. Parliament's Committee for National Security moreover examines if the organisation has been considered a threat to national security. The representatives of the organisation are heard by the parliamentary committee dealing with religious affairs. If, upon those examinations, the organisation meets all the statutory criteria, that committee submits a bill for the bestowal of "incorporated church" status. Otherwise, it submits a motion for the refusal of the request, which must contain due reasoning. Parliament then decides whether to adopt the bill or the motion of refusal. The lawfulness of a refusal may be challenged before the Constitutional Court within 15 days.

32. The 2011 Church Act, as amended on 1 August 2013, provides, in its relevant parts, as follows:

Religious activity and common rules on the status of religious communities

Section 6

"(1) A religious community shall be a church recognised by Parliament or an organisation performing religious activities. A church recognised by Parliament shall be an incorporated church.

(2) A religious community shall primarily be established and operate for the purposes of religious activities.

(3) Religious activities are related to a worldview which is directed towards the transcendental, which has a system of faith-based principles and its teachings are directed toward existence as a whole, and which embraces the entire human personality and has specific codes of conduct.

(4) The following shall not be considered as religious activities *per se*:

a) political and lobbying activities;

b) psychological and parapsychological activities;

c) medical activities;

d) business-entrepreneurial activities;

e) pedagogical activities;

f) educational activities;

g) higher educational activities;

h) health care activities;

i) charity activities;

j) family, child or youth protection activities;

k) cultural activities;

l) sports activities;

m) animal protection, environment protection or nature conservation activities;

n) data processing activities which go beyond data processing necessary for faith-based activities;

o) social work activities.

(5) A religious community shall only perform such religious activities which are neither contrary to the Fundamental Law nor unlawful and which do not violate rights and freedoms of other communities."

Section 7

"A religious community shall be entitled to use, as a self-definition, the denomination 'church' in its name and when referring to its activity; with a content relying on its principles of faith. The denomination of an organisation performing religious activities shall not contain any reference to the 'association' legal form."

Section 9

"(1) The Government may enter into agreements with religious communities which have considerable social support, preserve (themselves or through their subordinated institutions) historical and cultural values and maintain pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural or sport institutions, in order to ensure their operation. ..."

Organisation performing religious activities

Section 9/A

"(1) The organisation performing religious activities shall be an association consisting of natural persons confessing the same principles of faith, and shall, according to its statute, operate for the purpose of exercising religious activities.

(2) Rules governing the activity of the associations shall apply accordingly to the organisations performing religious activities, with the differences provided in this Act."

Section 9/B

"(1) The Budapest High Court shall have exclusive competence for the registration of organisations performing religious activities.

(2) Upon a registration request, the Court shall only examine whether

a) the organisation's representatives declared that its establishment serves the purpose of exercising religious activities;

b) the activity to be performed by the organisation does not violate subsections (4) and (5) of section 6;

c) the foundation was declared and the statute was adopted by 10 members at least;

d) only natural persons are members of the organisation and the statute excludes the membership of any legal person.

(3) The registration request shall only be dismissed if the organisation fails to meet the requirements enumerated under points a) to d) of subsection (2) above.

(4) The statute of the organisation performing religious activities may regulate the following subjects differently from the rules applying to associations:

a) admittance to the organisation and exercising of membership rights;

b) persons, as well as their tasks and competences, who are in legal relationship with the organisation and are entitled to

ba) adopt and oversee internal decisions about the organisation's activity or

bb) manage and represent the organisation."

(5) Organisations performing religious activities may only merge with another organisation performing religious activities."

Section 9/C

"(1) The control of lawfulness exercised by the Prosecutor's Office over an organisation performing religious activities shall only extend to the verification whether the organisation's activity conforms to subsections (4) and (5) of section 6. If the organisation fails to meet those requirements even after a warning from the Prosecutor's Office, this latter may initiate court proceedings against the organisation.

(2) Upon a petition from the Prosecutor's Office the court may:

a) order the organisation to restore the lawfulness of its activity and dissolve it in case of non-compliance;

b) dissolve the organisation if its activity violates the Fundamental Law according to the opinion of the Constitutional Court."

Ecclesiastical legal person (*Egyházi jogi személy*)

Section 10

"The incorporated churches and their internal ecclesiastical legal entities shall be ecclesiastical legal persons."

Section 11

"(1) An incorporated church shall be an autonomous organisation possessing self-government and consisting of natural persons confessing the same principles of faith, which Parliament provides with special public law status for the purpose of cooperation to promote public-interest goals.

(2) The incorporated church shall be a legal person.

(3) Incorporated churches shall have equal rights and obligations.

(4) Incorporated churches shall be enumerated in the Annex to this Act."

Person in service of a religious community

Section 13

"(1) An ecclesiastic [person] (*egyházi személy*) shall be a natural person who, according to the internal rules of an incorporated church, exercises ecclesiastical ministry in the framework of a specific ecclesiastical, labour or other relationship.

(2) Ecclesiastics shall be entitled to keep secret before State authorities any personal information which they acquired during ecclesiastical service.

(3) Ecclesiastics shall enjoy enhanced protection by the law of regulatory offences and by criminal law."

Section 13/A

"(1) A professional minister of an organisation performing religious activities shall be a natural person who is in the service of the organisation and exercises his or her activity in the framework of a labour relationship.

(2) Section 13 (2) and (3) shall apply to the professional ministers of organisations performing religious activities."

Conditions for recognition as a church

Section 14

"(1) An organisation performing religious activities shall be recognised as a church by Parliament if:

a) it primarily performs religious activities;

b) it has a confession of faith and rites containing the essence of its teachings;

c) it has been operating

ca) internationally for at least 100 years or

cb) in an organised manner as a religious community in Hungary for at least 20 years and its membership equals at least 0.1 per cent of the national population;

d) it has adopted its internal ecclesiastical rules;

e) it has elected or appointed its administrative and representative bodies;

f) its representatives declare that the activities of the organisation established by them are not contrary to subsections (4) and (5) of section 6;

g) its teaching and activities do not violate the right to physical and psychological well-being, the protection of life and human dignity;

h) the association has not been considered a threat to national security during its course of operation and;

i) its intention and long-term ability to maintain cooperation in promoting public-interest goals is evidenced, especially by its statute, the number of its members, its previous activity in the areas enumerated in section 9 (1) and the accessibility of those activities to a large group of the population."

Rules of the functioning of religious communities

Section 19

"(1) Religious communities shall function according to their internal rules, principles of faith and rites.

(2) Religious communities may participate in the value-creating service of society. In this view, the community (itself or through an institution which it established for this purpose) may also exercise activities defined in section 9 (1) which are not statutorily reserved for the State itself or a State institution. ...

(5) Religious communities may freely take part in civil law relationships; they may establish businesses and NGOs as well as participate therein."

Section 19/A

"(3) On the basis of rules of law churches may receive funding from the subsystems of general government, from programmes financed from EU funds or on the basis of international agreements, by way of application or outside the system of applications, on the basis of a specific decision. ..."

Section 19/C

"Religious communities, church buildings, cemeteries and other holy places shall enjoy enhanced protection by the law of regulatory offences and by criminal law, in particular for the sake of the undisturbed performance of rites and operation according to internal rules."

Rules of the functioning of ecclesiastical legal persons

Section 20

"(1) The public interest activities related to the areas enumerated in section 9 (1) of ecclesiastical legal persons shall be entitled to budgetary funds to the same extent as State and local government institutions performing similar activities.

(2) In ecclesiastical legal persons performing activities enumerated in section 9 (1) the content of employment shall conform to public employment in respect of wage, working time and rest periods. The central wage policy measures relating to employees of State and local government institutions shall cover the employees of ecclesiastical legal persons with the same conditions.

(3) In view of their cooperation to promote public-interest goals, ecclesiastical legal persons may be granted tax benefits or other similar benefits."

Section 21

"(1) In view of their cooperation to promote public-interest goals, ecclesiastical legal persons may organise, according to statutory regulation, religious education in educational institutions maintained by the State, local governments or local minority governments, as well as in higher educational institutions maintained by the State or a national minority government. ...

(3) The costs of religious education ... shall be borne by the State, according to statutory regulation or agreement concluded with an incorporated church."

Section 22

"(1) In order to realise their goals, ecclesiastical legal persons shall be authorised to engage in activities, which do not qualify as business or entrepreneurial activities, and shall also be authorised to engage in business or entrepreneurial activities besides their basic activities, even beyond the limits defined in section 19 (5).

(2) The following shall not qualify as business or entrepreneurial activities in respect of ecclesiastical legal persons:

a) operation of religious, pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural and sport institutions, as well as ... activities to protect the environment;

b) use of holiday homes by providing services to church personnel;

c) production or sale of publications or objects of piety which are necessary for religious life;

d) partial exploitation of real estate used for church purposes;

e) maintenance of cemeteries;

f) sale of immaterial goods, objects or stocks serving exclusively religious, pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural, sport or environmental protection activities, including the reimbursement of the cost of work clothes;

g) provision of services complementary to religious, pedagogical, educational, higher educational, health care, charity, social, family-child-youth protection, cultural, sport or environmental protection activities, or the non-profit oriented use of appliances serving these activities;

h) production or sale of products, notes, textbooks, publications or studies undertaken in the course of performing public duties taken over from the State or the local government;

i) operation of pension institutions or pension funds set up for the purpose of self-support of church personnel.

j) permission to a third party to use the ecclesiastical person's name, abbreviated name, commonly used denomination, emblem or logo.

(3) Revenues generated from activities listed in subsection (2), with special regard to the following:

a) consideration, fees, reimbursement paid for services;

b) compensation, damages, penalties, fines and tax refunds connected to the activity;

c) financially settled non-repayable funding, grants received in connection with the activity; and

d) the portion of interest, dividend and yield paid by financial institutions and issuers on deposits and securities, made or acquired by means of unengaged funds, in proportion to the revenues generated by activities which do not qualify as business or entrepreneurial activities."

Section 24

"Incorporated churches may perform pastoral services in the army, in prisons and hospitals, or other special ministries as laid down in rules of law."

33. Act no. XXXII of 1991 on Settling the Ownership of Former Church Properties provides as follows:

Preamble

"... The party-State, which was based on the principle of exclusivity of materialist and atheist outlook, restricted the confessional life and social role of churches to a bare minimum, by way of confiscating their assets, dissolving most of their organisations and through other means of power representing a continuous abuse of rights.

In a Hungary based on the rule of law, churches can again, freely and in an unrestricted manner, fulfil their societal role; however, they do not have the appropriate financial means.

Act no. IV of 1990 on Churches ... already made references to the fact that Hungarian churches, in addition to their confessional activities, fulfil important tasks in the life of the nation, notably through cultural, educational, social and health-care activities and fostering national identity. However, then it was not yet possible to create the material, financial assets necessary for these tasks.

In order to remedy, at least in part, the serious infringements and in order to secure the financial, material conditions for churches to be able to carry on with their activities, Parliament enacts the following law, so as to settle the ownership of former church properties:"

Act no. CXXIV of 1997 on the Financing of Religious and Public Interest Activities of Churches ("the Church Funding Act") provides as follows:

Preamble

"Recognising the Hungarian churches' millennium-long work in the life and interest of the nation;

Being aware of the importance of religious convictions in Hungarian society;

Taking into account that the Hungarian churches were subjected to measures of deprivation of rights after 1945;

Considering the requirements of separation of State and church as well as that of their co-operation towards community goals;

Parliament enacts the following law: ..."

Section 1

"This Act shall be applied to incorporated churches, religious denominations and religious communities ... within the meaning of the [2011 Church Act]."[1]

Section 4

"(1) Incorporated churches shall be entitled, under the detailed provisions of a separate Act, to one per cent of the personal income tax of those individuals who

[1] As of 1 August 2013, the Act is applicable to ecclesiastical legal persons only.

disposed of their tax to that effect. Incorporated churches may make use of this amount according to their internal rules.

(2) Beside the [above] amounts ..., incorporated churches shall be entitled to further subsidies, as provided in subsections (3) and (4) below.

(3) If the total amount of the subsidy to which the incorporated churches are entitled under subsection (1) does not attain 0.9 per cent of the personal income tax (calculated from the consolidated tax base and decreased by applicable tax reliefs) declared in the relevant year, the actual amount of the subsidy to be transferred to the incorporated churches shall be completed from the State budget to the above-mentioned extent.

(4) Incorporated churches shall be entitled to the subsidy proportionally to the number of individuals who donated one per cent of their personal income tax to them."

Section 6

"(1) Incorporated churches shall be entitled to further subsidies (hereinafter: complementary subsidy), the basis of which is the decision of the persons provided with public services to acquire those services from institutions maintained by incorporated churches. ..."

D. Case-law of the Constitutional Court

34. Decision no. 6/2013. (III. 1.) of the Constitutional Court contains the following passages:

"[131] The Fundamental Law lays down the principle of separation (detachment) of State and churches in connection with the freedom of religion. Besides being one of the founding principles of the functioning of a secular State, it is also one of the guarantees of the freedom of religion.

[134] ... The Fundamental Law guarantees that "religious communities may (besides other institutional forms proposed by the law of associations) freely avail themselves of a legal status which the State law specifies as a 'church'. In providing this legal form, the State takes note of the unique qualities of churches and makes it possible for them to fit in the legal order ..."

[141] ... Therefore, Parliament cannot decide, in accordance with the Fundamental Law, to eliminate the special "church" legal form for religious communities. It would violate the Fundamental Law if religious communities could only function either as associations or as other legal entities whose establishment is open to any group of persons even without any religious context. The lack of a special legal form, providing enhanced autonomy for the practice of the freedom of religion, would be unconstitutional.

[143] 2.3. In questions of substance, the State relies on the self-definition of religions and religious communities. However, in accordance with the freedom of religion and the right to practise a religion in community, it may define objective and reasonable conditions for the recognition as a special legal entity, i.e. a "church". In particular, such conditions may include a minimum headcount for submitting a request for recognition or a minimum length of time in operation.

[146] 2.4. In view of the above considerations, the State may regulate the conditions of bestowing legal personality on organisations and communities established pursuant to the freedom of religion by rules which take into account the specificities of the organisation or community concerned. Nevertheless, the Constitutional Court would point out that ... "it would raise ... constitutionality issues if the legislature would grant the possibility to become a legal person or to establish a specific legal entity for some organisations while excluding arbitrarily others in a comparable situation or making it disproportionatey difficult for them to obtain such legal status" ...

[152] The State enjoys a relatively wide margin of appreciation (within the limits imposed by the Fundamental Law) to define public-interest goals. In general, the State is not obliged to co-operate in realising targets defined by a church or religious community if it does not otherwise undertake to accomplish tasks in that sphere.

[153] The State also enjoys a wide margin of appreciation to grant financial subsidies, benefits and exemptions to churches, as the State has the power to enforce the principle of balanced, transparent and sustainable budget management ... according to Article N of the Fundamental Law. However, the Constitutional Court would stress that in allocating such subsidies, the State has to pay particular attention to the specificities imposed by the freedom of religion and must ensure that none of the churches be unjustifiably discriminated against in comparison to similarly situated churches and organisations [cf. Articles VII and XV of the Fundamental Law].

[155] There is no constitutional obligation to provide every church with similar entitlements. Nor is the State obliged to co-operate equally with every church. Practical differences in ensuring rights related to the freedom of religion remain constitutional in so far as they are not the result of a discriminatory practice. The State's neutrality has to be maintained, in terms of both executing public-interest tasks undertaken by the State, the allocation of subsidies to churches, and compulsory societal cooperation between the State and the churches.

[156] ... [T]he State is constitutionally required to ensure that religious communities have the opportunity to acquire a special church status (allowing them to function independently) and other entitlements for churches, which is consistent with the freedom of religion and the specific entitlement in question, under objective and reasonable conditions, in fair proceedings meeting the requirements of Articles XXIV and XXVIII of the Fundamental Law, subject to a remedy. ...

[158] ... The Constitutional Court came to the conclusion that, although there are similarities in the regulation of the rights of incorporated churches and religious associations, the 2011 Church Act also contains several important differences. A non-exhaustive list of them:

[159] Until [20 December 2011,] ... the rules providing enhanced autonomy for incorporated churches and the rights of ecclesiastics to keep secret before State authorities any personal information acquired during religious ministry applied accordingly also to the religious activity of those religious associations who requested church status from the Minister, but in vain. ... However, under the 2011 Church Act religious associations who subsequently requested church status in vain are no longer entitled to these guarantees.

[160] After the entry into force of the 2011 Church Act budgetary subsidies may only be granted to incorporated churches (apart from some subsidies which may be prolonged for one year pursuant to specific agreements).

[161] Under the Act no. CXXVI of 1997 on the Use of a Specified Amount of the Personal Income Tax in Accordance with the Taxpayer's Instruction, religious

associations shall be considered as associations, pursuant to the 2011 Church Act. As a consequence, they may be entitled to that part of the personal income tax which may be donated to associations. ... [T]hese associations shall also be considered beneficiaries, but not of the religious subsidies ...

[162] Incorporated churches may use donations to provide their ministers for religious services and rites ... with an income which is exempt from personal income tax. ...

[163] The Church Funding Act stipulates that the archives, libraries and museums of [incorporated] churches shall be entitled to ... a subsidy similarly to those institutions which are maintained by the State.

[164] The public interest activities and the institutions of [incorporated] churches shall be entitled to budgetary funds to the same extent as State and local government institutions performing similar activities. In these church institutions the content of employment shall conform to public employment in respect of wage, working time and rest periods. The central wage policy measures relating to employees of State and local government institutions shall cover the employees of church institutions with the same conditions. ...

[165] State authorities shall be prohibited to examine the religion-related incomes of the [incorporated] churches and the use of those incomes. ...

[166] The costs of religious and moral studies education shall be borne by the State, on the basis of a separate Act or of agreements concluded with the [incorporated] churches.

[167] In the light of the above, the Constitutional Court holds that the legislation in force provides incorporated churches with such additional rights that place them in a substantially advantageous situation as compared to the religious associations, help their religious and financial functioning and thus promote their freedom of religion. ...

[181] The church status of an organisation does not constitute an "acquired right" protected by the Fundamental Law in the sense that it may be reviewed and eventually withdrawn if it turns out later that conditions for its bestowal were not met. ... [I]t is a constitutional requirement that, similarly to the proceedings for the acquirement of church status, its review must also be fair and subject to a remedy.

[196] When deciding to confer church status for requesting religious communities, Parliament does not legislate but applies the law (as an "authority" in the sense of Article XXIV of the Fundamental Law), because it decides on the applicant's right in a particular case. ...

[200] The Constitutional Court established that the risk of some kind of political assessment in connection with the recognition of churches may not be excluded ...

[212] For the above reasons, the Constitutional Court holds that subsections (1) and (3) to (5) of section 14, as well as subsections (2) and (4) of section 34 of the 2011 Church Act do not meet the requirements flowing from the right to a fair trial and to a remedy and, as a consequence, the law results in the violation of the freedom of religion and the prohibition of discrimination. Therefore, the above-mentioned provisions violate the Fundamental Law.

[215] ... [F]or that reason, the Constitutional Court orders the retroactive annulment of subsections (3) to (5) of section 14 of the 2011 Church Act, as of 1 January 2012 when the regulation entered into force.

[222] As a general rule, churches registered under [the 1990 Church Act] and their subordinated independent organisations established for religious aims were transformed *ex lege* into associations by section 34 (1) (in effect between 1 January 2012 and 31 August 2012) of the 2011 Church Act.

[224] ... [The Constitutional Court] ordered, with regard to the applicants, the retroactive inapplicability of section 34 (1) (in effect between 1 January 2012 and 31 August 2012) of the 2011 Church Act."

35. Section 34 (1) of the 2011 Church Act stipulated that, as of 1 January 2012, every church and religious organisation shall be considered as an association, with the exception of those "defined in the Appendix of the Act" by Parliament. Although only this arbitrary recognition and enumeration of privileged churches was found to be unconstitutional, the Constitutional Court decided to annul the entire subsection (1) of section 34 and not only the expression "defined in the Appendix", for the sake of legal certainty.

III. MINUTES OF THE MEETINGS OF THE PARLIAMENTARY COMMITTEE FOR HUMAN RIGHTS, MINORITY, CIVIL AND RELIGIOUS AFFAIRS

36. Excerpts from the minutes of the meeting of 10 February 2012:

"CHAIRMAN [Dr T. LUKÁCS (KDNP – Christian Democratic People's Party)]: ... With the Act adopted by Parliament, freedom of religion is fully guaranteed in Hungary both as an individual and a communal freedom right. I would add that, in a sense, the freedom of communal exercise of religion has even been extended since in case of legal persons, unlike the formerly required one hundred members, today even ten members may exercise their communal rights under the law of association; associations are also entitled to one per cent donations and if they maintain institutions the State may conclude contracts with them. Thus, under the European model, "church" status has no direct bearing on freedom of religion. When we adopt this amendment entities with "church" status will cover 97 per cent of the persons who claim to be religious – I shall be able to give exact numbers when the 2011 census data have been processed. ...

There are 11 countries in Europe where "church" status is granted by a ministry or a State organ or Parliament. ... We can recommend this "church" status in good conscience. ... It does not mean, of course, that from a formal point of view other religious communities do not meet the criteria or that in another procedure further churches cannot be granted this status. ...

As it has previously been mentioned, it has been a priority concern to grant "church" status to protestant communities of international importance and to representatives in Hungary of the world religions. ... As I have said, we do not regard this matter as closed once and for all. If in the future someone can prove an important social role, membership or international significance and requests "church" status, we shall proceed according to the procedure prescribed in the law. ...

The number of those entities who requested, up until 20 December, from the Ministry of Public Administration and Justice the maintenance of their "church" status was 84 or 85. ... From among those, the number of those who certainly meet the 20

years registration criterion or have submitted a certification from their international organisation about compliance with the 100 years criterion is 34. From among those, these 13 have been selected. ...

Slovakia changed her own such law last year and recognised a total of 14 churches as "church" status came to be granted upon 20,000 members. I would add that in England and Sweden there is only one church [*sic*]. So, in Europe all sorts [of regulations] can be found. ...

Mr P. HARRACH (KDNP): ... Let me just add a sentence concerning political decisions. Political decisions are not from the devil, they are manifestations made by the State's responsible members on the basis of social considerations. Let us make it clear that the issue of authenticity may be examined neither by Parliament nor by any other political organisation since the evaluation of the relationship of God and man or of openness to transcendence does not fall within their competence. The State may only classify religious communities as organisations, that is, it may only deal with their social role. Or, to put it in a very narrow sense, with their role as institution maintainers, since this issue practically concerns subsidies granted to churches. Freedom of religion is fully safeguarded and unimpaired, and this is guaranteed under the Act, irrespective of whether the exercise of religion takes place in the form of an association or a "church". ...

CHAIRMAN: ... In Hungary the freedom of religious communities is fully safeguarded. The granting of "church" status is a separate issue almost everywhere in Europe, where in certain countries like, for example, England and Sweden – commonly referred to as democratic States – only one "church" is recognised. On the European continent mostly this two-tier system is applied. "Church" status is not a right to be guaranteed for everyone. Under Decision no. 8/1993. of the Constitutional Court the legislature may differentiate between churches on the ground of their social weight, historic role, role played in the nation and on other grounds. Exactly this is what has been done here.

Mr P. HARRACH: ... To decide on the social function of the religious communities is, however a task for Parliament, and it is a European practice."

37. Excerpts from the minutes of the meeting of 13 February 2012:

"CHAIRMAN: ... Under the adopted Act, to receive "church" status is not a right. ... The representation in Hungary of the five world religions is secured. ... The Buddhist churches concluded an agreement with each other which made interpretation much easier for us and such intent also exists in the Islamist communities. It is good because we would not be able to analyse Buddhism or Islam to such a depth as they themselves can do. ...

There are churches and religious communities which meanwhile submitted written statements to the Committee or to the Ministry of Public Administration and Justice stating that they did not wish to receive church status. Based on their statements they have not been included in this list. There is another ecclesiastical community which gave a statement to MTI [Hungarian news agency] according to which it would not request church status which, however, I cannot accept as a valid legal statement. I can only accept it if they make a statement to similar effect to the Committee or to the Ministry of Public Administration and Justice. ...

...

In 1947 legal continuity was broken in Hungary. After the entry into force of the 1947 Act and the setting up of the State Office for Church Affairs, church affairs

became totally different, with churches being run upon Moscow pattern, complying with instructions from Moscow. ...

Therefore we said that we would return to the pre-1947 situation and the present list was based on the 1895 Act of Parliament. Of course, with one exception ... this exception being – in sociological sense, in terms of membership – the third largest church today. Present-day logic is based on the premise that if we expect the – mostly – Christian churches not to be persecuted in Europe or other parts of the world, we should grant "church" status to representatives in Hungary of the great world religions. ..."

38. Excerpts from the minutes of the meeting of 14 February 2012:

"CHAIRMAN: ... As to compliance with the requirements, I wish to emphasise that in these summary proceedings where the case file of 85 churches had to be scrutinised there are, I think, some [terribly questionable] points ... which cannot be [clarified] in the present proceedings ...

Therefore it should be clear for everyone that what we wish to attain for the time being is to grant ["church" status to] authentic domestic representatives of the great world religions, while the authenticity and veracity of their certifications is still to be examined..."

IV. RELEVANT INTERNATIONAL DOCUMENTS

39. In General Comment 22 (U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994)), the United Nations Human Rights Committee stated, in so far as relevant, as follows:

"2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community. ...

4. ... [T]he practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications. ...

40. The European Commission for Democracy through Law ("Venice Commission"), in its Report on the 2011 Church Act (adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)), stated as follows:

"... 18. The Venice Commission would like to recall that the right to freedom of religion and conscience covers more elements than merely granting privileges, state subsidies and tax benefits to recognised churches. Freedom of thought, conscience and religion is one of the foundations of a "democracy society". It is so important that it cannot be derogated at all and cannot be restricted on national security grounds.

19. The freedom of thought, conscience and religion (Article 9 ECHR and 18 ICCPR), is a complex right, which is closely linked to and must be interpreted in connection with the freedom of association (Article 11 ECHR and 22 ICCPR), and the right to non-discrimination (Article 14 ECHR and 26 ICCPR). ...

28. According to Section 7.1 of the Act "A church, denomination or religious community (hereinafter referred to as "church") shall be an autonomous organisation recognised by the National Assembly consisting of natural persons sharing the same principles of faith; shall possess self-government and shall operate primarily for the purpose of practising religious activities." ...

32. Thus, the Venice Commission deems the obligation in the Act to obtain recognition by the Hungarian Parliament as a condition to establish a church as a restriction of the freedom of religion.

33. ... In the opinion of the Venice Commission, whether an obligation to have prior recognition of a two-third majority of the Hungarian Parliament in order to establish a church in Hungary may be justified in the light of international standards is questionable. ...

39. The Venice Commission has already stated in another context, that reasonable access to a legal entity status with suitable flexibility to accommodate the differing organisational forms of different communities is a core element of freedom to manifest one's religion.

40. Equally important, is that, if organised as such, an entity must be able "to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities". ...

52. However, [the membership] condition may become an obstacle for small religious groups to be recognised. The difficulty arises primarily for religious groups that are organised as a matter of theology not as an extended church, but in individual congregations. Some of these congregations may be relatively small, so that having 1,000 individuals who could sign the necessary document is difficult. During the visit to Hungary, the delegation learned that the Buddhist communities had to merge in order to reach the minimum size for the Law. Such a merger or co-operation may not always be easy for religious communities that have split sometimes centuries ago on grounds of basic questions of belief.

53. Although the Act does not explicitly require that only members of a religious community sign the document, it is clear that this condition constitutes an obstacle for small religious groups benefiting from the protection afforded by the Act.

54. With regard to membership requirements for registration purposes as such, the Venice Commission, on several occasions, has encouraged limited membership requirements. It has also, along with the Parliamentary Assembly of the Council of Europe's recommendations, called for considering equalising the minimum number of founders of religious organisations to those of any public organisations.

55. The requirement under consideration aims to only benefit from the protection afforded by the Act and does not concern the registration of religious groups itself. A minimum of 1,000 signatures out of a population of 10 Million is not excessive. The Austrian Constitutional Court, for instance, found that a higher threshold concerning memberships was not too high in the light of freedom of religion, and even accepted it as an admissible restriction under Article 9 ECHR.

56. To the extent that the signature requirement does not deprive religious groups from access to legal personality as such, the Venice Commission believes that it may not be interpreted as being in breach of Article 9 ECHR.

57. Section 14.2 of the Act imposes a duration requirement of "at least 100 years internationally or in an organised manner as an association in Hungary for at least 20 years". ...

64. It is clear to the Venice Commission that the general requirement that an association must have existed internationally for at least 100 years, or for at least 20 years in Hungary, is excessive, both with regard to the recognition of legal personality, and with regard to the other privileges granted to churches. This is hardly compatible with Articles 9 and 14 ECHR.

Consequently, the Venice Commission recommends revising the duration requirement in accordance with the recent benchmark judgment of the European Court of Human Rights. ...

70. The Venice Commission recommends deleting reference to national security in Section 14.2 and specifying with greater precision which particular law an association should comply with in order to satisfy recognition requirements. ...

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 churches. ...

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 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. ....

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. ...

90. The deprivation of the legal status of churches has to be considered as a limitation of the freedom of religion, which has to be justified in the light of the strict limitation clauses provided for in International instruments. The Venice Commission doubts that depriving churches of the legal status they enjoyed sometimes already for many years can be seen as "pressing social need" and "proportionate to the objective

pursued" in the sense of International standards, without providing reasons that can justify this deprivation.

91. It is also not clear to the Venice Commission that this deprivation can be considered "to be necessary in a democratic society, in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (Article 9.2 ECHR), or "to be necessary to protect public safety, order, health, or morals or fundamental rights and freedoms of others" (Article 18.3 ICCPR).

92. The Venice Commission recommends redrafting the Act in order to avoid a de-registration process and provisions operating retroactively unless specific reasons can justify it. It also recommends deleting the provision on forfeiture, which constitutes an undue limitation to the right to access to legal-entity status. ...

103. Finally, the deprivation of the legal status of these churches and of the rights and privileges related to that status implies moreover that churches are not treated on an equal basis. Unless there is an "objective and reasonable justification" for it, this unequal treatment has to be considered discriminatory under international standards."

41. The Venice Commission's Report on the Fourth Amendment to the Fundamental Law of Hungary (adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)) contains the following passages:

"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 Hungary, 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 ...

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".

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 practise 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'. 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'.

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."

42. In its 2004 Guidelines for Review of Legislation Pertaining to Religion and Belief (adopted by the Venice Commission at its 59th Plenary Session, (Venice, 18-19 June 2004)), the Venice Commission stated:

... "II.B.3. Equality and non-discrimination. States are obliged to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national or other origin, property, birth or other status. Legislation should be reviewed to assure that any differentiations among religions are justified by genuinely objective factors and that the risk of prejudicial treatment is minimized or totally eliminated. Legislation 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 discrimination. ...

II.F.1. ... Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organizations. The following are some of the major problem areas that should be addressed: ...

– High minimum membership requirements should not be allowed with respect to obtaining legal personality;

– It is not appropriate to require lengthy existence in the State before registration is permitted;

– Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned;

– Provisions that grant excessive governmental discretion in giving approvals should not be allowed; official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited;

– Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed...;

– Provisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities under new criteria) should be questioned.

– Adequate transition rules should be provided when new rules are introduced;

– Consistent with principles of autonomy, the State should not decide that any particular religious group should be subordinate to another religious group or that religions should be structured on a hierarchical pattern (a registered religious entity should not have veto power over the registration of any other religious entity).”

THE LAW

I. JOINDER OF THE APPLICATIONS

43. Given that the applications raise the same issue in essence, the Court decides that they should be joined under Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATIONS OF ARTICLES 9 AND 11 OF THE CONVENTION

44. The applicants complained under Article 11 – read in the light of Article 9 – that the de-registration and the discretionary re-registration of churches amounted to violations of their rights to freedom of religion and association.

45. The Court recalls that in a recent case it examined a substantially similar complaint about the refusal of re-registration of a religious organisation from the standpoint of Article 11 of the Convention read in the light of Article 9 (see *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, §§ 74 and 75, ECHR 2006-XI). The Court finds it appropriate to apply the same approach in the present case.

46. Article 9 provides as follows:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 11 provides as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the

protection of health or morals or for the protection of the rights and freedoms of others...”

47. The Government contested that argument.

A. Admissibility

48. The Government submitted several pleas for the applications to be declared inadmissible. The applicants contested these arguments.

49. In particular, the Government argued that the applicants had not pursued all available domestic remedies. Some of them had not applied for parliamentary recognition or initiated a popular initiative (*népi kezdeményezés*) to the same end. It was true that the Constitutional Court had found this remedy unconstitutional in view of the principles pronounced in the Court’s case-law on Article 6 of the Convention; however, in the Government’s view, that consideration was not sufficient to exempt the applicants concerned from attempting this remedy, which had been successful in eighteen other cases.

Moreover, the Government noted that fourteen of the applicants had pursued successful constitutional complaints challenging the 2011 Church Act, culminating in decision no. 6/2013. (III. 1.) of the Constitutional Court (see paragraphs 34 and 35 above). Therefore, those applicants which had not done so, had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention.

50. The Court notes that the Constitutional Court annulled the original form of the impugned legislation with retrospective effect. This resulted in a situation in which the applicant communities regained the formal status of churches. However, with regard to the ability of churches to receive donations and subsidies, an aspect of crucial importance from the perspective of them carrying out any societal functions they may have, the grievance has not been redressed. It follows that the constitutional complaint was not capable of entirely remedying the applicants’ grievance, whether or not they actually availed themselves of this legal avenue. Consequently, the applications cannot be rejected for non-exhaustion of this remedy.

51. Moreover, in so far as those applicants are concerned which did not meet the statutory requirements, a request for parliamentary recognition, obviously futile, cannot be regarded as an effective remedy to be exhausted in the circumstances. In any case, the question as to whether the parliamentary procedure for recognition is a legal avenue capable of providing redress for the alleged violation is closely linked to the merits of the applications and must be joined to it for joint consideration.

52. The Government moreover requested the Court to dismiss application no. 41463/12 on the ground that it was incompatible *ratione personae* with the provisions of the Convention, since the applicant, the

European Union for Progressive Judaism, an entity with its seat in London, had never been "within the jurisdiction of Hungary" within the meaning of Article 1 of the Convention (that is, it had never been registered as a church in Hungary and never received any State subsidies in that country).

The Court notes that this applicant's legal status was not affected by the entry into force of the 2011 Church Act and it is free to continue to exercise its right to freedom of religion under the same legal conditions as before. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

53. The Government also requested the Court to dismiss the applications for their being incompatible *ratione personae* with the provisions of the Convention in respect of those applicants which had availed themselves of a constitutional complaint. They could no longer be regarded as victims of a violation of their rights under the Convention, since the Constitutional Court repealed the provisions affecting the applicants' legal status (see paragraphs 17, 18, 34 and 35 above).

The Court notes that, notwithstanding the decision of the Constitutional Court, which declared unconstitutional, as of 1 January 2012, the transformation of the existing churches into associations, it has not been demonstrated that adequate redress has been provided for the applicants. It further recalls in this respect that, even in the absence of prejudice and damage, a religious association may claim to be a "victim" when the refusal of re-registration directly affected its legal position (see *Moscow Branch of the Salvation Army*, cited above, §§ 64-65); and considers that this approach is likewise applicable to the present situation pertaining to the effective de-registration of the applicants.

Consequently, the Court is satisfied that these applicants have retained their victim status and the application cannot be rejected in their respect for incompatibility *ratione personae*.

54. Moreover, the Government requested that applications nos. 70945/11, 23611/12 and 41553/12 be declared inadmissible under Article 35 § 3 (a) of the Convention for those applicants abusing the right of individual petition, since they had not submitted to the domestic courts any declarations of intention to continue their religious activities.

The Court considers that the submission of a declaration of intention to the judicial authorities was not suitable to prevent or remedy the alleged violation of the applicants' religious freedom, in that such motions had, in the circumstances, no prospect of success in regaining their original status. The failure of the applicants concerned to lodge such a declaration cannot be interpreted as an abuse of the right of individual petition.

55. The Government also contended that the applications were inadmissible *ratione materiae* with the provisions of the Convention, since the applicants' legal capacity had remained unaffected and they could

continue their religious activities as associations, despite the loss of their church status.

The Court observes that the subject matter of the case is not the applicants' legal capacity but the applicants' recognition as churches entitled to the relevant privileges. This issue falls within the scope of Articles 9 and 11 of the Convention. The autonomous existence of the applicant religious communities, and hence the collective exercise of religion, was undeniably affected by the new system of registration (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 114, ECHR 2001-XII; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 61, 31 July 2008). Therefore, it cannot be argued that the applications are incompatible *ratione materiae* with the provisions of the Convention.

56. Furthermore, the Court considers that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds, the issue of non-exhaustion of domestic remedies apart (see paragraph 51 above). They must therefore be declared admissible, with the exception of application no. 41463/12.

B. Merits

1. The parties' arguments

a. The Government

57. The Government considered that the acts and events complained of did not constitute an interference with the applicants' rights to freedom of religion and association.

58. Firstly, they noted that recognition as a church under the 2011 Church Act did not affect the various rights surrounding the freedom of religion, namely the right to freedom of conscience and religion, the right to manifest one's religion in community with others, freedom from discrimination on grounds of religion or belief, the right of parents to ensure education in conformity with their own convictions, the right to freedom of religion in education, in social care, child care and penitentiary institutions, the freedom to impart religious beliefs through the media, or the protection of personal data concerning one's religion. Contrary to the applicants' allegations, these rights, which were essential elements of the freedom of religion, were not reserved for recognised churches and their members.

59. Secondly, the Government submitted that, in contrast to cases previously examined by the Court, notably *Moscow Branch of the Salvation Army* (cited above, §§ 96-97), the legal personality of the applicant communities was not at stake in the present applications. The applicants did not contest that their legal personalities had not been removed. They had not

been liquidated and had retained the full capacity of a legal entity. Their legal personality had been transformed by virtue of law into another form without any interruption in time. Therefore, there was no interference with the applicants' right under Articles 9 and 11 in this respect either.

60. The Government further maintained that the freedom to manifest one's religion or beliefs under Article 9 did not confer on the applicant communities or their members an entitlement to secure additional funding from the State budget. Nor did it entail a right to receive State subsidies due to churches as such. Therefore the loss of such subsidies could not be regarded as an interference with the applicants' rights under Article 9 of the Convention.

61. The Government also submitted that, even if the 2011 Church Act complained of could be regarded as an interference, it was prescribed by a law adopted by a two-thirds majority of the Members of Parliament. The applicants' argument that the 2011 Church Act was invalid under public law had not been upheld by the Constitutional Court. Those provisions of the 2011 Church Act which were found unconstitutional did not affect the applicants' situation, whereas other provisions complained of by the applicants were not found unconstitutional.

62. Moreover, the alleged interference pursued the legitimate aim of protecting public order and the rights and freedoms of others. After the entry into force of Act no. CXXVI of 1996 on the Use of a Specified Amount of the Personal Income Tax in Accordance with the Taxpayer's Instruction and the 1997 Vatican Treaty regulating State financing of church activities, the 1990 Church Act had given rise to unexpected abuses which could not be prevented in the legal context determined by the 1989 Constitution. The new Act was enacted in order to put an end to the so-called "church business", in which churches were established for the sole purpose of obtaining State subsidies for maintaining institutions of social care or education, or even for personal gain, without conducting any genuine religious activities. By the end of 2011, there were, absurdly, 406 churches registered in Hungary. In light of the decreasing budgetary resources of the State and a parallel decrease in the resources available to organisations with genuine religious activities, there was a pressing social need to put an end to the abuses of church subsidies.

63. Furthermore, the on-going reform of the general system of financing social and educational institutions also required changes to the system of State financing of such institutions operated by religious communities. Accordingly, there was a pressing social need for the re-regulation of the registration of churches.

64. While retaining the principle that the State has to refrain from interfering with the religious communities' self-definition in theological terms, the 2011 Church Act defined the notion of religious activities for the purposes of recognition of churches as participants in the system of State-

church relations exclusively from a legal perspective. Similarly to the model prevailing in a number of European States, the Hungarian legislature introduced a two-tier system of legal entity status for religious communities. Self-defined religious communities were free to operate as associations in accordance with Articles 9 and 11 of the Convention, while those religious communities which wished to establish a special relationship with the State and share the social responsibilities thereof were expected to undergo an assessment of the nature of their activities by the authorities.

65. The Government argued that their approach was in conformity with the case-law of the Convention, notably in cases where the Court relied on the position of the domestic authorities in defining "religion" for the purposes of registration (see *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, § 79, ECHR 2009). Therefore, the definition of religious activities by the 2011 Church Act and the assessment of the religious nature of an organisation by the State authorities were not contrary to Article 9 of the Convention. The 2011 Church Act complied with the requirements of neutrality and impartiality since it was not based on the specificities of one particular religion and was suitable to ensure the recognition of a number of churches representing a wide range of religions and religious beliefs.

66. Prior registration as a church in Hungary should not be regarded as decisive for the recognition of the religious nature of an organisation by the authorities, since registration as a church under the 1990 Church Act had been based exclusively on the self-definition of the founders of the organisation, without any substantive assessment by the authorities. Such assessment was introduced only by the 2011 Church Act with the aim of preventing abuses resulting from this excessive deference to self-definition. The Constitutional Court, in decision no. 6/2013. (III. 1.), cited examples when the judicial authorities competent in matters of church registration under the 1990 Church Act had carried out a review of the religious nature of the activities envisaged by the statutes of the self-defined churches requesting registration; however, this review had not been systematic, there had been no legal definition of religion and religious activities, and therefore there had been a divergent judicial practice in this field. It was only this decision of the Constitutional Court which clarified that, contrary to the applicants' allegations, State authorities were not prohibited from verifying whether the stated beliefs and actual practices of a prospective or existing church were genuinely of a religious nature. On the other hand, the Constitutional Court found that further procedural guarantees should be attached to the exercise of that power by the State authorities.

67. The Government asserted that, in spite of the findings of the Constitutional Court as to the deficiencies in the procedural guarantees, the substantive assessment of the religious nature of an organisation's activities was carried out neutrally and impartially under the 2011 Church Act. The legislature originally intended to obtain an impartial opinion from an

independent institution, the Hungarian Academy of Sciences, similarly to the procedure of recognition of national minorities. When the Academy refused to provide the decision-makers with its expertise in the relevant fields, the parliamentary committee dealing with religious affairs decided to seek guidance from other independent and reliable experts, and based its decision as to whether the teachings of a candidate church were of a religious nature on the presence or absence of its international recognition. Having regard to the fact that the Court also referred to the European consensus as a guiding principle in the definition of religion, this approach by the Hungarian authorities could not be regarded as arbitrary or falling outside their margin of appreciation.

68. As regards the proportionality of the measures applied to achieve the above aims, the Government were of the opinion that the method of "re-registration" as provided by the 2011 Church Act was the least restrictive measure possible and therefore proportional to the aim pursued. It did not place a disproportionate burden on religious organisations: they were required only to submit a simple declaration of intent to continue their religious activities and to make some minor adjustments to their statutes in order to retain their legal personality. They also remained entitled to re-claim their status as a church in a simple procedure of recognition by Parliament.

b. The applicants

69. The applicants submitted that the loss of their proper church status due to the 2011 Church Act had constituted an interference with their freedom of religion. The proper functioning of religious communities necessitated the enjoyment of special and adequate legal status, that is, church status in a legal sense. In Hungary, religious communities had had the reasonable possibility to be registered as churches since 1990, and the applicants had indeed enjoyed this status. The fact that on 1 January 2012 the vast majority of churches (including them) had lost their proper church status and had been forced to transform into ordinary civil associations or cease to exist legally had constituted in itself an interference with their freedom of religion, all the more so since the loss of church status had deprived them of privileges which had facilitated their religious activities. The fact that those privileges were guaranteed henceforth only to churches recognised by Parliament, had placed them in a situation which was substantially disadvantageous vis-à-vis those churches.

70. The applicants claimed that the right to freedom of religion encompassed the expectation that members would be allowed to associate freely without arbitrary State intervention. Therefore, the State was prohibited from regulating State-church relationship arbitrarily; any interference in that sphere must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. The requirements related to

the registration of churches must be objective and reasonable, because in this question the State must remain neutral and impartial. Consequently, if a religious community met the legal requirements, it must be entitled to be registered as a church, and the registration procedure must guarantee a fair procedure.

71. However, the conditions and process of their re-registration as churches not only became stricter in comparison to the system of the 1990 Church Act, but unreasonably burdensome and unfair, allowing Parliament to reject arbitrarily, based on political considerations, their attempts to re-register.

72. As regards the condition of an established existence for a long time, they admitted to the objectivity of that condition, nonetheless arguing that this criterion was unreasonable. They pointed out that the Communist regime had ended only hardly more than twenty years ago in Hungary. Prior to that, it had hardly been possible for new religious movements to form and exist in the country. Consequently, virtually all new religious movements were excluded from the advantages of becoming a "church", in breach of Article 9.

73. In addition, the 2011 Church Act included less objective criteria as well, notably that the operation of the religious community should not pose any threat to national security and that its principles should not violate the right to health, the protection of life or human dignity. The applicants' re-registration requests had been dismissed, although there had been no evidence that they had posed any threat to the State or public order.

74. In view of the above, the applicants underlined that, under the 2011 Church Act, a religious community could be denied registration even if it met the applicable objective criteria, which demonstrated arbitrariness.

2. The Court's assessment

a. General principles

75. The Court reiterates that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. While religious freedom is primarily a matter of individual conscience, it also implies freedom to "manifest [one's] religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares. Bearing witness in words and deeds is bound up with the existence of religious convictions (see *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999–I).

76. The Court does not deem it necessary to decide *in abstracto* whether acts of formal registration of religious communities constitute an interference with the rights protected by Article 9 of the Convention.

However, it emphasises that the State has a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs (see *Metropolitan Church of Bessarabia*, cited above, § 116; *Religionsgemeinschaft der Zeugen Jehovas*, cited above, § 97). Facts demonstrating a failure by the authorities to remain neutral in the exercise of their powers in this domain must lead to the conclusion that the State interfered with the believers' freedom to manifest their religion within the meaning of Article 9 of the Convention. The Court recalls that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush*, cited above, §§ 77-78). Indeed, the State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see *Metropolitan Church of Bessarabia*, cited above, § 123).

77. In this context, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. The Court recalls its findings in this respect as pronounced in the case of *Hasan and Chaush* (cited above, § 62):

> "The Court recalls that religious communities traditionally and universally exist in the form of organised structures. They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one's religion, protected by Article 9 of the Convention.
>
> Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable".

78. The Court further reiterates that the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. The Court has consistently held the view that a refusal by the domestic authorities to grant legal-entity status to an

association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52 *et passim*, ECHR 2004-I; and *Sidiropoulos and Others v. Greece*, 10 July 1998, § 31 *et passim*, *Reports of Judgments and Decisions* 1998-IV). States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos*, cited above, § 40). Where the organisation of the religious community was at issue, a refusal to recognise it has also been found to constitute interference with the applicants' right to freedom of religion under Article 9 of the Convention (see *Metropolitan Church of Bessarabia*, cited above, § 105).

79. The State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a "pressing social need"; thus, the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Gorzelik*, cited above, §§ 94-95, with further references).

80. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports* 1998-I; and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 49, ECHR 2005-I (extracts)).

b. Application of those principles to the present case

i. Whether there was an interference

81. The Court observes that the applicant communities had lawfully existed and operated in Hungary as churches registered by the competent court in conformity with 1990 Church Act. The 2011 Church Act changed the status of all previously registered churches, except those recognised

churches listed in the Appendix to the 2011 Church Act, into associations. If intending to continue as churches, religious communities were required to apply to Parliament for individual recognition as such.

82. The Court has found in two previous cases (see *Moscow Branch of the Salvation Army*, cited above, § 67; and *Church of Scientology Moscow v. Russia*, no. 18147/02, § 78, 5 April 2007) that the refusal of re-registration disclosed an interference with a religious organisation's right to freedom of association and also with its right to freedom of religion.

83. The Court considers that the measure in question effectively amounted to de-registration of the applicants as churches and constituted an interference with their rights enshrined under Articles 9 and 11. It must therefore determine whether the interference satisfied the requirements of paragraph 2 of those provisions, that is, whether it was "prescribed by law", pursued one or more legitimate aims and was "necessary in a democratic society" (see, among many authorities, *Metropolitan Church of Bessarabia*, cited above, § 106).

84. The State's power in this field must be used sparingly; and exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. In this connection, the Court recalls its position in the case of *Gorzelik* (cited above, §§ 94-95) and *Jehovah's Witnesses of Moscow v. Russia*, (no. 302/02, § 100, 10 June 2010). The burden of proof to demonstrate the presence of compelling reasons is on the respondent Government (see, *mutatis mutandis*, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013). It is therefore for the Government to show in the instant case that it was necessary, in pursuit of the legitimate aims which they relied on, to bar already recognised churches from maintaining their status in regard to confessional activities, that is, manifestation of religion.

ii. Prescribed by law

85. This issue has not been in dispute between the parties. The Court is satisfied that the interference complained of was prescribed by law, namely by the 2011 Church Act.

iii. Legitimate aim

86. The Government submitted that the impugned interference, if any, could be regarded as pursuing the legitimate aims of protection of the rights and freedoms of others as well as the protection of public order, within the meaning of Article 9 § 2, namely, by eliminating entities claiming to pursue religious ends but in fact only striving for financial benefits. The applicants contested this view.

The Court considers that the measure in question can be considered to serve the legitimate of aim of preventing disorder and crime, for the

purposes of Article 11 § 2, notably by attempting to combat fraudulent activities.

iv. Necessary in a democratic society

α. Width of margin of appreciation

87. With regard to the Government's reliance on the principle pronounced in the case of *Kimlya* (loc. cit.) (see paragraph 65 above), according to which the disputed nature of Scientology teachings resulted in deference to the national assessment thereof, the Court would note that, in that case, the lack of European consensus was considered to be indicated by the fact that, in various countries, the authorities had initiated proceedings against the representatives of that religious group. For the Court, these actions demonstrated the presence of an actual official dispute about the religious nature of the teaching. It is in this particular context that the disputed character of a purported religion may entail a wide margin of appreciation on the State's side in assessing the teachings of a religion.

88. However, the Court is of the view that this approach cannot automatically be transferred to other situations where a religious group is simply not recognised legally as a proper church in one or more European jurisdictions. This mere absence of apparent consensus cannot give rise to the same degree of deference to the national assessment, especially when it comes to the framework of organisational recognition of otherwise accepted religions (formerly fully-fledged churches), rather than to the very acceptance as religion of a certain set of controversial teachings. To hold otherwise would mean that non-traditional religions could lose the Convention's protection in one country essentially due to the fact that they were not legally recognised as churches in others. This would, however, render illusory to a large extent the guarantees afforded by Articles 9 and 11 in terms of guaranteeing proper organisational forms for religions.

89. The Court therefore considers that although the States have a certain margin of appreciation in this field, this cannot extend to a total deference to the national assessment of religions and religious organisations, and the applicable legal solutions enacted in a Member State must be in compliance with the Court's case-law and subject to the Court's scrutiny.

β. Positive obligations

90. The Court considers that there is a positive obligation incumbent on the State to put in place a system of recognition which facilitates the acquisition of legal personality by religious communities. This is a valid consideration in terms of defining the notions of religion and religious activities as well. For the Court, those definitions have direct repercussions on the individual's exercise of the right to freedom of religion, and are capable of restricting the latter if the individual's activity is not recognised

as a religious one. According to the position of the United Nations Human Rights Committee (see paragraph 39 above), such definitions cannot be construed to the detriment of non-traditional forms of religion – a view which the Court shares. In this context, it recalls that the State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see *Metropolitan Church of Bessarabia*, cited above, §§ 118 and 123, and *Hasan and Chaush*, cited above, § 62). However, the present case does not concern the definition of religion as such in Hungarian law.

91. The Court further considers that there is no right under Article 11 in conjunction with Article 9 for religious organisations to have a specific legal status. Articles 9 and 11 of the Convention only require the State to ensure that religious communities have the possibility of acquiring legal capacity as entities under the civil law; they do not require that a specific status under the public law be accorded to them.

92. The distinctions in the legal status granted to religious communities must not portray those adherents in an unfavourable light in public opinion, the latter being sensitive to the official evaluation of a religion – and of the church incarnating it – afforded by the State in public life. In the traditions of numerous countries, the denomination as a church and its State recognition are the key to social reputation, without which the religious community may be seen as a suspicious sect. In other words, the non-recognition of a religious community as a church may amplify prejudices against the adherents of such, often smaller communities, especially in case of religions with new or unusual teachings.

93. When assessing the difference in the legal status and resulting treatment between religious communities in terms of co-operation with the State (where the State, within its margin of appreciation chooses a constitutional model of co-operation), the Court further notes that these distinctions have an impact on the community's organisation and thereby on the practice of religion, individually or collectively. Indeed, religious associations are not merely instruments for pursuing individual religious ends. In profound ways, they provide context within which individual self-determination unfolds and serve pluralism in society. The protection granted to freedom of association to believers enables individuals to follow collective decisions to carry out common projects dictated by shared beliefs.

94. The Court cannot overlook the risk that the adherent of a religion may feel no more than tolerated – but not welcome – if the State refuses to recognise and support his or her religious organisation, whilst extending the same to other denominations. This is so because the collective practice of religion in the form dictated by the tenets of that religion can be quintessential for the unhampered exercise of the right to freedom of religion. In the Court's eyes, such a situation of perceived inferiority goes to the freedom of manifesting one's religion.

γ. Deregistration of the applicant religious communities

95. The Court notes that the immediate effect of the enactment of the 2011 Church Act was that the applicant entities, formerly full-fledged churches capable of benefiting from privileges, subsidies and donations, lost that status and were reduced at best to associations, largely lacking those possibilities. It is true that the Constitutional Court's subsequent decision nominally undid this interference, and in the Government's submissions, this element provided full redress for the alleged grievance; however, the applicants argued that they could never regain their former status unimpaired.

96. When assessing this measure of effective deregistration of the applicant communities, it is of importance that they had previously been recognised as churches by the Hungarian authorities under a legislation which had been in force at the time when Hungary adhered to the Convention system and remained so until the entry into force of the 2011 Church Act.

Moreover, the Court notes, while recognising the Government's legitimate concern as to the problems related to the large number of churches formerly existing in the country (see paragraph 62 above), that it has not been demonstrated by the Government 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 – were not available.

97. The Court cannot but observe that the outcome of the impugned legislation was the stripping of existing and operational churches from their legal framework, and this sometimes with far-reaching material and reputational consequences.

δ. Possibilities of re-registration of the applicant communities

98. The Court notes that under the legislation in force, there is a two-tier system of church recognition in place in Hungary. A number of churches, the so-called incorporated ones, enjoy full church status including entitlement to privileges, subsidies and tax donations. The remaining religious associations, although free to use the label "church" after August 2013, are in a much less privileged situation, with only limited possibilities to transit from this category to that of incorporated churches. The applicants in the present case, formerly fully qualified churches, now belong to the second group, with seriously diminished rights and material possibilities to manifest their religions, as opposed to either their former status or the presently incorporated churches.

99. The Court notes the Government's arguments which seem to focus on the one hand, on the feasibility of such a transit, and, on the other hand, on the reasonableness of the conditions thereof, in particular, the length of

existence and minimum membership as objective criteria and absence of threat to national security as ultimately decided by Parliament.

100. As to the two-tier system of church recognition, the Court is satisfied that such a scheme may fall as such within the States' margin of appreciation (see *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 138, ECHR 2013 (extracts)). Nevertheless, such a scheme normally belongs to the historical-constitutional traditions of those countries which sustain it, and a State-church system may be considered compatible with Article 9 of the Convention in particular if it is part of a situation pre-dating the Contracting State's ratification of the Convention (see *Darby v. Sweden*, no. 11581/85, Report of the Commission, 9 May 1989, § 45, Series A no. 187).

For example, the Court accepted that additional funding from the State budget to the State Church does not violate the Convention, in view, among others, of the fact that the employees of the State Church were civil servants with rights and obligations as such with regard to the general public, and not only with regard to members of their congregations (see *Ásatrúarfélagið v. Iceland* (dec.), no. 22897/08, § 34, 18 September 2012). On a more general note, the Court would add that the funding of churches and other material or financial benefits granted to them, while not being incompatible with the Convention, must not be discriminatory or excessive, that is, clearly disproportionate to those received, for comparable activities, by other organisations in a given society.

101. However, in the present case, the Court finds that the Government have not adduced any convincing evidence to demonstrate that the list of the incorporated churches as contained in the valid Appendix of the 2011 Church Act reflects Hungarian historical tradition fully, in that it does not encompass the applicant religious communities and can be understood to look back to the 1895 state of affairs (see the excerpts of minutes of the related discussion of the competent parliamentary committee in paragraph 37 above) in disregard of more recent historical developments.

102. The Court notes that the decision on recognition of incorporated churches lies with Parliament, an eminently political body, which needs to adopt those decisions with a two-thirds majority. The Venice Commission observed that the required votes are evidently dependent on the results of elections (see paragraph 40 above, in point 76). In this manner, the granting or refusal of church recognition may be related to political events or situations. This scheme inherently carries with it the disregard of neutrality and the peril of arbitrariness. A situation in which religious communities are reduced to courting political parties for their favourable votes is irreconcilable with the State's neutrality requisite in this field.

103. The Court considers that the applicant religious communities cannot reasonably be expected to submit to a procedure devoid of the guarantees of objective evaluation in a fair procedure by a non-political

body. Their failure to avail themselves of this legal avenue cannot therefore result in the inadmissibility of their applications for non-exhaustion of domestic remedies, especially if the respective applicants could not objectively meet the requirements of time of existence and volume of membership.

The Government's related objection (see paragraph 49 above) invoking non-exhaustion of domestic remedies must therefore be dismissed.

104. Quite apart from the re-registration being potentially tainted by political bias, the Court has found that the refusal of registration for a failure to present information on the fundamental principles of a religion may be justified in the particular circumstances of the case by the necessity to determine whether the denomination seeking recognition presented any danger for a democratic society (see *Cârmuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* (dec.), no. 12282/02, 14 June 2005). However, in the present case, the Court observes that the Government gave no reason for the requirement of scrutinising afresh already active churches from the perspective of dangerousness for society, let alone verifying the contents of their teachings, as required implicitly under the 2011 Church Act (see section 14, as amended, in paragraphs 29 and 32 above). Nor did they demonstrate any element of actual danger on the applicant entities' side (cf. *Church of Scientology Moscow*, cited above, § 93). The Court notes that by the material time the applicants had lawfully operated in Hungary as religious communities for several years. There is no evidence before the Court that during this time any procedure has been put in place by the authorities to challenge the existence of the applicants, notably on grounds of their operating unlawfully or abusively. The reasons for requiring their re-registration should have therefore been particularly weighty and compelling (see *Church of Scientology Moscow*, cited above, § 96; and *Moscow Branch of The Salvation Army*, cited above, § 96). In the present case no such reasons have been put forward by the domestic authorities.

105. However, even assuming that there were such weighty and compelling reasons, the Court cannot but conclude that no fair opportunity (see *Religionsgemeinschaft der Zeugen Jehovas*, cited above, § 92) has been offered to the applicant religious groups to obtain the level of legal recognition sought, notably in view of the political nature of the procedure.

ε. Possibilities of the applicant communities to enjoy material advantages to manifest religion and co-operate with the State in that regard

106. The Court recalls that the freedom to manifest one's religion or beliefs under Article 9 does not confer on the applicant associations or their members an entitlement to secure additional funding from the State budget (see *Ásatrúarfélagið*, cited above, § 31), but subsidies which are granted in a different manner to various religious communities – and thus, indirectly,

to various religions – call for the strictest scrutiny (see, *mutatis mutandis*, *Gorzelik*, cited above, § 95).

107. The Court has already recognised that privileges, in particular in the field of taxation, obtained by religious societies facilitate their pursuance of religious aims (see *Association Les Témoins de Jéhovah v. France*, no. 8916/05, §§ 49, 52-53, 30 June 2011) and that therefore there is an obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral (see *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, cited above, § 92) in the exercise of their powers in the domain of allocating these resources and granting these privileges. Where in pursuit of its perceived positive obligations in regard to Articles 9 and 11, the State has voluntarily decided to provide rights to subsidies and other advantages to religious organisations – those rights thus falling within the wider ambit of those Convention articles – it cannot take discriminatory measures in the granting of those benefits (see, *mutatis mutandis*, *E.B. v. France* [GC], no. 43546/02, §§ 48-49, 22 January 2008; *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 58, 9 December 2010). Similarly, if the State decides to reduce or withdraw certain advantages due to religious organisations, such a measure cannot be discriminatory, either.

108. In the Court's view, States have considerable liberty in choosing the forms of co-operation with the various religious communities, especially since the latter differ to a large extent from each other as to their organisation, volume of membership and activities flowing from their respective teachings. This is particularly so in selecting the partners with which the State intends to collaborate in certain activities. The above prerogative of the State is even more preeminent when it comes to public, societal tasks undertaken by religious communities but not directly linked to their spiritual life (that is, not related to, for example, charitable activities flowing from religious duties). In this context, States enjoy a certain margin of appreciation when shaping collaboration with religious communities. At this juncture, the Court notes the particular context of Hungarian State-church relations, in particular, that Hungarian churches were subjected to measures of deprivation of rights after 1945 (see the two Preambles quoted in paragraph 33 above).

109. In its choice of partners for outsourcing public-interest tasks the State cannot discriminate among religious communities. The neutrality of the State requires that, in case the State chooses to co-operate with religious communities, the choice of partners be based on ascertainable criteria, for example, as to their material capacities. Distinctions on the State's side in recognition, partnership and subsidies cannot produce a situation in which the adherents of a religious community feel second-class citizens, for religious reasons, on account of the less favourable State stance on their community.

110. The Court observes that under Hungarian law, incorporated churches enjoy preferential treatment, in particular in the field of taxation and subsidies (see above section 20 in paragraph 32 as well as paragraph 33). The advantage obtained by incorporated churches is substantial and facilitates their pursuance of religious aims by virtue of their special organisational form.

111. For the Court, the freedom afforded to States in regulating their relation to churches includes the possibility of reshaping such privileges by legislative measures. However, this freedom cannot extend so far as encroaching upon the neutrality and impartiality required of the State in this field.

In the present case, the withdrawal of benefits (entailed by deregistration of churches and consequent non-granting of the status of incorporated church) concerned only certain denominations, including the applicants. It is true that the applicant communities do not seem to fulfil the joint criteria put in place by the lawmaker, notably as to the minimum membership and length of existence. These conditions have arguably placed the applicants, some of whom are novel and/or small communities, in a disadvantageous situation, at odds with the requisite neutrality and impartiality. As regards the question of duration of the religious groups' existence, the Court accepts that the prescription of a reasonable period might be necessary in the case of newly established and unknown religious groups. But the same is hardly justified for religious groups established once confessional life became unhampered after the end of the Communist regime in Hungary, which must be familiar to the competent authorities by now – whilst just falling short of the existence requirement. In this connection the Court notes the Venice Commission's view, according to which the relevant periods are excessive (see paragraph 40 above).

112. The Court finds no indication that the applicants are prevented from practising their religion as legal entities, that is, as associations, which secures their formal autonomy vis-à-vis the State. Nevertheless, under the legislation in force, certain religious activities performed by churches are not available to the religious associations, which for the Court has a bearing on the latter's right to collective freedom of religion. The Court notes in this connection that, in decision no. 6/2013. (III. 1.), the Constitutional Court identified, in a non-exhaustive list, eight privileges only due to churches (see points 158 to 167 of the Decision in paragraph 34 above). In particular, only incorporated churches are entitled to the one per cent of the personal income tax earmarked by believers and the corresponding State subsidy. These sums are intended to support faith-related activities. For this reason the Court finds that such differentiation does not satisfy the requirements of State neutrality and is devoid of objective grounds for the differential treatment. Such discrimination imposes a burden on believers of smaller religious communities without an objective and justifiable reason.

113. In this connection, the Court would add that wherever the State may, in conformity with Articles 9 and 11, legitimately decide to retain a system where the State is constitutionally mandated to adhere to a particular religion (see *Darby*, cited above), as in some European countries, and it provides State benefits only to some religious entities and not to others in the furtherance of legally prescribed public interests, this must be done on the basis of reasonable criteria related to the pursuance of public interests (see, for example, *Ásatrúarfélagið*, cited above).

114. In view of these considerations, the Court finds unnecessary the examination of possible discrimination in regard to the operation of cemeteries, religious publications, production and selling of religious objects, which are often related to religious practice, or the issues related to differences in the possibility of teaching religion, employment or co-operation with the State in public-interest activities.

ζ. Conclusion

115. The Court concludes that, in removing the applicants' church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure, whose justification is open to doubt as such, and finally, in treating the applicants differently from the incorporated churches not only in the possibilities of cooperation but also in securing benefits for the purposes of faith-related activities, the authorities neglected their duty of neutrality vis-à-vis the applicant communities. These elements, jointly and severally, enable the Court to find that the impugned measure cannot be said to correspond to a "pressing social need".

There has therefore been a violation of Article 11 of the Convention read in the light of Article 9.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 9 AND 11

116. The applicants further complained under Article 14 of the Convention, read in conjunction with Articles 9 and 11, that they had been discriminated against on account of their position as a religious minorities.

Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

117. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its

Protocols has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III; *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45).

118. In the circumstances of the present case the Court considers that the inequality of treatment, of which the applicants claimed to be a victim, has been sufficiently taken into account in the above assessment that led to the finding of a violation of substantive Convention provisions (see, in particular, paragraph 115 above). It follows that – although this complaint is also admissible – there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see *Metropolitan Church of Bessarabia*, cited above, § 134; *Church of Scientology Moscow*, cited above, § 101).

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 READ ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

119. In application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12 and 41463/12, the applicants further complained under Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention, about the loss of State subsidies due to the loss of their former church status.

Article 1 of Protocol No. 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties." ...

120. The Government contested that argument.

121. The Court considers that the problem of access to State funds due to churches is to a large extent identical with the issues examined in the context of Articles 9 and 11 of the Convention. The applicant associations' frustrated privileges have been sufficiently taken into account in that context (see paragraphs 106 to 115 above), all the more so since the pecuniary claims the applicants made under this head are not different from their Article 41 claims submitted in respect of the alleged violations of Articles 9

and 11 of the Convention. It follows that – although these complaints are also admissible – there is no cause for a separate examination of the same facts from the standpoint of Article 1 of Protocol No. 1 read alone or in conjunction with Article 14 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

122. The applicants complained that the procedure in regard to the de-registration and re-registration of their entities as churches was unfair, in breach of Article 6 § 1 of the Convention.

Article 6 § 1 of the Convention provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

123. The Court considers that, in the light of its findings concerning Articles 11 and 9 of the Convention (see paragraph 115 above), it is not necessary to examine separately either the admissibility or the merits of this complaint.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

124. The applicants also complained that there was no effective remedy available to them against the legislation in question, in breach of Article 13 of the Convention.

The Court reiterates that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention (see, among other authorities, *Vallianatos*, cited above, § 94; *Roche v. the United Kingdom* [GC], no. 32555/96, § 137, ECHR 2005-X; *Paksas v. Lithuania* [GC], no. 34932/04, § 114, ECHR 2011). In the instant case, the applicants' complaint under Article 13 is at odds with this principle. Consequently, this complaint is manifestly ill-founded and as such must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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."

126. The applicants claimed the following sums in respect of pecuniary damage:

(i) in application no. 23611/12: *Evangéliumi Szolnoki Gyülekezet Egyház* – 33,579,732 Hungarian forints (HUF) (approximately 111,900 euros (EUR)); Mr Soós – a monthly sum of HUF 159,080 (EUR 530) from 29 February 2012 until the decision of the Court;

(ii) in application no. 26998/12: *Budapesti Autonóm Gyülekezet* – HUF 27,225,032 (EUR 90,750); Mr Görbicz – a monthly sum of HUF 160,000 (EUR 530) from 1 June 2012 until the decision of the Court;

(iii) in application no. 41150/12: *Szim Salom Egyház* – HUF 96,965,719 (EUR 323,200);

(iv) in application no. 41155/12: *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* – HUF 50,653,431 (EUR 168,850);

(v) in application no. 54977/12: *Magyarországi Evangéliumi Testvérközösség* – HUF 1,461,192,932 (EUR 4,710,000);

(vi) in application no. 41553/12:

– *ANKH Az Örök Élet Egyháza* – HUF 2,491,432 (EUR 8,300);

– *Árpád Rendjének Jogalapja Tradicionális Egyház* – HUF 3,415,725 (EUR 11,400);

– *Dharmaling Magyarország Buddhista Egyház* – HUF 10,261,637 (EUR 34,200);

– *Fény Gyermekei Magyar Esszénus Egyház* – HUF 8,855,523 (EUR 29,500);

– *Mantra Magyarországi Buddhista Egyháza* – HUF 18,203,096 (EUR 60,700);

– *Szangye Menlai Gedün, a Gyógyító Buddha Közössége Egyház* – HUF 2,099,453 (EUR 7,000);

– *Univerzum Egyháza* – HUF 5,665,877 (EUR 18,900);

– *Usui Szellemi Iskola Közösség Egyház* – HUF 114,822,096 (EUR 382,750);

– *Út és Erény Közössége Egyház* – HUF 4,937,194,474 (EUR 16,457,300);

These sums allegedly correspond in essence to the tax donations and the State subsidies lost or to be lost in the future, in various ways, on account of the impugned legislation. In respect of Mr Soós and Mr Görbicz, the claims relate to their lost remunerations as ministers.

127. In respect of non-pecuniary damages, the applicants claimed the following sums:

(i) *Magyar Keresztény Mennonita Egyház* (no. 70945/11), *Evangéliumi Szolnoki Gyülekezet Egyház* (no. 23611/12), *Budapesti Autonóm Gyülekezet* (no. 26998/12), *Szim Salom Egyház* (no. 41150/12), *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* (no. 41155/12) and *Magyarországi Biblia Szól Egyház* (no. 56581/12): EUR 70,000 each;

(ii) Mr Izsák-Bács (no. 70945/11), Mr Soós (no. 23611/12), Mr Görbicz (no. 26998/12), Mr Guba (no. 41150/12) and Ms Bruck (no. 41155/12): EUR 30,000 each;

(iii) in application no. 41553/12: EUR 100,000 for each applicant.

128. In respect for the costs and expenses incurred before the Court, the applicants claimed the following sums:

(i) in application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12 and 56581/12, the applicants claimed, jointly, EUR 41,910 which sum corresponds to 165 hours of legal work billable by their lawyer at an hourly rate of EUR 200 plus VAT;

(ii) in application no. 54977/12, the applicant claimed EUR 5,250 for 35 hours of legal work billable by its lawyer at an hourly rate of EUR 150 plus VAT;

(iii) in application no. 41553/12, the applicants claimed, jointly, EUR 18,000, which sum corresponds to 120 hours of legal work billable by their lawyer at an hourly rate of EUR 150 plus VAT.

129. The Government contested these claims as excessive.

130. The Court considers that in respect of the claims of non-pecuniary damage of Mr Izsák-Bács (no. 70945/11), Mr Soós (no. 23611/12), Mr Görbicz (no. 26998/12), Mr Guba (no. 41150/12) and Ms Bruck (no. 41155/12), the finding of a violation constitutes sufficient just satisfaction.

131. The Court further considers that the remaining questions of application of Article 41 are not ready for decision, especially in view of the complex scheme of material advantages which the applicants claimed to have lost. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

132. Accordingly, the Court reserves this question and invites the Government and the applicants to notify it, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach.

FOR THESE REASONS, THE COURT,

1. *Joins* the applications;

2. *Declares*, unanimously, inadmissible application no. 41463/12;

3. *Joins* the Government's objection about the exhaustion of domestic remedies to the merits of the case and *dismisses* it, unanimously;

4. *Declares*, unanimously, admissible the remaining applicants' complaints under Article 11 in the light of Article 9, read alone and in conjunction

with Article 14, as well the complaints under Article 1 of Protocol No. 1, read alone and in conjunction with Article 14;

5. *Declares*, unanimously, inadmissible the remaining applicants' complaints under Article 13 of the Convention;

6. *Holds*, by five votes to two, that there has been a violation of Article 11 read in the light of Article 9 of the Convention;

7. *Holds*, by five votes to two, that there is no need to examine separately the complaints under Article 14 in conjunction with Articles 11 and 9 of the Convention;

8. *Holds*, by six votes to one, that there is no need to examine separately the complaints under Article 1 of Protocol No. 1 read alone or in conjunction with Article 14 of the Convention;

9. *Holds*, by five votes to two, that there is no need to examine separately the admissibility or the merits of the complaints under Article 6 § 1 the Convention;

10. *Holds*, by five votes to two, that the finding of a violation constitutes sufficient just satisfaction in respect of the claims of non-pecuniary damage of Mr Izsák-Bács (no. 70945/11), Mr Soós (no. 23611/12), Mr Görbicz (no. 26998/12), Mr Guba (no. 41150/12) and Ms Bruck (no. 41155/12);

11. *Holds*, by five votes to two, that, the remaining questions of application of Article 41 are not ready for decision and accordingly,
(a) *reserves* the said questions;
(b) *invites* the Government and the applicants to notify the Court, within six months from the date of which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach;
(c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 8 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Spano joined by Judge Raimondi is annexed to this judgment.

G.R.A.
S.H.N.

DISSENTING OPINION OF JUDGE SPANO JOINED BY JUDGE RAIMONDI

I.

1. Having peeled away the layers of perceived factual complexity in this case, the main elements that remain are, in essence, the following.

2. During the Communist era, religious entities in Hungary were deprived of their property in accordance with Communist political doctrine regarding the practice of religion. After the fall of Communism in 1989, the State decided to provide subsidies in return for previously confiscated church properties and to enter into extensive collaboration with certain well-established churches. Also, flexible registration requirements were adopted under the 1990 Hungarian Church Act, applicable to newly established churches. Churches registered under that Act were provided with material benefits from the State budget in the form of direct revenue from taxation and other indirect budgetary means.

3. The flexible registration framework and State-church collaboration scheme under the 1990 Church Act had the consequence of creating a vast system of associative religious activity. By 2011, 406 religious entities had been registered in Hungary, the majority of them being partly financed, directly or indirectly, by the State.

4. Seeking to respond to this situation, the Government adopted the 2011 Church Act, which in effect brought the previous system to an end, reclassifying all registered religious entities as either *incorporated churches* or *organisations performing religious activities*; the former still received material benefits from the State budget, whilst the latter were no longer recipients of such benefits. The religious entities, which were required to apply for enhanced status as incorporated churches for the purposes of receiving material benefits from the State, did not however lose their legal personality, nor were they under any threat of being dissolved as such unless they showed no interest in continuing their activities under the new legislation.

5. As I will explain more fully below, I am unable to agree with the Court that there has been interference with the applicants' rights for the purposes of Articles 9 and 11 of the Convention, as found by the majority. Today's judgment enlarges the scope of Article 9, taken alone and in conjunction with Article 11, as regards associative religious activity, to an extent that conforms neither with the text or purpose of these provisions nor with their development in the case-law of this Court. I therefore respectfully dissent.

II.

6. Article 9 § 1 of the Convention provides, expressly, that the right to freedom of religion includes "freedom to change [one's] religion or belief

and freedom, either alone or in community with others and in public or private, to manifest [one's] religion or belief, in worship, teaching, practice and observance". As is clear from this text, the freedom *to manifest* one's religion or belief forms the core of the right under Article 9. The concept of *manifestation* is elaborated upon further in the text, which states that it includes the freedom to *worship*, *teach*, *practice* or *observe* one's religion or belief. To be considered a *manifestation* in this sense, the act must thus be closely connected to the belief. Any State measure that impedes, directly or indirectly, the ability of an individual, whether alone or in community with others, to manifest his or her religion or belief in the ways espoused in Article 9 § 1 will constitute interference with that freedom and must be justified under paragraph 2 of the same Article. Conversely, if an individual can, without undue hardship or inconvenience, manifest his or her religion or belief in spite of the measure alleged to constitute interference, no Article 9 issue arises in principle.

7. Since religious communities traditionally exist in the form of organised structures, Article 9 of the Convention has been interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. The autonomous existence of religious communities is thus considered indispensable for pluralism in a democratic society and an issue at the very heart of the protection which Article 9 affords (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI, and *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 61, 31 July 2008).

8. The Court has consistently held that a refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to interference with the applicants' exercise of their right to freedom of association (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52 et passim, 17 February 2004; *Sidiropoulos and Others v. Greece*, 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 31 et passim; and *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 62). Where the organisation of the religious community was at issue, a refusal to recognise it has also been found to constitute interference with the applicants' right to freedom of religion under Article 9 of the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 105, ECHR 2001-XII).

9. In addition to the guarantees of associative religious freedom under Article 9, interpreted in the light of Article 11 of the Convention, the right to freedom of religion excludes, in principle, any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush*, cited above, § 78). The State thus has a duty under Article 14 of the Convention to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and

beliefs (see *Metropolitan Church of Bessarabia and Others*, cited above, § 116; *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 97; and *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 88, 9 December 2010). The obligation under Article 9, incumbent on the State's authorities, to remain neutral in the exercise of their powers in the religious domain, and the requirement under Article 14 not to discriminate on grounds of religion, require that if a State sets up a system for granting material benefits to religious groups, for example through the taxation system, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner on objective and reasonable grounds (see, *mutatis mutandis*, *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 92, and *Ásatrúarfélagið v. Iceland,* no. 22897/08, § 34, 18 September 2012).

III.

10. In paragraph 81, the majority observes that the applicant communities had lawfully existed and operated in Hungary as churches registered by the competent court in conformity with the 1990 Church Act. The 2011 Church Act "changed the status of all previously registered churches, except those recognised churches listed in the Appendix to the 2011 Church Act, into associations. If intending to continue as churches, religious communities were required to apply to Parliament for individual recognition as such".

11. The majority then refers, in paragraph 82, to two previous cases of the Court (*Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 67, ECHR 2006-XI, and *Church of Scientology Moscow v. Russia*, no. 18147/02, § 78, 5 April 2007) where the "refusal of registration" disclosed interference with a religious organisation's right to freedom of association and also with its right to freedom of religion. On this basis, the Court concludes in paragraph 83 that the "measure in question effectively amounted to de-registration of the applicants as churches and constituted an interference with their rights enshrined under Articles 9 and 11".

IV.

12. In the light of the text, object and purpose of Article 9, interpreted in conjunction with Article 11, and the consistent case-law of this Court, I disagree that the applicants have successfully demonstrated, in the general and abstract way concluded by the majority, that the measure adopted by the Hungarian legislature in the form of the 2011 Church Act interfered, directly or indirectly, with their *freedom to manifest their religion or beliefs* in the sense referred to above (see paragraph 6 above). Neither the 2011 Church Act nor its amendments had, in general, any impact on the *legal personality status* of the applicants. They were eventually not de-registered

as such, only reclassified for the purposes of receiving State benefits or being eligible for cooperative agreements with the State, and they were not under *threat of being dissolved through State action*, with the exception of those churches not declaring their intent to continue with their activities. Thus, the two previous cases of the Court which the majority cites in paragraph 82 of the judgment (see paragraph 11 above) do not have a bearing on the resolution of whether any interference occurred in this case.

13. In reality, as the Court states unequivocally in paragraph 112, there is in fact "no indication that the applicants [were] prevented from practising their religion as legal entities, that is, as associations, which secures their formal autonomy vis-à-vis the State" as a result of the adoption of the 2011 Church Act or its amendments. In the light of this Court's case-law on associative religious freedom under Articles 9 and 11, that should have been the end of the matter. Whether "adherents of a religious community feel [like] second-class citizens, for religious reasons, on account of the less favourable State stance on their community" (see paragraph 109), is immaterial for the purposes of Articles 9 and 11, if they are unimpeded in manifesting their religious beliefs, in form and substance, within legally recognised associations. It should be pointed out that the Court, citing a prior opinion by the European Commission, has consistently held that a "State Church system cannot in itself be considered to violate Article 9 of the Convention" (see *Darby v. Sweden*, 23 October 1990, opinion of the Commission, § 45, Series A no. 187, and *Ásatrúarfélagið,* cited above, § 27).

14. It is important to highlight that the Court has never held before today that the decision of the State to withhold previously afforded material benefits from religious entities which are duly registered and afforded legal personality status constitutes, as such, interference with the freedom to manifest a religion or a belief under Article 9, interpreted in the light of Article 11. As is clear from the case-law of the Court, cited above in paragraph 9, an arguable issue under the Convention only arises in this regard if an applicant can demonstrate on the facts that in the exercise of its regulatory powers the State has withheld material benefits from a religious entity whilst providing benefits to others, and that this difference in treatment is not justified on objective and reasonable grounds. By its nature, an assessment of this kind under Article 14 of the Convention necessitates an individual examination of whether discrimination occurred. Therefore, the Court should have examined the applicants' complaint on the basis of Article 14 taken in conjunction with Articles 9 and 11 of the Convention. But the majority declined to examine this part of the complaint separately, a decision from which I dissented. Thus, I do not express my views on the Article 14 issue in this opinion.

15. In conclusion, this Court must be ever mindful that the scope of the rights and freedoms guaranteed by the Convention is not without limits. As

rules of law, their scope must be defined within the text of the relevant provision, as interpreted reasonably in the light of their object and purpose. The unrestrained expansion of the substantive reach of the Convention runs the risk of undermining the legitimacy of this system of European supervision of human rights.