

Hungary's Religion Law under Scrutiny

This short book contains articles I have written over the last three years in response to Hungary's new law on "freedom of religion" and the status of churches. As the reader will quickly discern, I am one of this law's severe critics. By selectively revoking rights Hungarian citizens had once secured, and by introducing a historically anachronistic system of legal discrimination against many religious communities, Hungary's law on religion has been an integral part of the devolution of democratic institutions for which Viktor Orbán's government is rightly criticized. The essays that follow will, in my view, demonstrate this conclusively. Even so, I publish this book in a spirit of hope. First, my hope is that Hungary's established churches, confronted again with this law's egregious shortcomings, will come to appreciate more fully that religious freedom is a cornerstone not only of liberal society, but also of the ideal of Christian democracy. Second, I hope this book will help to keep public focus on the deep flaws in the religion law, which have not been corrected in spite of critical rulings by Hungary's Constitutional Court and the European Court of Human Rights. As the scandal of this law is exposed to ever greater light, I believe the people of Hungary will grow increasingly embarrassed by their government, and start to pressure it to change this bad law.

Only three years old, Hungary's law on religion has a convoluted history. A first bill was passed in July 2011, but through a highly irregular parliamentary procedure. An original draft of the law was introduced by the Christian Democratic People's Party (KDNP), a member of the government coalition. The KDNP bill reduced the number of recognized churches to forty-four, but also provided for a procedure by which additional religious groups could receive recognition through the courts. Two hours before the final vote, however, late in the night, János Lázár, a

member of the governing Fidesz party, proposed an “amendment” from the floor that changed the text of the bill in its entirety. The amended bill reduced the number of recognized churches from forty-four to fourteen, and stipulated that in the future churches were to be recognized only by a two-thirds majority vote in Parliament. This completely different version of the bill was immediately passed into law.

Due to the irregular procedure, Hungary’s Constitutional Court vacated the law in its entirety in December 2011. Three days after the court’s decision, on December 22, another bill essentially identical to the law struck down by the court was submitted to the Committee on Constitutional, Legislative and Judicial Matters. Transitional provisions in the bill would strip all but fourteen churches of legal personality. The committee discussed the bill for approximately fifty minutes and then forwarded it to Parliament, where debate was taken up and closed the very same day. The bill was passed as Act CCVI of 2011 and went into effect January 1, 2012.

At the beginning of February, Parliament expanded the number of recognized churches from 14 to 27.¹ Even so, these were fewer churches than those recognized in the original Christian Democratic proposal for the law. A year later, in February 2013, the Constitutional Court struck down key provisions in the law. The court ruled that all religious associations have an equal right to apply for recognition by means of a procedure that follows due process and ensures the right of effective remedy. Since the provisions for recognition set forth in the religion law had failed to do this, the court restored the legal status of deregistered churches.

¹ Although the appendix of the law lists 27 incorporated churches, two of those are affiliated organizations comprising several religious communities (i.e., the “Hungarian Islam Council” and the “Buddhist religious communities”). If we count the member communities within those affiliates separately, there are 32 recognized churches.

The government responded to this unfavorable decision by amending the constitution, first in March and a second time in September 2013. The purpose of these amendments was to protect Parliament's power to recognize churches. Thus Article VII of Hungary's Basic Law was rewritten to give Parliament the explicit right to determine which religious groups to recognize as churches.² In June 2013, Act CCVI of 2011 was modified to require that religious communities applying for recognition as a church demonstrate they are suitable to cooperate with the state in promoting public goods. A religious community demonstrates its suitability for cooperation on the basis of its charter, the size of its membership, and its previous activities. Final judgment about such suitability is determined by a two-thirds vote in Parliament.³ In June, also, the religion law was modified to create two distinct classes of religious communities, "incorporated churches" and "organizations conducting religious activity." Only incorporated churches must be recognized by Parliament; religious organizations are registered by the courts.

In April 2014, the European Court of Human Rights (ECtHR) found Hungary's religion law in breach of article 9 (protecting freedom of religion) and article 11 (protecting freedom of association) of the European Convention (*Magyar Keresztény Mennonita Egyház and others v. Hungary*). In the view of the ECtHR, the law's deregistration procedure, its re-registration procedure, and the tiered classification system itself violated the state's obligation to remain

² According to Hungary's Basic Law, article VII (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." Because Hungary's Basic Law has been modified repeatedly since 2011, tracking down an accurate version of it can be a challenge. An up to date version is maintained on the website of the Office of the President of the Republic: (http://www.keh.hu/magyarorszag_alaptorvenye/1515-Magyarország_Alaptorvenye)

³ Act CCVI of 2011 14. § i) reads: "the proof of the intention to cooperate in the interests of society and the ability to carry it on in the long term lies, especially, in the organization's bylaws, the number of its members, the activity it conducted prior to the application in the areas specified in Article 9 (1) and the access of larger groups of the public to such activities."

neutral toward religious communities. In an early reaction to the decision, a spokesman for the Hungarian government pointed out that Hungary has no obligation to adhere to rulings of the European Court.⁴ Whether or not Hungary will appeal the decision to the ECtHR's Grand Chamber is not clear at the time of this writing.

The contents of this book

The essays in this volume were written at different moments within the unfolding history of the law. Thus the legal context addressed by each of them differs slightly. The first essay, *An Open Letter*, was written in January 2012, only weeks after Hungary's new constitution and the religion law went into effect. At the time I wrote *An Open Letter*, fourteen churches were recognized in Hungary. The second essay, *Four Theses about Religious Freedom*, was published a few months later in May 2012, after Parliament had expanded the list of recognized churches from fourteen to twenty-seven. At the time of this essay, however, the law made no provision for deregistered churches, placing them in a legal no man's land. The third essay, my *Report to the US Helsinki Commission*, was written in March 2013, less than a month after Hungary's Constitutional Court had struck down significant portions of the religion law, and only a week after Parliament, in response to the court's ruling, had amended the country's constitution. At the time my Helsinki report was written, the religion law did not include a tiered classification system for religious communities. The fourth essay, *Hungary's System of Church Recognition*, originally written in February 2014, examines the tiered system introduced into the religion law and finds it wanting. At the time this essay was written, the European Court of Human Rights

⁴ "Itt a kormány válasza a strasbourgi ítéletre" *Világ gazdaság online* April 9, 2014. (<http://www.vg.hu/kozelet/jog/itt-a-kormany-valasza-a-strasbourgi-iteletre-425267>)

had not yet ruled on Hungary's religion law. I was gratified when most, if not all of my criticisms of Hungary's tiered classification system were validated by the court. The version of the essay included in this volume has been modified slightly to take into account the ECtHR's ruling. The fifth and final essay, "*Let Us Make Them in Our Image*," was written in May 2014 shortly before this book went to press, and is, at least for the moment, up to date. Only time will tell what new chapters the future holds for the saga of Hungary's constantly changing religion law.

Since each chapter in this book was originally an independent article, they can be read separately and in any particular order. The essays are presented, however, in chronological order, and a reader who follows them from beginning to end will acquire a sense of the evolution of the law from 2012 to 2014. A few of the articles have been modified slightly in an effort to reduce repetition of argument. Some repetition has been inevitable, and for this I beg the reader's patience and forgiveness. The first two essays, *An Open Letter* and *Four Theses*, were originally written in Hungarian and addressed explicitly to Hungary's Christian churches. The remaining essays were originally written in English and addressed to a broader public. Unlike the first two essays, they are not written from a confessional standpoint, although the violations of religious freedom which they describe will certainly be troubling to Christians.

Much of the work in this book is based on research I conducted in Hungary in 2013-2014 through a sabbatical granted by my home institution, Texas Lutheran University. That sabbatical was further supported in part by a fellowship from IREX (International Research & Exchanges Board) with funds provided by the United States Department of State through the Title VIII Program. The Central-European Religious Freedom Institute and Christians Associated for

Democracy also provided assistance for the translation of several chapters into Hungarian. I gratefully acknowledge the support these institutions have extended to my research.

Finally I would like to dedicate this book to my children, with an epigram taken from the Book of Proverbs, “Do not withhold good from those who deserve it, when it is in your power to act” (3:27). I seek in this way to express two desires shared by every parent; first, that the world we leave our children is better than the one into which we were born, and second, that our children grow up to be better people than we have been.