

TRANSLATED EXCERPTS OF “RATIONALE FOR AMENDMENT OF THE CHURCH LAW”

Released by the Hungarian Ministry of Justice in September 2015

1.4 Key components of the amendment

After the amendment, in the context of registering religious communities with legal personality – to ensure the neutrality of the state – **churches would not be “recognized”; instead they would be registered**, uniformly **through a court proceeding**, on the basis of objective and reasonable criteria specified in the act, transparently (e.g. justified) and with regular judicial remedy. Upon the entry into force, *ex lege* assumptions would take effect to ensure that in terms of their status, religious communities do not find themselves in a position that is worse than before and to settle in a reassuring fashion the church status of communities that continue to be engaged in religious activities and were negatively affected by the provisions of the statutory regulation that took effect on January 1, 2012 and were found unlawful by the Constitutional Court and the European Court of Human Rights.

1.5 The rationale of the new Hungarian church organization

The proposed **new Hungarian church organizational structure** provides wide-ranging autonomy and support for the religious activities of religious communities, recognizes their social role but at the same time reserves the right of the state to make a decision – for objective reasons, based on social acceptance, embeddedness and ecclesiastical traditions – as to which religious community it wishes to cooperate with more closely, and the manner of such cooperation, in the provision of public services based on social need. The act would stipulate as a fundamental principle that each community that defines itself as a religious community (even without legal personality) is entitled to all constitutional protection that the Fundamental Law provides to religious communities in the framework of the free practice of religion.

1.5.1 Religious associations

Any religious community (of at least 10 members) can transform into a **religious association** and consequently acquire legal personality (pursuant to the law of association, but at the same time also benefiting from the constitutional protection set forth in the church law as a religious community, similarly to other religious communities). Religious associations, as **non-profit organizations**, can also perform public interest tasks.

1.5.2 Registered churches

Registered churches that already possess church status have a lot more social support than religious associations. The regulation based on the rationale requires at least **1,000 members** or social support that can also be certified on the basis of donations of 1% of the personal income tax (400 donations of 1% the personal income tax based on a 3 year average) and stipulated operation as a religious association for **at least 5 years**.

1.5.3 Certified churches

The court registers as certified churches religious communities that have wide social acceptance, **at least 10,000 members living or residing in Hungary** (or receiving at least 4,000 church donations of 1% of the personal income tax based on a 5 year average) **and have been lawfully operating for a long time**. The required length of operation is at least **20 years** in Hungary or at least **100 years** as an organization internationally.

1.6 Cooperation between religious communities and the state

In the framework of cooperation between the state (the Government) and religious communities, for the purpose of performing public tasks (on the basis of social needs, the willingness and ability of the partners) may conclude specific agreements with religious communities with respect to special areas and comprehensive cooperation agreements with certified churches based on their history, social acceptance, tight organization and the social services they provide (that is, on the basis of reasonable and objective criteria). Already existing (e.g. the international agreement with the Holy See) and future strategic, comprehensive cooperation **agreements** – in order to protect them and because of their significance and long-term future – would be codified into **law**.

4. Basic principles of regulation

This rationale is built on the Fundamental Law and the time-tested achievements of previous church laws, and also takes into account long-term solutions that are accepted in Europe.

The statutory regulation would guarantee for all communities that perform primarily religious activities – regardless of their organizational structure, legal status or name – the following:

- a) the neutrality of the state, the separation of church and state, the cooperation between the state and religious communities and the framework thereof;
- b) wide-ranging autonomy of religious communities;
- c) free self-determination of religious communities (free choice of organizational structure and name);
- d) equal rights of religious communities and the prohibition of discrimination.

The act would stipulate – partially preserving the currently effective stipulations of the church law (Ehtv.) and partially modifying them in several places – the following:

- a) freedom of religion and conscience;
- b) the criteria and procedure of registering religious communities (on the basis of objective and reasonable considerations, in line with the right to a fair procedure and to legal remedy);
- c) criteria pertaining to social acceptance (number of members, length of operation);
- d) basic principles of governmental funding of religious activities (prohibition of discrimination);

e) institutional and procedural criteria that ensure the lawful operation of religious communities.

The state – on the basis of a sovereign decision – may conclude specific **agreements** with religious associations and registered churches among religious communities with legal personality and comprehensive partnership agreements, codified in law, with certified churches that are (objectively) decisive based on their historical and social significance (social acceptance, embeddedness, tight organization) for the performance of key societal (social, health, education, etc.) tasks and the co-financing thereof. The law will continue to acknowledge and respect existing agreements in this regard.

An important aspect of the amendment that **it is not about “recognizing churches” but about the registration by the court of religious communities with legal personality (special legal status)**; it is objective and reasonable and guarantees adequate transparency (e.g. obligation to provide an explanation) and regular judicial remedy in the event that the criteria based on the amount of social support is satisfied.

The new church rationale incorporates certain components of Act IV of 1990 (hereinafter: Ltv) as well as the goals of the 2011 legislation (prevention of abuses), and it also takes into account the **historical constitution** and previous Hungarian (and European) religious traditions that constitute Hungarian national identity and has been in existence basically since the 19th century (see especially Act XLIII of 1895).

It is a **complex amendment** that incorporates various components that would modify not only the amendment of the cardinal law on the freedom of conscience and religion, the rights of religious communities and the framework of their cooperation with the state (Ehtv) but would also result in the amendment of the act on the financing of religious communities and other specialized laws (including the acts on accounting, taxation, association and procedures and public tasks).

6. The rationale of modifying the Hungarian church organization structure

The modified Hungarian church organization system – in line with Hungarian church traditions as well as international and constitutional expectations – would guarantee wide-ranging autonomy to religious communities, it would acknowledge their social role, protect and support religious activities that are tied to the freedom of religion, but at the same time would reserve the right of the state to decide – on the basis of objective criteria – which religious community it wishes to cooperate with more closely in the provision of public tasks. The rationale considers a religious community all communities, religious denominations, religious associations and churches that perform primarily religious activities regardless of their name or organizational structure. The legislation draws a distinction between religious communities only on the basis of reasonable and objective criteria (participation in public tasks, social support and embeddedness).

The rationale’s proposed modification of church organization is based primarily on the following. On the one hand, the legislation must satisfy the constitutional requirement that church status should be obtained exclusively on the basis of objective and reasonable criteria, there should be no discrimination between religious communities whose situation is comparable, and church status should not be

“unreasonable and disproportionately unattainable” for new religious communities or those that are – based on their own internal regulations – less tightly organized. Another important criterion is compliance with the effective provisions of the Fundamental Law (Article VII). We believe that with respect to the separate but cooperative relationship between the state and religious communities, a new, more flexible church organizational structure is needed, which includes a new church status (i. e. that of “registered church”), in line with the word and spirit of the Fundamental Law, as well as new legal terminology to describe church categories.

The units of the new organizational model are the following:

- religious communities without legal personality that operate in any, non-institutionalized form and perform religious activities that would not be specified in the normative text but – in line with international criticism – should be specified to ensure the freedom of religion (since in accordance with the freedom of religion, anyone, as few as 2-3 people can establish such a community without any institutional constraints), see point 6.1;
- religious associations with legal personality operating as an association but having a special internal autonomy (and benefitting from enhanced constitutional protection to guarantee religious freedom) (religious community operating as a religious association, see point 6.3);
- religious communities that already have church status and possess this special status because they have considerably larger social recognition and a longer religious past, and have a higher share of public tasks (registered church, see point 6.3);
- religious communities with considerable social recognition, a historical past in Hungary and/or international recognition, as well as the authentic Hungarian representatives of large world religions including certified churches that, in addition to having considerable social recognition, guarantee long-term operation (for public interest goals) and may enter into a strategic agreement with the state for the performance of public tasks, in line with their mutual interests (certified church, see point 6.4).

6.1 Religious communities without legal personality

Any community that defines itself as a religious community, under any name (even without legal personality) is entitled to every **constitutional protection**, as well as autonomy in terms of its internal organization and operation (with respect to its religious activities) that the Fundamental Law grants for religious communities in the framework of the free practice of religion. The state – in addition to respecting, and having others respect, their freedom of conscience and religion and their religious autonomy – has no other obligation towards them (e.g. providing funding). The legislation would mention them only in passing, to stipulate their constitutional protection of the freedom to practice religion within the community and to grant them religious autonomy.

6.2 Religious associations

Religious communities may transform into an association and thus acquire legal personality (pursuant to the right of association). Religious associations **may also request to be recognized as non-profit organizations** (based on general rules and criteria) and may also undertake the provision of special public interest tasks pursuant to a special agreement concluded with the state. In compliance with general accounting and taxation regulation, as non-profit organizations (in other words, not on a

universal basis) **they are entitled** – in addition to donations – **to 1% of the tax (“associations’ 1%,” without compensation) and may receive special state funding for the provision of public tasks. They would be registered on the basis of legislation pertaining to associations, in a judicial procedure**, upon request with the option of regular judicial **remedy**, with the difference that the court notifies the minister responsible for coordination with the churches of the registration.

6.3 Registered churches

They are religious communities with a special church status that have considerably more significant social recognition and embeddedness than religious associations. They have **at least 1,000 members**, and their social support is also demonstrated by the personal income tax contributions of taxpayers (with the option to take into account the 1% contribution of at least 400 persons based on a 3 year average) and **have been lawfully operating as a religious community for at least 5 years**. This type of religious community has additional rights (and obligations). The state supports their religious activities with **tax exemptions** (e.g. personal income tax and health insurance contribution discounts for clearly defined church personnel) and the financing of certain activities (e.g. optional religious education). They would also receive the **“churches’ 1%”** together with supplementation. They would receive other **state financing on the basis of special agreements, the provision of public tasks** and on the basis of actual social need. The applicable accounting rules would be less stringent. Registered churches would be exempt from state control in respect of some of their own church revenues (e.g. donations, collection plates). **They would be registered in a judicial procedure** (at the Metropolitan Court of Budapest, with a notice to the minister responsible for coordination with churches), upon request, with the option of regular judicial **remedy**.

6.4 Certified churches

Religious communities that enjoy wide social recognition, have at least 10,000 members (or at least 4,000 church donations of 1% personal income tax as a five year average) and have operated solidly and permanently, lawfully and in an organized manner, as a religious association or registered church. They are also registered by the court the Metropolitan Court of Budapest, with a notice to the minister responsible for coordination with churches), upon request, with the option of regular judicial **remedy**. **The required length of operation in Hungary is 20 years, but social recognition**, which is a condition of registration, **can also be ascertained on the basis of a shorter period of operation in Hungary** if 100 years of organized international operation can be proven and a certificate is available attesting to the fact that that the faith-based principles of the organization are the same as those of the international organization.

Certified churches enjoy additional privileges to ensure the comprehensive as well as more extensive provision of certain public tasks, owing to their complex organizational structure (e.g. pastoral service in the military, higher education, network of social institutions, normative funding of pastoral service in smaller settlements, religious and ethical instruction in schools). The funding they receive for their religious activities is the same as the funding received by the religious communities specified in point 6.3 (1% church compensation, personal income tax and health insurance contribution discounts for church personnel, complete autonomy with respect to religious income – the currently effective accounting controls will only apply to the use of public funds as well as funding that is currently stipulated in the decree implementing the Ehtv).

Churches that qualify as incorporated churches pursuant to effective statutory regulation will be registered by the court as certified churches by the force of the law, that is, without any separate procedure or administrative procedures.

6.5 Cooperation based on a separate agreement

Pursuant to the new regulation, **the state** – on the basis of its sovereign decision, in other words, not on the basis of subjective right – may enter into **special agreements for the provision of certain public tasks with religious associations and registered churches**, and may conclude comprehensive, strategic agreement(s) with certified churches. The latter cooperation **agreements** would be concluded primarily with those **certified churches** that, on the one hand, would like to have a closer cooperation and, on the other hand, **can undertake extensively, and in the long run, the obligations arising from them**, owing to their historical and social role, embeddedness, organization, social recognition, **the traditional public interest activities performed by them, and their actual possibilities**. Already existing (e.g. the international agreement with the Holy See) and future strategic, comprehensive cooperation **agreements** would be specifically mentioned and later codified into **law**, with a view to their protection, significance and long-term future. We expect to conclude such agreements (and some already exist) – granting, for example, the opportunity to acquire arable land and funding for higher education – with, for example, the Catholic, Reformed and Lutheran church and the Jewish religious community. This cooperative partnership is free from discrimination because, on the one hand, in principle other certified churches may also request such partnership, and on the other hand, it is based on an enhanced social role and a church tradition that constitutes a part of the national identity and is generally accepted in Europe as well.