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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and the Organization of American States.
2. This report details the human rights situation in Hungary, paying particular regard to changes to the Hungarian Fundamental Law (Constitution) and other legal changes that have occurred since the first UPR cycle.

(a) Religious Freedom

Background

3. In 2011 the Hungarian Parliament adopted a new church law¹, which established a new system of acquiring legal status for churches, religious denominations and religious communities. As well as its application to new churches, the 2011 Church Act also impacted churches previously registered under the “1990 Church Act”² – de-registering them and requiring them to undergo a process of re-registration.
4. The 2011 Church Act introduced a multi-tiered system of church registration and re-ordered different religious groups into the following categories: (i) non-registered religious groups; (ii) “civil associations” or “religious communities”, which have legal personality but do not receive any government benefits, and (iii) churches, which receive many benefits, including funding and tax exemptions.
5. The Hungarian government explained that the reason for the new law was to address the situation of sham churches that had arisen under the old law and that were receiving certain benefits from the State. However, while the aim of the government may have been legitimate, its restrictive new law and the way it has been adopted raise several causes for concern.
6. To become registered as a church, several strict requirements must be met. For example, the church must meet the statutory definition of religion, which depends very much on government interpretation. Additionally, the church must have existed for either 20 years domestically or 100 years internationally, and the church must have at least 1000 members.

¹ Act no. CCVI of 2011.

² Act no. IV of 1990.

7. Although multi-tiered church registration systems have been upheld under certain circumstances by the European Court of Human Rights, 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.³
8. Thus, while church registration systems may not be in violation of international human rights law *per se*, they must be carefully enacted and fairly operated. In this context, UN Special Rapporteur on Freedom of Religion or Belief, Mr. Heiner Bielefeldt, stated:

All registration decisions must be based on clearly defined formal elements of law and in conformity with international law. Registration should neither depend on extensive formal requirements in terms of the number of members and the time a particular community has existed, nor should it depend on the review of the substantive content of the belief, the structure of the community and methods of appointment of the clergy.⁴
9. In the case of Hungary, there were large procedural deficiencies in the way in which certain churches made it into the top tier and others did not; the process appeared to be highly arbitrary and rushed.
10. First, the government only recognized 14 churches— instead of the 406 that had previously been recognized. Next, after both domestic and international civil society organizations voiced significant concern, this list was extended, again arbitrarily, to 32 churches. However, under the original law it is the Hungarian Parliament who ultimately decides which organizations are on the list and which are not, and recognition as a church requires a two-thirds majority in a parliamentary vote.
11. The 2011 Church Act has been amended on several occasions, in particular on 1 August 2013. Significantly, the procedure of recognition as a church was amended. A request for recognition must now be submitted to the Minister in charge of religious affairs instead of parliament. The Minister must then examine whether the organization meets certain statutory criteria, following which he will adopt an administrative decision that may be subject to judicial review.

Legal complaints

12. In 2012, nine cases were brought before the European Court of Human Rights involving various types of churches and other religious organizations that have not been recognized under the new law.⁵
13. While the ECtHR proceedings were still ongoing, the Hungarian Constitutional Court

³ *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 116, ECHR 2001-XII.

⁴ Special Rapporteur on Freedom of Religion or Belief report on “Freedom of religion or belief and recognition issues,” A/HRC/19/60, 22 December 2011, § 73(e).

⁵ *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), 8 April 2014.

ruled on 26 February 2013 that parts of the 2011 Church Act were unconstitutional.⁶ However, in response to the Hungarian Constitutional Court decision, the Hungarian government amended its Fundamental Law (Constitution) on 1 April 2013 in an attempt to nullify the application of the Court's decision.⁷

14. On 8 April 2014, the European Court of Human Rights ruled decisively that Hungary's 2011 Church Act was contrary to the principles of the European Convention of Human Rights and that the de-registration of (and subsequent refusal to re-register) the churches was a violation of freedom of assembly and freedom of thought, conscience and religion:

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 9.⁸

15. In September 2014, the Grand Chamber of the ECtHR refused Hungary's appeal against the decision.

Implementation of decision

16. According to the NGO Forum for Religious Freedom (FOREF Europe), Hungary has failed to implement the decision.
17. The Court's ruling required Hungary to compensate the affected churches for losses incurred as a result of the de-registration process. Although the Court allotted a time period of six months for negotiations to take place, FOREF Europe reports that the Government of Hungary did not initiate negotiations until one week before the deadline. The insufficient time period meant most of the religious communities failed to reach an agreement with the government, forcing them to return to the ECtHR for a remedy.⁹
18. Moreover, although the Hungarian government promised new legislation on the status of churches by the end of 2014, it has not amended the church law to correct its deficiencies.¹⁰

(b) Freedom of Expression

⁶ Decision no. 6/2013 (III. 1.).

⁷ Fourth Amendment of the Fundamental Law of Hungary, Article VII.

⁸ *Magyar Keresztény Mennonita Egyház and Others*, cited above, at § 115.

⁹ HUNGARY: Government Ignores Judgment of the European Court of Human Rights, FOREF Europe Report to OSCE (PC.SHDM.NGO/24/15), 2 July 2015.

¹⁰ *Id.*

Legal Background

19. Until recently, Hungary was one of the few jurisdictions in Europe that had resisted pressure to weaken its free speech protections. The Hungarian Constitutional Court has consistently struck down overly broad criminal restrictions on speech and has interpreted the law as only criminalizing speech when there is “a clear and present danger” of violence.¹¹
20. However, on 1 October 2013 the Fifth Amendment of the Fundamental Law (Constitution) entered into force. Article IX (5) of the Fundamental Law represents a significant threat to freedom of expression. It states:

The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community.

Analysis

21. The fundamental right to freedom of expression is protected within international law to a high degree. Article 19 of the International Covenant on Civil and Political Rights (1966)¹² holds, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”
22. Commenting on Article 19, the UN Human Rights Committee has stated, “Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society.”¹³ Additionally, “Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”¹⁴
23. Restrictions on the right to freedom of expression are only valid if they are provided by law, in pursuit of a legitimate aim, and necessary in a democratic society. As UN General Comment No. 34 concludes, “in every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict

¹¹ See Decision 12/1999 (V. 21.) AB; Decision 18/2004 (V. 25.) AB. Molnar, Peter, Towards Improved Law and Policy on ‘Hate Speech’—The ‘Clear and Present Danger’ Test in Hungary, in Hare, Ivan, and Weinstein, James (eds), *Extreme Speech and Democracy*, Oxford University Press, USA, 2011, p.251.

¹² Ratified by Hungary in 1974.

¹³ UN General comment No. 34, 12 September 2011, CCPR/C/GC/34, § 2

¹⁴ *Id.*, at § 3.

conformity with article 19.”¹⁵

24. “Violating the dignity of the Hungarian nation” is not a legitimate reason for withholding freedom of speech from its citizens and is not “necessary” under international law.
25. The provision is so vague as to lack requisite legal certainty and is wide open to abuse and arbitrary application by State actors. Moreover, there is no basis in international law for a State itself to have its “dignity” protected at the expense of citizens’ right to freedom of speech. As the ECtHR has held, the right to freedom of expression “is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”¹⁶

(c) Marriage and Family

26. In 2012 Hungary’s new Constitution received strong criticism for *inter alia* defining marriage as between one man and one woman. The relevant provision now states, “Hungary shall protect the institution of marriage, understood to be the union of a man and a woman established by their voluntary decision, and the family as the basis of the nation’s survival. Marriage and the parent-child relationships are the basis of the family.”
27. Hungary’s definition of marriage and the family is fully in line with international law, in particular article 16 of the Universal Declaration of Human Rights and article 23 of the ICCPR, as well as the religious, cultural and ethical convictions of its population.
28. International law does not in any way require that Hungary amend its understanding of marriage as the union of a man and a woman. Every effort should be made to support stable marriages in accordance with the country’s law.

(d) Recommendations

29. In view of the above, ADF International has the following recommendations:
 - Fully implement the decision of the European Court of Human Rights in *Magyar Keresztény Mennonita Egyház and Others v. Hungary* and repeal or significantly amend the 2011 Church Act so as to meet international obligations in regard to freedom of religion;
 - Repeal Article IX (5) of the Fundamental Law in order to adequately protect freedom of expression;
 - Continue to affirm the definition of marriage as between a man and woman and support stable marriages in accordance with the country’s law.

¹⁵ *Id.*, at § 52.

¹⁶ *Handyside v. The United Kingdom* (1979-80) 1 E.H.R.R. 737, § 49.



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