PAÍSES DEL ESTE
CRÓNICA LEGISLATIVA

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1. Comentario legislativo

1.1 Modificaciones en las circunstancias agravantes de los Códigos penales de Albania y Rumania.

En Febrero de 2014 se modificó el Código Penal en Albania (Law No. 7895, 27 de enero 1995). Entre otras cuestiones, el apartado j del artículo 50 determina como circunstancia agravante promover la realización de un delito por razones de género, raza, religión, nacionalidad, creencias políticas, religiosas o sociales. Esta redacción se consolidó en la versión de 2013 y queda refrendada en la última revisión de 28 de febrero de 2014[1].

Por su parte, el Código Penal de Rumania (Law No. 289/2009, entrada en vigor 1 Febrero de 2014), también recoge como circunstancia agravante la comisión de un delito por motivos de raza, nacionalidad, origen étnico, idioma, religión, género, orientación sexual, opinión, ideología política, creencia, riqueza, origen social, edad, discapacidad, enfermedad crónica no contagios, infección por VIH o cualquier otra

[1] http://www.legislationline.org/documents/id/18761

circunstancia similar, cuando el autor considera que son causas de la inferioridad de una persona.

1.2 Eslovaquia. Ley sobre protección de datos personales No. 122/2013 Coll., en su redacción final tras las modificaciones y adiciones introducidas por la Ley No. 84/2014 Coll2.

El artículo 13 de la norma, dentro de lo que denomina "categorías especiales de datos de carácter personal", prohíbe el tratamiento/procesamiento de datos personales que revelen las creencias religiosas, junto con el origen racial o étnico, las opciones políticas, la afiliación política o sindical y los datos relativos a la salud y a la vida sexual. Con las siguientes excepciones (artículo 14):

a) Cuando existe consentimiento del interesado, por escrito u otro medio, para su tratamiento, siempre que la prestación de dicho consentimiento no esté excluida por una Ley especial.

b) Cuando su regulación esté recogida en una Ley especial, una norma vinculante de la Unión Europea o un Tratado internacional vinculante para la República de Eslovaquia.

c) Cuando el interesado no tenga capacidad legal o física para emitir consentimiento por escrito, ni puede obtenerse el de su representante legal

d) Cuando ese procesamiento de los datos se realice en el marco de las actividades legítimas de una iglesia o comunidad religiosa reconocidas por el Estado (entre otras entidades relacionadas en el artículo) y su tratamiento se refiera sólo a los datos de sus miembros o personas físicas que están en un contacto regularmente para el cumplimiento de sus objetivos, siempre que estos datos se utilicen para cubrir sus necesidades internas y no se proporcionen a terceros sin el consentimiento escrito del titular de los datos.

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2 http://www.dataprotection.gov.sk/uoou/sites/default/files/kcfinder/files/Act_122-2013_84-2014_en.pdf

e) Cuando ya se han hecho públicos por el titular o sean necesarios para ejercitar una acción legítima.

f) Cuando tengan por finalidad proporcionar atención médica o realizar un seguro de salud pública, siempre que quien realice el tratamiento sea un proveedor de atención médica, una compañía de seguro, etc.

g) El tratamiento se realice por las instituciones públicas de seguridad social, para la previsión de beneficios sociales del Estado, con fines de apoyo a la integración social de personas con discapacidad, protección social de menores, etc.

Por último, relacionado con los datos religiosos, cuando el Capítulo VI de la norma regula la obligación de notificar, el funcionamiento de los registros especiales y la conservación de registros y archivos, advierte de que la obligación de notificar no se aplicará a los archivos que contengan datos de carácter personal relativos a las creencias religiosas a la pertenencia del sujeto a una iglesia o comunidad religiosa reconocida por el Estado, si esos datos son tratados por la iglesia y se utilizan a efectos internos.

1.3 Reforma de La Ley fundamental de Hungría, a 1 de octubre de 2013.

En la última reforma constitucional de Hungría se sigue manteniendo la protección del derecho de libertad de pensamiento, conciencia y religion integramente. Se trata de un derecho reconocido a "toda persona" cuya contenido abarca la libertad de elegir o cambiar de convicciones y la libertad de manifestar, o no hacerlo, de profesar y enseñar sus convicciones mediante la realización de actos de culto, ceremonias o cualquier otra forma, tanto individualmente como de forma colectiva, en publico y en privado.

Por su parte, el texto constitucional recoge, de forma expresa, la posibilidad de que los individuos que compartan los mismo principios de fe puedan crear entidades religiosas, de acuerdo con la Ley (que se verá a continuación). Del mismo modo, consagra el principio de separación y constitucionaliza la autonomía de las confesiones. Elementos a los que acompaña con el reconocimiento de la

cooperación con las comunidades religiosas, para lo que sera necesario petición expresa de la comunidad religiosa y decision favorable del Parlamento. Las comunidades que participen en esa cooperación deben ser "iglesias constituidas" (termino que aparece desarrollado en la Ley y que se refiere a aquellas entidades que han sido reconocidas por el Estado). A través de esa cooperación se prevé la posibilidad de conferir derechos específicos.

Concluye el texto constitucional previendo la necesidad de regular la formación de las comunidades y su reconocimiento asi como las condiciones de cooperación en una norma de desarrollo. Sobre esta base se concreta la reforma de la Ley de desarrollo del derecho de libertad de conciencia y religion y del estatuto legal de las comunidades religioas en agosto de 2013.

1.4 Reforma de la Ley n. CCVI sobre el derecho de libertad de conciencia y de religión y el estatuto legal de las iglesias, confesiones y comunidades religiosas de 1 de agosto de 2013.

Para que una comunidad religiosa se convierta en "incorporated church" o iglesia constituida, es necesario reconocimiento por el Parlamento (artículo 6 de la norma).

Toda iglesia debe tener fines religiosos. Según el artículo 6.3 de la Ley "lo religioso" se refiere a un conjunto de creencias dirigidas hacia lo trascendental, un sistema de principios basados en la fe, que se centran en la existencia humana, a la personalidad humana en su totalidad, y sobre los que se establecen códigos de conducta específicos. En términos generales, la norma considera que para que una comunidad pueda ser considerada iglesia debe cumplir con los clásicos elementos de: creencia en un Dios o en un ser trascendente, culto y credo. Así, para la norma no son religiosas:

- actividades políticas y de lobby
- actividades psicológicas y para psicológicas
- actividades médicas
- actividades empresariales
- actividades pedagógicas

- actividades educativas
- actividades de caridad
- actividades de protección de la familia, la infancia y la juventud
- actividades deportivas
- actividades culturales
- actividades de protección del medioambiente, de los animales o de conservación de la naturaleza
- actividades tecnológicas y de información
- actividades relacionas con el trabajo social

Y, finalmente, las comunidades religiosas podrán desarrollar sus actividades siempre que no sean contrarias a la Ley fundamental, que no sean ilegales o que no violen los derechos y libertades de otras comunidades. En definitiva, en el apartado 5 señala las limitaciones.

En su denominación podrán utilizar la palabra "church", iglesia, para auto-definirse, cuando sus actividades se basen en sus principios de fe, pero en su denominación no podrán contener la referencia "asociación" (artículo 7)

Será en el artículo 9 donde se contienen las bases para el desarrollo del modelo de cooperación a través de acuerdos. Según la norma, para que las entidades puedan firmar acuerdos deben disponer de un "apoyo social suficiente", y deben tener como objetivo preservar sus valores culturales e históricos (tanto ellas mismas como a través de instituciones subsidiarias), asegurar el funcionamiento de instituciones educativas y pedagogicas, de atención sanitaria, de caridad, de atención a las familias, la infancia y la juventud, culturales y deportivas (actividades que están excluidas de lo religioso en el artículo 6).

Será el artículo 9/A quien defina a las organizaciones que realizan actividades religiosas como asociaciones que comprendan a personas que profesan los mismos principios de fe y que deberán operar con el fin de realizar actividades religiosas.

La competencia del registro de las entidades religiosas recae sobre Tribunal Superior de Justicia de Budapest (artículo 9/B). Recibida una solicitud deberá examinar si:

a) su creación responde a la realización de fines relligiosos

b) no incumple los límites establecidos en el artículo 6

c) se compone al menos de 10 miembros

d) Solo son miembros de la entidad las personas naturales, quedando excluidas las personas jurídicas

Solo podrá denegarse la inscripción si se incumpl alguno de estos requisitos.

En sus estatutos debera fijar, de forma diferente a las reglas que se aplican a las asociaciones, las condiciones en las que se regula:

a) la forma de acceder a la organización y los derechos de los miembros

b) los representantes legales y sus competencias

El control de legalidad sobre las actividades religiosas se realizará por el Fiscal, verificando si la actividad de la organización se ajusta al artículo 6 párrafos 4 y 5 (artículo 9/C). Si no cumple con estos requisitos, incluso previa advertencia por parte del Ministerio fiscal, se podrá iniciar un procedimiento judicial. El Tribunal podrá resolver solicitando que la entidad restaure su actuación de conformidad con las bases legales o disolverla en caso de incumplimiento o de violación de la Ley Fundamental, previo dictamen del Tribunal Constitucional.

Es necesario que las Iglesias constituidas y sus entidades tengan personalidad juridica eclesiastica (artículo 10). El artículo 11 de la misma norma les reconoce a estas entidades personalidad juridica y capacidad de autogobierno. Así, obtendrán un estatus especial de derecho público y se podrá cooperar con ellas para el cumplimiento de intereses públicos. El conjunto de Iglesias constituidas y reconocidas se incluye en un Anexo a la Ley.

A continuación, el artículo 13 de la norma define al "eclesiastico" o "ministro de culto". En este concepto incluye a todas aquellas

personas naturales que, de acuerdo con las normas internas de la iglesia, realiza labores propias del ministerio o en el marco de un relación eclesiastica o laboral específica (13/A 1) . Tienen reconocido el derecho al secreto professional (artículo 13.2) y gozarán de una mayor protección penal (artículo 13.3).

Para que el Parlamento reconozca a una iglesia sera necesario que cumpla las condiciones recogidas en el artículo 14:

(a) realiza actividades religiosas;

(b) tiene unos principios de fe y unos ritos donde se contienen la esencia de sus enseñanzas;

(c) haber operado como mínimo cien años en el extranjero o 20 años como comunidad religiosa en Hungría, así como diponer de número de miembros es igual o superior al 0,1 por ciento de la población nacional;

(d) Disponer de unas reglas eclesiásticas internas;

(e) Tener unos órganos administrativos y representativos;

(f) Declarición de sus representantes de que sus actividades no son contrarias a los apartados 4 y 5 del artículo 6;

(g) que sus actividades y enseñanzas no violen el derecho a la integridad física y psicológica, la protección de la vida y la dignidad humana;

(h) no ser considerada una amenaza para la seguridad nacional ;

(i) Tener capacidad e intención de mantener, a largo plazo, relaciones de cooperación para promover los objetivos de interés public, cuestión que se evidencia en su estatus, en el número de miembros que tiene, en su participación anterior en las áreas enumeradas en la sección 9 (1) y en la accesibilidad por parte de un gran sector de la población a beneficiarse de esas actividades.

El articulo 19 de la norma prevé que las comunidades religiosas se regiran en su funcionamiento por sus normas internas, sus principios de fe y sus ritos. Además, considera que podrán participar en la formación de valores sociales y podrán desarrollar relaciones de derecho civil y establecer ONG´s. El artículo 19/A les reconoce la

posibilidad de recibir financiación pública de los organos subsidiarios del gobierno central e incluso de programas específicos de la UE.

Las entidades religiosas, los lugares de culto, los cementerios y demás lugares sagrados gozarán de una protección penal específica para castigar las ofensas o la interrupción de los ritos (artículo 19/C).

Las personas jurídicas ecclesiasticas que desarrollen actividades de interes publico en las áreas enumeradas en el artículo 9 podrán optar a recibir fondos en la misma medida que instituciones gubernamentales o locales que realizan las mismas actividades (artículo 20). Los salarios, tiempo de trabajo y descansos deberan acomodarse a las condiciones laborales de las que disponen los trabajadores de las instituciones gubernamentales que se dedican a las mismas actividades, extendiendo la norma incluso la aplicación de las medidas de política salarial (párrafo 2). Finalmente, el ultimo párrafo del artículo 20 prevé la posibilidad de aplicar beneficios fiscales y similares a estas entidades.

El artículo 21 concede a las personas jurídicas eclesiasticas la competencia de organizar la enseñanza de la religion en los centros públicos. Los costes correrán a cargo del Estado, en los términos acordados.

Estas personas jurídicas ecclesiasticas tienen reconocida la capacidad para realizar actividades comerciales, empresariales, etc. (artículo 22), no siendo considerados actividades comerciales o empresariales: la enseñanza, las actividades pedagógicas, la caridad, la protección de la familia, la juventud y la infancia, las actividades deportivas, el uso de casas por personal ecclesiastico para vacaciones, la producción o venta de públicaciones, la explotación parcial de bienes inmuebles, el mantenimiento de cementerios, etc.

Finalmente, el artículo 24 reconoce la asistencia religiosa en los centros públicos como el ejercito, las instituciones penitenciarias, los hospitales, etc.

2. Doctrina del TEDH.

2.1 *Caso Magyar Keresztény Mennonita Egyház y otros contra Hungría de 8 de abril de 2014. (Application nos. 70945/11, 23611/12,*

26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12).

En el presente caso, el TEDH analizó si la denegación del reconocimiento de personalidad jurídica a las Iglesias y confesiones religiosas recurrentes al amparo de lo dispuesto en los arts. 14 ss de la Ley n. CCVI sobre el derecho de libertad de conciencia y de religión y el estatuto legal de las iglesias, confesiones y comunidades religiosas de 2011 (en adelante Ley sobre libertad de conciencia de 2011[3]) se adecua al margen de apreciación de que disponen los Estados miembros en relación con la interpretación del alcance y contenido del derecho a la libertad de conciencia, pensamiento y de religión contemplado en el art. 9 del Convenio de Roma de 1950. Hasta la entrada en vigor de la citada norma todas las comunidades religiosas recurrentes disfrutaban con plenitud de su libertad para llevar a cabo las actividades de culto en el territorio húngaro gracias a que habían sido legalmente recomidas como tales al amparo de los dispuesto en la derogada ley n. IV sobre libertad de conciencia y de religión y sobre Iglesias de 1990. La entrada en vigor de la Ley de 2011 llevó consigo que todas las entidades religiosas que hasta entonces estaban reconocidas como tales, tuvieran que inscribirse de nuevo como asociaciones religiosas en el nuevo Registro creado a tal efecto por el Ministerio de Asuntos Religiosos húngaro, salvo aquellas que, atendiendo a su notorio arraigo en el bagaje histórico-cultural del país, continuaron siendo legalmente reconocidas como comunidades religiosas por el parlamento en el Anexo II de la citada Ley. Como consecuencia de todo ello, las entidades recurrentes ante el TEDH o bien sólo fueron reconocidas como simples asociaciones sometidas al Derecho común perdiendo, por tanto, las prerrogativas y derechos derivados de su reconocimiento legal como comunidades religiosas u otras tantas, incluso, ni tan saquera fueron reconocidas como tales asociaciones perdiendo, por tanto, su personalidad jurídica debido a que bien sus fines no eran religiosos o a que llevaban a cabo

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[3] Sobre un comentario y el texto íntegro de la Ley en inglés vid. Rodríguez Moya, A. – Pérez Álvarez, S. – Pelayo Olmedo, JD. "Crónica legislativa: países del Este", *Laicidad y libertades. Escritos jurídicos*, n. 12 (II), 2012, pp. 99-151.

actividades contrarias a lo dispuesto en los arts. 14 y concordante de la Ley (Arts. 8 ss de la Ley sobre libertad de conciencia de 2011).

Como pone de manifestó el TEDH en los antecedentes de hecho de la sentencia, el Tribunal Constitucional de Hungría dicto la decisión n. 6 de 2013 donde declaraba la inconstitucionalidad de las citadas previsiones de la Ley, bajo la consideración de que eran contrarias a la realización efectiva del derecho d derecho de libertad de conciencia consagrado en el art. 7 de la Ley Fundamental cuyo pleno disfrute por parte de los colectivos en que se integran los ciudadanos que ya habían sido legalmente declarados como "Iglesias" al amparo de la derogada Ley de 1990; y que, en todo caso, el principio constitucional de separación entre el Estado y las iglesias consagrado en el mismo precepto constitucional implica que los poderes públicos sólo podrían limitar el acceso a la personalidad jurídica mediante el establecimiento de unos requisitos objetivos y razonables pero que no implicasen, en ningún caso, la declaración de qué debe ser considerado o no religioso lo que es incompatible con la laicidad del propio Estado. A pesar del sentido del fallo de la Corte Constitucional, el encargado del Registro de entidades religiosas denegó el reconocimiento legal de las comunidades religiosas solicitantes en base a que sus ritos y enseñanzas no perseguían fines religiosos en los términos del art. 14 de la Ley sobre libertad de conciencia de 2011 (N. 1 – 18).

Sobre la base de estos presupuestos, el TEDH recuerda a modo de principio general que el derecho a la libertad de pensamiento, de conciencia y de religión es uno de los cimientos de una "sociedad democrática" en el sentido de la Convención de Roma, cuyo pleno disfrute también implica la libertad para manifestar en público y junto a los demás, esto es, en comunidad las propias creencias. El Tribunal no considera necesario decidir, en abstracto considerado, si el establecimiento o no de un conjunto de requisitos legales para que actos de Registro formal de las comunidades religiosas por parte de las autoridades nacionales de los Estados miembros, constituye o no interferencia con el pleno disfrute de la libertad de conciencia consagrada en el art. 9 de la Convención. En todo caso, nos hallamos ante una cuestión cuya valoración apreciación que forma parte del margen de apreciación del que disponen sus autoridades nacionales,

en relación con la interpretación del alcance y significado de los límites impuestos a las diferentes manifestaciones externas de aquella libertad. Ahora bien, en relación con este particular el Tribunal hace hincapié en que en el contexto de un Estado laico, como es Hungría, los poderes públicos tienen el deber de permanecer neutral e imparcial en el ejercicio de su potestad reglamentaria en la esfera de la libertad religiosa y en sus relaciones con diferentes religiones, confesiones y creencias. El pleno disfrute de esta libertad excluye cualquier discrecionalidad por parte del Estado para determinar si las creencias religiosas o los medios utilizados para expresar estas creencias son legítimas.

En efecto, el TEDH considera en el presente caso que los Estados parte deben mantener una actitud de neutralidad e imparcialidad, como se define en la jurisprudencia del Tribunal de Justicia, es incompatible con cualquier poder por parte del Estado para evaluar la legitimidad de un determinado grupo o comunidad religiosa. Más cuando se trata del reconocimiento legal de una comunidad religiosa, en donde el art. 9 del Convenio debe ser interpretado a la luz del contenido del derecho de asociación consagrado en el art. 11 del Convenio de Roma de 1950. El Tribunal recuerda, además, que el reconocimiento por parte de los Estados miembros del Convenio de personalidad jurídica al ente asociativo de que se trate para que ostente plena capacidad de obrar en el ordenamiento jurídico interno, en relación para el desempaño de las actividades de interés mutuo para los asociados como lo es la expresión en común de las propias creencias también es una exigencia derivada del pleno disfrute del derecho de asociación consagrado en el art. 11 del Convenio. Las autoridades nacionales de los países contratantes disponen de un escaso margen de apreciación para limitar esta manifestación específica tanto de la libertad de conciencia como del derecho de asociación de los ciudadanos de modo que, a juicio del Tribunal, sólo pueden negarse a reconocer la personalidad jurídica a una comunidad religiosa cuando exista una "necesidad social imperiosa" en contra de dicho reconocimiento (N. 75-79).

En base a estas consideraciones, aunque el TEDH considera de que a falta de consenso en el marco del Consejo de Europea en relación con el reconocimiento de personalidad jurídica al amparo de las

respectivas legislaciones internas a movimientos religiosos de nuevo cuño como acontece, por ejemplo, con la Iglesia de la Cienciología; el margen de apreciación de que disponen los Estados miembros en esta materia no se puede extender a la deferencia total a la evaluación de las religiones y organizaciones religiosas de las autoridades nacionales; las soluciones legales aplicables adoptadas en un Estado miembro deben estar en conformidad con la doctrina general del Tribunal que acabamos de exponer. De donde resulta, entonces, que la ausencia de aparente consenso sobre el carácter religioso o no de un determinado culto no puede dar lugar a discriminaciones por motivos de convicciones en relación con el reconocimiento de personalidad jurídica a una o varias comunidades religiosas, sean tradicionales o no. Sostener lo contrario significaría que las religiones no tradicionales podrían perder la protección jurídica que les brinda el alcance del art. 9 de la Convención interpretado de conformidad con la legislación interna de un determinado Estado parte debido al hecho de que no se encuentran legalmente reconocidas como iglesias conforme a los parámetros fijados en legislaciones nacionales internas de otros países parte. La adopción de este tipo de medidas o por parte de las autoridades públicas nacionales respectivas excedería de su margen de apreciación del derecho de libertad de conciencia interpretado conforme a las exigencias derivadas del derecho de asociación contemplado en el art. 11 del Convenio en esta materia (N. 87-89).

Pero es que, además, los Estados miembros del Consejo de Europa no sólo disponen de un escaso incluso, en la praxis nulo, margen de apreciación en relación con esta manifestación específica de los derechos de asociación y de libertad de conciencia, pensamiento y de religión, sino que además el TEDH considera la realización efectiva de ambos derechos implica el cumplimiento de una obligación de signo positivo por parte de las autoridades nacionales respectivas de poner en marcha un sistema interno de registro y/o reconocimiento que facilite la adquisición de la personalidad jurídica de las comunidades religiosas. El acceso a dicho estatuto jurídico no puede se restringido en base a la calificación del carácter religioso o no de las actividades y/o fines que persiga la entidad, sobre todo en el contexto propio de un Estado secular donde los poderes públicos deben ser neutrales a la hora de calificar la legitimidad de una

determinada creencia religiosa. De lo contario, si el Estado se negara a reconocer a una comunidad religiosa como tal en base a la consideración de su carácter religioso o no esta discriminado injustificadamente a estas entidades con respecto de aquellas otras que sí han sido legalmente reconocías como tales restringiendo, por tanto, la libertad para expresar colectivamente las convecciones religiosas de los miembros de aquellos grupos. Todo ello, bajo la premisa de que la realización efectiva de los arts. 9 y 11 de la Convención sólo requiere que las autoridades nacionales de los Estados parte garanticen que las comunidades religiosas tienen la posibilidad de adquirir el tipo personalidad jurídico-privada al igual que el resto de entidades asociativas, pero no implica, necesariamente, que deben adquirir el status legal de sujetos de Derecho público. La determinación de uno u otro tipo de personalidad jurídica y de los derechos y beneficios derivados del reconocimiento de uno u otro tipo de personalidad jurídica forma parte del margen de apreciación del que disponen los Estados miembros en esta materia (N. 90 – 91 y 94).

Sobre la base de estos presupuestos, el TEDH analiza en primer lugar el caso de aquellas entidades recurrentes que a la entrada en vigor en enero de 2012 de la Ley sobre libertad de conciencia de 2011 llevó consigo que las entidades solicitantes que, hasta entonces, se encontraban legalmente reconocidas como entidades religiosas de pleno derecho beneficiándose de los privilegios, subsidios y donaciones derivadas de dicho reconocimiento, perdieron esa condición y fueron relegados a, como mucho, el estado de asociaciones privadas que carecen, sin embargo, de los mismos derechos y prerrogativas que las comunidades religiosas. El establecimiento A este respecto, el Tribunal constata que esta normativa contempla dos estatutos jurídicos diferenciados a las entidades religiosas en base a que ostentasen notorio arraigo en el territorio nacional en los términos fijados a tal efecto. La existencia de estatuaos jurídicos diferenciados para las entidades religiosas legalmente reconocidas en los diferentes Estados parte del Consejo forma parte del margen de apreciación del que disponen en relación con la interpretación del alcance y contenido del art. 9 del Convenio de Roma siempre que, eso sí, se base en tradiciones histórico-constitucionales del país. Así sucede actualmente, como resalta el propio Tribunal, en aquellos Estados miembros que reconocen un

estatuto jurídico cualificado a las iglesias que bien se encuentra constitucionalmente reconocida como corporaciones de Derecho público o que aún siguen siendo tuteladas, al menos de manera formal, por el Estado como acontece actualmente en Alemania o en Suecia respectivamente. Inglaterra o en Suecia. El recogimiento de dicho estatuto cualificado a favor de algunas entidades religiosas en estos u otros países DEL Consejo de Europa no excede de su margen de apreciación del alcance y significado del derecho de libertad de conciencia consagrado en el art. 9 del Convenio de Roma, en la medida en que se base en criterios objetivos y razonables relacionados con el cumplimiento por parte de estos grupos en los intereses públicos propios del Estado. Lo que no sucede en el caso húngaro, donde el Tribunal considera que el Gobierno no ha aportado ninguna prueba convincente para demostrar que las comunidades religiosas demandantes no ostentaran notorio arraigo como parte integrante del bagaje histórico-cultural del país más cuando mucha de ellas venían desempeñando sus actividades de culto en el territorio nacional desde la década de los ochenta del pasado siglo. Como constata el propio TEDH, la decisión de no reconocerlas expresamente bajo el estatuto jurídico de Iglesias en el Anexo de la Ley sobre libertad de conciencia de 2011 se debió a razones arbitrarias de carácter político que exceden del margen de apreciación que disponen los países parte del Convenio para establecer estatutos jurídicos diferenciados a las comunidades religiosos por razones históricas o culturales; irreconciliables, por ende, con el requisito de la neutralidad que deben mantener los poderes públicos de un Estado secular como es Hungría en este campo. (N. 95-103 y 113).

En relación con las comunidades recurrentes que no fueron legamente reconocidas ni como Iglesias ni como asociaciones religiosas debido a que sus fines no se ajustaban a lo dispuesto en el art. 14 de la Ley sobre libertad de conciencia de 2011, el TEDH considera que si bien las autoridades internas de los Estados miembros gozan de un escaso margen de apreciación en os términos expuestos con anterioridad para denegar el reconocimiento de personalidad jurídica a una comunidad religiosa por motivos de seguridad pública, las entidades a las que se denegó dicho estatus en el presente caso venían desempeñando su actividades religiosas en el territorio húngaro durante décadas sin que

hubieran sido declarados como grupos peligroso para la sociedad por parte de la opinión pública y sin que, lo que es aun mas importante, se hubiese instado un proceso criminal contra alguna o todas ellas ante la jurisdicción húngara en base a estos motivos. De ahí que el Tribunal estima que las autoridades nacionales también se han excedido del margen de operación que disponía para tratar de ajustar las disposiciones impugnadas a de la Ley sobre libertad de conciencia de 2011 a las exigencias derivadas del debido respeto del Convenio de Roma en esta materia (N. 101-104).

Por todo ello, el TEDH concluye que la aplicación que fue llevada a cabo en la práctica de la Ley sobre libertad de conciencia de 2011 llevó consigo una violación de los derechos de libertad de conciencia interpretado con arreglo a las exigencias derivados del derecho de asociación contemplados en los arts. 9 – 11 del Convenio de Roma de 1950. Las disfunciones que provocó la entrada en vigor de la citada Ley en el sistema de reconocimiento de personalidad jurídica bajo las categorías de iglesias o de asolaciones religiosas fueron corregidas por obra de la declaración de inconstitucionalidad de algunos precipuo de la Ley por obra de la Corte Constitucional húngara en su sentencia n. 6 de 2013. La promulgación de dicho fallo llevó consigo la reforma en agosto de 2013 de los preceptos impugnados y, sorprendentemente, la quinta enmienda del último inciso del art. 7 de la Ley Fundamental de Hungría que constitucionaliza, expresamente, la potestad de que dispone actualmente el legislador para regular en una norma con rango de Ley el estatuto jurídico de las comunidades religiosas en este Estado parte del Consejo de Europa.

2.2 Caso de Mladina d.d. Ljubljana contra Eslovenia de 17 de abril de 2014. (Application no. 20981/10)

El 17 de abril de 2014, el Tribunal Europeo de Derechos Humanos dictó sentencia en el caso de Mladina v. Eslovenia. En este caso, la revista Corte desarrolla su doctrina respecto de las declaraciones públicas que son susceptibles de crítica. El asunto tiene origen en una demanda contra la República de Eslovenia presentada ante la Corte por una compañía eslovena, Mladina dd Liubliana, el 8 de abril de 2010. La compañía invoca el artículo 34 de la Convención para la

Protección de los Derechos Humanos y de las Libertades Fundamentales por violación de su derecho a la libertad de expresión basándose en las sentencias que, en su contra, habían dictado los tribunales eslovenos.

HECHOS:

En junio de 2005 el Parlamento esloveno examinaba un proyecto de Ley de parejas del mismo sexo. Durante el debate parlamentario sobre la cuestión ciertos representantes del Partido Esloveno Nacional, en el uso de la palabra, realizaron manifestaciones que posteriormente fueron cuestionadas por la revista Mladina.

En concreto, un miembro del Parlamento esloveno, explicó de una manera extremadamente apasionada que las parejas del mismo sexo no deberían tener ningún reconocimiento, y expresó su posición en los siguientes términos: "Ninguno de nosotros quiere tener un hijo o una hija que quisiera optar por este tipo de matrimonio. Si nuestros mendigos pueden seguir un rastro de migas hasta Finlandia dejemos que estas damas y caballeros también vayan allí para casarse. Pero las mayores víctimas de esta ley serían los hijos de ese matrimonio: Imagínense a un niño cuyo padre viene a recogerlo de la escuela y le saluda con ¡heeeeey, he venido a llevarte a casaaaaa! ¿Has cogido ya el abrigo?". Esta imitación, sin duda histriónica, fue acompañada de expresiones corporales amaneradas propias de una concepción afeminada de los gays a quienes, como el diputado reconoció, en su lugar de origen "llaman maricones".

El 27 de junio de 2005, la revista Mladina publicó un artículo de una página titulado "La Ley de parejas del mismo sexo aprobada". El texto publicado contenía el resumen del debate parlamentario previo a la adopción de la ley y realizaba un exhaustivo y crítico análisis de la intervención en el debate del miembro del partido conservador Mr. S.P.

La revista calificó la intervención del parlamentario como una imitación burda y zafia de un estereotipo vulgar de homosexual, afeminado que ilustra, en realidad "la actitud típica de un "encefalograma plano" que tiene la suerte de estar viviendo en un país en el que, incluso una persona de sus características, puede terminar

en el Parlamento, cuando en un país normal digno de respeto no podría siquiera ocupar la conserjería en una escuela de primaria".

En la segunda parte del artículo, el autor relata las respuestas de otros parlamentarios a los discursos de los miembros del SNP. El texto concluye con distintos puntos de vista de organizaciones no gubernamentales que abogan por los derechos de las parejas del mismo sexo, que critican principalmente el hecho de que la Ley concede un elenco muy limitado de derechos a estas parejas y advierten del posterior recurso de la Ley ante el Tribunal constitucional por parte de los representantes de las ONGs.

El 26 de agosto de 2005, el miembro de SP SNP interpuso un recurso ante el Tribunal de "Distrito" de Liubliana por difamación y ataque a su honor por la sociedad ahora demandante. El parlamentario alegaba haber padecido crisis de angustia graves debido al carácter ofensivo del artículo. Afirmó que la descripción que se hace de él como "encefalograma plano" era objetiva y subjetivamente ofensivo, con el objetivo de menospreciarle. La empresa demandante respondió que consideraba que sus acciones eran plenamente legales, si bien se movían en el siempre difícil equilibrio entre el derecho al honor de Mr. S.P. al honor el derecho a la libertad de expresión. En la argumentación presentada la revista invoca las normas y la jurisprudencia de la Corte Europea de Derechos Humanos en relación con la libertad de prensa para difundir información sobre asuntos de interés público. La empresa solicitante considera que las declaraciones de Mr. S.P. constituían un ataque a los homosexuales por lo que la crítica en la revista era en respuesta a los insultos que aquél profirió. No obstante, la crítica que se realiza en el artículo no tiene por objeto menospreciar a Mr. S.P. sino que constituye una reacción a sus declaraciones en términos análogos a los que él utilizó.

EL caso concluyó con la condena de la revista a pagar 2,921.05 euros y a publicar la introducción y parte dispositiva de la sentencia. El Tribunal reconoció el derecho de la revista a criticar la actuación del parlamentario pero considera que el término "encefalograma plano" se refiere a sus características personales y, por tanto, es objetivamente ofensiva. En opinión del Tribunal, el uso de lenguaje ofensivo tiene como propósito servir de información al público y, en realidad, no se trata de una crítica seria al trabajo de Mr. S.P. como parlamentario. El

Tribunal no encontró el discurso de Mr. S.P. ofensivo considerando su actuación histriónica y gestos exagerados como una reminiscencia de ideas pretéritas sobre la homosexualidad, sin que esto supusiera muestras de intolerancia hacia gays y lesbianas.

El 24 de enero de 2007 el Tribunal Supremo de Ljubljana desestimó el recurso de la empresa y admitió en parte el recurso de Mr. S.P. en relación con el texto pero, rechazó su reclamación de daños y perjuicios. El Tribunal confirmó que las declaraciones contenidas en el artículo impugnado constituían una ofensa que el diputado del SNP no está obligado a soportar independientemente de que su actuación resultase hiriente para los homosexuales. El 10 de noviembre de 2007, la empresa demandante presentó un recurso de inconstitucionalidad ante el Tribunal Constitucional. Alegó, entre otras cosas, que el artículo impugnado debía considerarse una sátira política en la que el autor simplemente había expresado su opinión sobre la conducta de Mr. S.P. en un debate parlamentario. El 10 de septiembre de 2009, el Tribunal Constitucional desestimó la denuncia de la empresa solicitante al considerar que los tribunales, en su interpretación, habían logrado el equilibrio entre la libertad de expresión y la dignidad personal del parlamentario.

EL DERECHO

Expuesta la normativa eslovena aplicable[4] el Tribunal procede a la aplicación del Derecho de Estrasburgo. La empresa solicitante entiende que las decisiones de los tribunales nacionales han violado su derecho a la libertad de expresión, conforme a lo dispuesto en el artículo 10 de la Convención[5].

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4 A. La Constitución.
Son aplicables las siguientes disposiciones: Art. 15. El ejercicio y los límites de los derechos, art. 34. Derecho a la dignidad personal, art. 35. La protección del derecho a la intimidad y libre formación de la personalidad y art. 39. Libertad de Expresión.
B. Derecho civil.
Son aplicables los artículos 179 y 178 del Código Civil.

5 Artículo 10. Convenio Europeo de Derechos Humanos.

La empresa recurrente señaló que el Tribunal Europeo de Derechos Humanos ha encontrado expresiones como " idiota " o " fascista " admisibles utilizadas como crítica en determinadas circunstancias. Se destaca en este sentido que el parlamentario en cuestión, era una figura pública y que el artículo, sin duda, contribuyó a un debate sobre un asunto de interés público. La empresa entiende que el artículo responde a las intervenciones de Mr. S.P. - y de sus colegas – en las que utilizaba un lenguaje peyorativo y realizaba una burda representación de estereotipos homosexuales, claramente homófobos y discriminatorios. La empresa solicitante considera inaceptable que los tribunales eslovenos hayan utilizado estos estereotipos dañinos para justificar una injerencia en su derecho a la libertad de expresión. Aun aceptando que las definiciones empleadas pudieran parecer ofensivas, deben entenderse como un ejercicio de práctica satírica como muchos chistes o ilustraciones a las que estamos acostumbrados ya que cualquier lector habría sido consciente de que los comentarios del autor contenían un altísimo grado de exageración.

El Gobierno argumentó que los tribunales nacionales habían sopesado cuidadosamente los dos derechos en conflicto , a saber, el derecho de la sociedad demandante a la libertad de expresión y el derecho del SP a la reputación , teniendo debidamente en cuenta el hecho de que el ejercicio de ambos derechos está limitado por las leyes. El Gobierno

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Libertad de expresión

1. Toda persona tiene derecho a la libertad de expresión. Este derecho comprende la libertad de opinión y la libertad de recibir o de comunicar informaciones o ideas sin que pueda haber injerencia de autoridades públicas y sin consideración de fronteras. El presente artículo no impide que los Estados sometan a las empresas de radiodifusión, de cinematografía o de televisión a un régimen de autorización previa.

2. El ejercicio de estas libertades, que entrañan deberes y responsabilidades, podrá ser sometido a ciertas formalidades, 12 13 condiciones, restricciones o sanciones, previstas por la ley, que constituyan medidas necesarias, en una sociedad democrática, para la seguridad nacional, la integridad territorial o la seguridad pública, la defensa del orden y la prevención del delito, la protección de la salud o de la moral, la protección de la reputación o de los derechos ajenos, para impedir la divulgación de informaciones confidenciales o para garantizar la autoridad y la imparcialidad del poder judicial.

argumenta que el artículo periodístico contenía información inexacta y engañosa. Entre otras cosas, el periodista había omitido mencionar que la imitación de un hombre homosexual al recoger a un niño de la escuela había ido acompañada de una explicación, ya que el menor podía sentirse burlado y humillado. En opinión del Gobierno, esta última parte de la intervención de Mr. S.P. arroja una luz diferente sobre la cuestión. El Gobierno hace hincapié en que el artículo contenía comentarios groseros y objetivamente difamatorias sobre Mr. S.P. y sus características personales e intelectuales, entendiendo que el mero hecho de que el parlamentario se haya opuesto a la ley propuesta, aunque de una manera posiblemente inaceptable, no supone que se pueda aceptar la calificación de nadie como "encefalograma plano", aunque se trate de una crítica a un personaje público en el ejercicio de sus funciones. En conclusión, el Gobierno señaló que el caso no se refería a ningún proceso penal, se trata de una demanda civil por daños y perjuicios. En opinión del Gobierno, el pago de daños y perjuicios y la publicación de la sentencia no pueden ser considerados como una carga excesiva para la empresa solicitante.

FUNDAMENTOS DE DERECHO

El Tribunal considera que las decisiones de los tribunales internos han supuesto una injerencia en el ejercicio de la libertad de expresión de la revista Mladina. Tal injerencia infringe el Convenio si no cumple los requisitos del artículo 10 § 2. Por lo tanto, hay que determinar si se estaba «prevista por la ley" y si era "necesaria en una sociedad democrática ". El Tribunal considera que la injerencia está protegida por los artículos 178 y 179 del Código Civil esloveno para proteger los derechos de los demás. Al evaluar si la interferencia era proporcionada la Corte reconoció que aunque la descripción de las intervenciones del Sr. S.P. había sido exagerada no supone una violación de su derecho al honor y propia imagen.

El Tribunal destacó que las declaraciones de Mladina han sido publicadas en el contexto de un debate político, por un periodista que desempeña un papel crucial en una sociedad democrática. Por otra parte, el Sr. S.P. es un político por lo que ha de mostrar un mayor grado de tolerancia que un ciudadano particular. El Tribunal entiende

que la libertad de prensa abarca un amplio espectro de expresiones aun cuando éstas sean altamente exageradas. La Corte alude a distintas sentencias para afirmar que los políticos deben demostrar una mayor tolerancia frente a las declaraciones que se vierten sobre ellos así en: Lingens v. Austria; . Oberschlick v. Austria; . Oberschlick v. Austria y Lopes Gomes da Silva v. Portugal. De hecho, la Corte ha dicho varias veces que ellos mismos hacen declaraciones que abren la puerta a críticas en un tono análogo al que ellos han empleado. Cabe señalar que las afirmaciones que se consideran " sensibles a la crítica " implican, inevitablemente, un juicio de valor por el propio Tribunal. La Corte ya ha concedido una especial protección en virtud del artículo 10 a trabajos periodísticos contra la xenofobia, así en Oberschlick v. Austria. En esta ocasión lo que hace es aplicar los mismos criterios en un caso de homofobia.

Esta sentencia deja claro que los trabajos periodísticos en los que se realizan críticas de testimonios homófobos disfrutan de un nivel particularmente alto de protección en virtud del artículo 10. En definitiva, la Corte entiende que las opiniones críticas del autor fueron acompañadas de una serie de expresiones exageradas que pretendían servir como recursos retóricos y no meramente ofensivos. En casos como el presente incluso el lenguaje ofensivo, puede estar protegido por el artículo 10 ya que no se busca como fin último la ofensa o el ataque al honor de nadie.

En definitiva y a la vista de lo expuesto el Tribunal Europeo de Derechos Humanos, declara que en el caso que nos ocupa ha habido una violación del artículo 10 de la Convención por parte de los tribunales eslovenos.

ANEXO I

Albania

Criminal Code of Albania (excerpts) (as of February 2014)

art 50/j The following circumstances aggravate the punishment..... (j) when the act is instigated by motivations related to gender, race, religion, nationality, language, political, religious or social beliefs.

Rumania

Criminal Code – Law No. 289/2009 (entry into force 1 February 2014)

Art.77– Aggravating Circumstances

h) committing a criminal offence on grounds of **race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion, political ideology, belief, wealth, social origin, age, disability, non-contagious chronic disease or HIV infection** or for any similar circumstances, considered by the perpetrator as causes of the inferiority of one person against others....

G.E.O. No. 31/2002 prohibiting the organizations with fascist, racist and xenophobic character and the glorification of those found guilty of crimes against peace and humanity

art. 6/1 - threatening by means of IT system

(1) Using a computer system to threaten a person or a group of persons with committing an offence whose maximum penalty provided by law is at least 5-year imprisonment, on grounds of race, colour, race, descent, national or ethnic origin or on grounds of religion, if used as pretext for any of the abovementioned grounds, shall be criminalized and punished by imprisonment from one to 3 years.
(2) Criminal proceedings shall be instituted upon preliminary complaint lodged by the injured party.

Eslovaquia

Act No. 122/2013 Coll. on Protection of Personal Data and on Changing and Amending of other acts, resulting from amendments and additions executed by the Act. No. 84/2014 Coll.

(....)

Section 13

Special Categories of Personal Data

(1) The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in

political parties or movements, trade-union membership, and data concerning health or sex life shall be prohibited.

(2) In the processing of personal data, an identifier of general application stipulated by a special Act18) may be used for the purposes of identification of a natural person only if its use is necessary for achieving the given purpose of the processing. The processing of a different identifier revealing characteristics of the data subject or disclosing of an identifier of general application shall be prohibited.

(3) Personal data relating to mental identity of a natural person or his mental capacity to work may only be processed by a psychologist or by a person entitled to it by a special Act.19)

(4) The processing of personal data relating to a breach of provisions invoking criminal liability or administrative liability may only be performed by a person entitled to it by a special Act.20

(5) The controller shall be entitled to process biometrical data only if it is adequate for the purpose of processing and necessary for its achieving and if

a) it expressly results for the controller from the Act,

b) the data subject gave a written or other credibly proven consent to the processing,

c) the processing of personal data is necessary for the performance of a contract under Section 10 Paragraph 3 Point b), or

d) the processing of personal data is necessary for the purposes under Section 10, Paragraph 3 Point g)

(6) Adequacy, necessity and legal basis of biometric data processing under Paragraph 5 Points b) and d) is determined by the Office in the procedure under Section 37 to 39.

Section 14

Exceptions from Restriction

in Processing of Special Categories of Personal Data

The prohibition relating to the processing of special categories of personal data under Section 13 Paragraph 1 shall not apply if

a) the data subject gave a written or other credibly provable consent to their processing; consent shall be invalid if its granting is excluded by special Act

b) the legal basis for the processing of personal data is based on a special Act, a legally binding act of the European Union or an international treaty which is binding for the Slovak Republic,

c) the processing is necessary for protection of vital interests of the data subject or another natural person if the data subject does not have a legal capacity or is physically unable to issue a written consent and a consent of his legal representative cannot be obtained,

d) the processing is performed within the framework of legitimate activities by a civil society, foundation or non-profit organisation providing generally beneficial services, by a political party or movement, trade-union organisation, church or religious society acknowledged by the State, and such processing only concerns their members or those natural persons who are in a regular contact with them with respect to their objectives, the personal data serve solely for their internal needs and will not be provided to a third party without a written or other credibly provable consent of the data subject,

e) the processing concerns the personal data which have already been made public by the data subject himself or which are necessary for exercising his legal claim,

f) the processing is performed for the purposes of providing healthcare and effecting public health insurance, provided that these data are processed by a provider of the healthcare, a health insurance company, a person exercising services related to providing healthcare or by a person exercising supervision of healthcare and on his behalf expertly skilled entitled person that is bounded by obligation to maintain secrecy over matters that are part of professional secret and obligation to maintain etiquette of the profession, or

g) the processing is performed within the framework of social insurance, social security of policemen and soldiers for the purposes of provision of the state social benefits, purposes of supporting social integration of a natural person with severe disability to the society,21 purposes of social services, performing of measures of protection and

social custody of children or provision of help in material need, or the processing is necessary for the purposes of fulfilment of duties or exercising of legal rights of the controller which is responsible for processing in labour law and employment services area and if it expressly results for the controller from a special Act.22

(...)

CHAPTER SIX

OBLIGATION TO NOTIFY, SPECIAL REGISTRATION AND KEEPING-RECORDS OF FILING SYSTEMS

Section 33

The controller shall be obliged to notify the Office of filing systems, to request the Office for a special registration of filing systems or to keep records of filing systems in the extent and under conditions stipulated by this Act.

Obligation to Notify

(1) The obligation to notify shall apply to all filing systems, in which personal data are processed by fully or partially automated means of processing.

(2) Obligation to notify pursuant to Paragraph 1 shall not apply to filing systems which

a) are subject to special registration pursuant to Section 37,

b) are subject to supervision of a data protection officer, who was authorized by the controller in writing under Section 23 and who performs supervision of personal data protection pursuant to this Act, with exception of filing system in which personal data pursuant to Section 10 Paragraph 3 point g) are being processed, which is always subject to the obligation to notify; the Office may decide that the filing system in which personal data under Section 10 Paragraph 3 point g) are being processed is subject to the special registration,

c) contain personal data concerning membership of the persons in a civil society or a trade-union organisation, and if these personal data are processed and used solely for its internal needs or containing

personal data concerning religious beliefs of persons associated in a church or religious association acknowledged by the State and if these personal data are processed by the church or the religious association and used solely for their internal needs, or containing personal data concerning membership of persons in a political party or movement, of which they are members and if these personal data are processed by the political party or movement and used solely for their internal needs, or

d) contain personal data processed pursuant to the Law, directly enforceable legally binding legal Act of the European Union or an international treaty which the Slovak Republic is bounded by.

HUNGRIA

Reforma de la Ley Fundamental de Hungría de 1 de octubre de 2013.

With effect from 1 October 2013, pursuant to the Fifth Amendment to 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 or 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 cooperate to promote community goals. Such cooperation shall be established by decision of Parliament, at the request of the religious community concerned. Religious communities participating in such cooperation shall operate as incorporated churches. With a view to their participation in activities promoting community goals, the State shall confer specific rights on the incorporated churches.

(5) Common rules concerning religious communities, the conditions of cooperation, the incorporated churches and the detailed rules governing them shall be defined and regulated by a cardinal Act."

2. Reforma de la Ley n. CCVI sobre el derecho de libertad de conciencia y de religión y el estatuto legal de las iglesias, confesiones y comunidades religiosas de 1 de agosto de 2013.

Religious activities 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 be established and operate primarily for the purposes of religious activities.

(3) Religious activities relate to a set of beliefs directed towards the transcendental which has a system of faith-based principles and whose teachings focus on existence as a whole, and which embraces the entire human personality and lays down 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) charitable activities;

(j) family, child or youth protection activities;

(k) cultural activities;

(l) sports activities;

(m) animal protection, environmental protection or nature conservation activities;

(n) information technology activities which go beyond the information technology necessary for faith-based activities;

(o) social work activities.

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

Section 7

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

Section 9

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

Organisation performing religious activities

Section 9/A

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

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

Section 9/B

"(1) The Budapest High Court shall have exclusive jurisdiction to register organisations performing religious activities.

(2) On receiving a registration request, the High Court shall examine only whether

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

(b) the activity to be performed by the organisation does not violate section 6, sub sections (4) and (5);

(c) the organisation's founding was declared, and its statute adopted, by ten members at least;

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

(3) The registration request shall be rejected only if the organisation fails to meet the requirements enumerated under sub-section (2), points (a) to (d), above.

(4) The statute of organisations performing religious activities may regulate the following subjects in a manner which differs from the rules applying to associations:

(a) admittance to the organisation and exercise of membership rights;

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

b.a adopt and oversee internal decisions concerning the organisation's activity or

b.b manage and represent the organisation."

(5) Organisations performing religious activities may merge only with other organisations performing religious activities."

Section 9/C

"(1) The review of lawfulness exercised by the prosecutor's office in respect of an organisation performing religious activities shall extend only to verifying whether the organisation's activity conforms to section 6, sub-sections (4) and (5). If the organisation fails to meet those requirements even after a warning from the prosecutor's office, the latter may initiate court proceedings against the organisation.

(2) At the request of the prosecutor's office the court may

(a) order the organisation to restore its activity to a lawful footing and dissolve it in the event of non-compliance;

(b) dissolve the organisation if its activity violates the Fundamental Law in 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 comprising natural persons confessing the same principles of faith, on which Parliament confers 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 Appendix to this Act."

Person in the service of a religious community

Section 13

"(1) An ecclesiastic (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 from the State authorities any personal information which they acquire during ecclesiastical service.

(3) Ecclesiastics shall enjoy enhanced protection under the law on regulatory offences and under 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

c.a internationally for at least one hundred years or

c.b in an organised manner as a religious community in Hungary for at least twenty years and its membership equals at least 0.1 per cent of the national population;

(d) it has adopted internal ecclesiastical rules;

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

(f) its representatives declare that the activities of the organisation established by them are not contrary to sub-sections (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 the course of its operation and;

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

Rules on 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 shaping social values. To this end, the community (either itself or through an institution which it establishes for this purpose) may also exercise the activities defined in section 9(1) which are not statutorily reserved for the State itself or a State institution. ...

(5) Religious communities may enter freely into civil-law relationships; they may establish businesses and NGOs and participate therein."

Section 19/A

"(3) On the basis of statutory rules churches may receive funding from the subsidiary organs of central government, from programmes financed out of 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 under the law on regulatory offences and under criminal law, in particular to ensure the undisturbed performance of rites and operation according to internal rules."

Rules on the functioning of ecclesiastical legal persons

Section 20

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

(2) The conditions of employment within ecclesiastical legal persons performing the activities enumerated in section 9(1) shall conform to those in the public sector in respect of wages, working time and rest periods. The central wage-policy measures applicable to employees of State and local government institutions shall cover the employees of ecclesiastical legal persons, subject to the same conditions.

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

Section 21

"(1) With a view to cooperation to promote public-interest goals, ecclesiastical legal persons may organise, according to statutory regulations, religious education in educational institutions maintained by the State, local government 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, on the basis of statutory regulations or an 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 core activities, even beyond the limits defined in section 19(5).

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

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

(b) the use of holiday homes as a service to church personnel;

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

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

(e) the maintenance of cemeteries;

(f) the sale of non-material goods, objects ... serving exclusively religious, pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural, sports or environmental protection activities, including the reimbursement of the cost of work clothes;

(g) the provision of services complementary to religious, pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural, sports or environmental protection activities, or the not-for-profit use of equipment serving these activities;

(h) the production or sale of products, notes, textbooks, publications or studies linked to the performance of public duties taken over from the State or local government;

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

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

(3) The revenues generated from the activities listed in sub-section (2) shall include, in particular, the following:

(a) payments, fees and reimbursement in respect of services;

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

(c) ... non-repayable fundir.g, grants received in connection with the activity; and

(d) the portion of interest, dividends and yields paid by financial institutions and issuers on deposits and securities made or acquired using uncommitted 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 in hospitals, or other special ministries as laid down in statutory rules."

ANEXO II

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)

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, and their ministers and members, on 16 November 2011, 3 and 24 April, 25 and 28 June, and 19 and 29 August 2012 respectively.

2. The applicants were represented by Mr D. Karsai (applications 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 under Article 11 read in conjunction with Articles 9 and 14 of the Convention that the deregistration and discretionary re-registration of churches amounted to a violation of their right to freedom of religion and was discriminatory. Under Articles 6 and 13, they alleged that the relevant procedure was unfair and did not offer any effective remedy. Several of the applicants also alleged a violation of Article 1 of Protocol No. 1 on account of the loss of State subsidies following the loss of church status.

4. On 27 September 2012 the Government were given notice of the applications.

5. In respect of application no. 41463/12, the United Kingdom 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. The applicant communities originally existed and operated lawfully 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) 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 activities outsourced by the municipality of Szolnok and had concluded an agreement with the State Treasury on the provision of services for homeless people. In 2011 the Treasury cancelled this agreement and granted the relevant subsidy only until 30 June 2011. As a consequence the applicant had to terminate the corresponding contract with the municipality, but was obliged to continue to perform its social services up to and including July 2011, thereby allegedly sustaining 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.

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, the European Union for Progressive Judaism is a religious association with its registered office in London. It acts as an umbrella organisation for progressive Jewish 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 twenty 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 since 1999, 2008, 2005, 2001, 2007, 1992, 1998, 2008 and 2007 respectively.

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 to be unconstitutional and annulled them with retrospective effect.

Meanwhile, several applicants filed requests to have the Minister responsible 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 requested.

19. After the Constitutional Court's decision, several applicants applied to the National Taxation and Customs Agency ("the NTCA") seeking to be reissued with the number which is necessary in order to remain entitled to the one per cent of income tax which taxpayers may donate to churches. The NTCA suspended the procedure and invited the applicants to initiate a recognition procedure before Parliament. In the applicants' submission, this demonstrated further disregard for the Constitutional Court's decision.

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

II. RELEVANT DOMESTIC LAW

A. Overview of developments in 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 a membership exceeding one hundred 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). The only entities which qualified as churches were those listed in the Appendix to the 2011 Church Act and those classified as churches by Parliament subject to 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 the recognised churches in the relevant cardinal law and to determine the criteria for the recognition of churches that might be additionally admitted in the future. Formerly registered churches could be converted, at their request, into associations and carry on their activities on that basis; 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 fourteen. The Appendix, in force as of 1 March 2012, lists twenty-seven churches and church alliances, giving a total of thirty-two churches. According to the information published by the tax authorities, these thirty-two churches do not fully coincide with the thirty-two most supported churches if such support is measured by the number of taxpayers making voluntary tax donations in their favour.

On 28 December 2012 the Constitutional Court repealed, among other provisions, 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' being deprived, by 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 reintroduced into the Fundamental Law itself, notably by its Fourth Amendment, which entered into force on 1 April 2013. This introduced the terms "churches" and "other organisations performing religious activities", with churches being defined as those organisations with which the State cooperates to promote 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 encompasses "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 one hundred years of international existence or that it has functioned in Hungary for twenty 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 cooperate with the State to promote 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 to the Fundamental Law (which entered into force on 1 October 2013) was intended to emphasise, also at 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 cooperate with some of those communities to promote community goals, conferring 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 terms were replaced by the overall term "religious communities" throughout the text of the Fundamental Law.

However, under the present rules of Hungarian law, incorporated churches continue to enjoy preferential treatment, in particular in the field of taxation and subsidies. In particular, only incorporated churches are entitled to the one per cent of personal income tax donated by citizens and to 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 and practical terms – by the lawmaker in the case of incorporated churches but not in the case of other religious communities: these examples include religious education and confessional activities within State institutions, the operation of

cemeteries, including religious funerals, the publication of religious printed material and 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 of this kind, which is available only to incorporated churches.

B. Constitutional provisions

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

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 or 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 cooperate with the churches to promote community goals.

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

27. With effect from 1 April 2013, pursuant to the Fourth Amendment to 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 or 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 recognising certain organisations which perform religious activities as churches, with which the State shall cooperate 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. With effect from 1 October 2013, pursuant to the Fifth Amendment to 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 or 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 cooperate to promote community goals. Such cooperation shall be established by decision of Parliament, at the request of the religious community concerned. Religious communities participating in such cooperation shall operate as incorporated churches. With a view to their participation in

activities promoting community goals, the State shall confer specific rights on the incorporated churches.

(5) Common rules concerning religious communities, the conditions of cooperation, the incorporated churches and the detailed rules governing 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, read as follows:

Religious activities

Section 6

"(1) For the purposes of this Act, religious activities relate to a set of beliefs directed towards the transcendental which has a system of faith-based principles and whose teachings focus on existence as a whole, and which embraces the entire human personality and lays down 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) charitable activities;

(j) family, child or youth protection activities;

(k) cultural activities;

(l) sports activities;

(m) animal protection, environmental protection or nature conservation activities;

(n) information technology activities which go beyond the information technology 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 organisation comprising natural persons sharing the same principles of faith, shall possess self-government, and shall operate primarily for the purpose of exercising religious activities. For the purposes of this Act, religious denominations and religious communities shall also be considered as churches.

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

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

Section 8

"The State may enter into agreements with churches which have substantial social support, preserve historical and cultural values and maintain pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural or sports 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 enacting additional rules of law related to the social role of churches and in maintaining relations with them."

Section 14

"(1) The representative of an association which primarily performs religious activities (hereinafter referred to as an 'association') shall be 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) 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 internationally for at least one hundred years, or in an organised manner as an association in Hungary for at least twenty 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 a statute, an instrument of incorporation and internal ecclesiastical rules;

(e) it has elected or appointed 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 the course of its operation;

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

(3) Based on the popular initiative, the parliamentary committee on religious affairs (hereinafter referred to as 'the committee') shall submit a bill to Parliament regarding the recognition of the association as a church. If the conditions defined in sub-section (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 that it fulfils the conditions defined in points (a) to (f) of sub-section (2). The committee shall request the opinion of the President of the Hungarian

Academy of Sciences regarding the fulfilment of the conditions defined in points (a) to (c) of sub-section (2).

(5) If Parliament does not support the recognition of an association as a church in accordance with the bill referred to in sub-section (3), the decision made in this regard shall be published in the form of a parliamentary resolution. No popular initiative aimed at securing recognition of the association as a church may be initiated within a period of one year following the publication of this resolution."

Section 15

"The association in question shall qualify as a church as of the day of entry into force of the amendment to this Act in respect of its registration."

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 core activities. Furthermore, they shall be authorised to establish businesses and NGOs and to participate therein.

(4) Churches' public-interest activities and institutions shall be entitled to budgetary funds to the same extent as State and local government institutions performing similar activities. In these church institutions the conditions of employment shall conform to those in the public sector in respect of wages, working time and rest periods.

(5) The central wage-policy measures applicable to employees of State and local government institutions shall apply to the employees of the church institutions referred to in sub-section (4), subject to the same conditions.

(6) Churches may receive funding on a statutory basis from the subsidiary organs of central government, from programmes financed out of 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) In addition to those activities listed in section 6, sub-section (2), the following shall not qualify as business or entrepreneurial activities in the case of churches:

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

(b) the use of holiday homes as a service to church personnel;

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

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

(e) the maintenance of cemeteries;

(f) the sale of non-material goods, objects ... serving exclusively religious, pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural, sports or environmental protection activities, including the reimbursement of the cost of work clothes;

(g) the provision of services complementary to religious, pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural, sports or environmental protection activities, or the not-for-profit use of equipment serving these activities;

(h) the production or sale of products, notes, textbooks, publications or studies linked to the performance of public duties taken over from the State or local government;

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

(5) The revenues generated from activities listed in sub-section (4) shall include, in particular, the following:

(a) payments, fees and reimbursements in respect of services;

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

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

(d) the portion of interest, dividends and yields paid by financial institutions and issuers on deposits and securities made or acquired using uncommitted 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, and in particular church rites and the undisturbed conduct of church governance, as well as church buildings, cemeteries and other holy places, shall enjoy enhanced protection under the law on regulatory offences and under criminal law."

Section 24

"(1) In teaching 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 in hospitals, or other special ministries as provided for by statute."

Section 33

"(1) The Minister shall, within thirty 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 sub-section (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 the rules governing popular initiatives, Parliament shall, in the light of the provisions governing the recognition of churches set out in Act no. C of 2011 ..., make decisions by 29 February 2012 in respect of the recognition of churches submitting applications for recognition to the Minister in accordance with this Act, under the procedure set out in section 14, sub-sections (4) and (5).

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

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

(a) recognition as a church may proceed on the basis of a popular initiative launched up to one year after publication of the parliamentary resolution referred to in section 14, sub-section (5);

(b) the procedural action defined in section 35, sub-section (1), must be commenced by 30 April 2012 and the conditions set out in section 37, sub-section (2), must be fulfilled by 31 August 2012;

(c) the date of 30 April shall be taken into account in applying section 35, sub section (3), point (b);

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

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

(5) The organisation

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

(b) where it meets the requirements provided for in this Act, 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 where it intends to continue its activities it shall, in accordance with the rules concerning associations, initiate a change-of-registration procedure. In this connection section 37, sub-section (1), section 38 and section 63, points (a) and (c), 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 at which the change of registration is decided shall be considered as the constituent assembly.

(2) The requirements for the organisation to be registered as an association must be fulfilled by 30 June 2012 at the latest. However, if the organisation undertakes religious activities from 1 January 2012 within the same organisational framework defined in its internal ecclesiastical rules as in force on 31 December 2011, the court, in the course of the registration of the association and in connection with the requirements set out in section 62, sub-section (4), point (b), of Act no. IV of 1959 on the Civil Code, 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. Failure to meet the above deadline shall result in forfeiture of the right to register. ..."

Section 37

"(1) With the exception of the cases defined in sub-section (3), after the entry into force of this Act only churches listed in the Appendix may be granted budgetary subsidies 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 to be an association and shall be entitled to the one per cent that can be donated to associations, provided that it complies with the conditions laid down by the laws concerning associations by 30 June 2012.

(3) On the basis of an agreement, the State shall provide budgetary subsidies for the operation of the following institutions operated by the organisation on 31 December 2011:

(a) until 31 August 2012 for public education institutions;

(b) until 31 December 2012 for social institutions."

Section 38

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

(2) Until 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 section 34, sub-section (1), of the Church Funding Act shall be entitled, in 2012, to receive the complementary funding specified under section 4, sub-section (3), 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 the 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 'organisations') shall qualify as associations as of 1 January 2012. ...'"

30. The 2011 Church Act was amended on several occasions, in particular on 1 August 2013. Following these amendments, the criteria to be met in order for an organisation performing religious activities to

obtain "incorporated church" status remain 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 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 cooperate with the State to promote public-interest goals. The ability of an organisation to cooperate may be evidenced by its statute, the number of members it has, its previous activities and the accessibility of those activities to a large section of the population.

31. The procedure for 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 is open to judicial review. The final decision is communicated to the parliamentary committee on religious affairs which, in turn, examines the organisation's intention and ability to cooperate 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 further examines whether the organisation has been considered a threat to national security. The representatives of the organisation are heard by the parliamentary committee on religious affairs. If, following examination by the committee, the organisation is found to meet all the statutory criteria, the committee submits a bill for the granting of "incorporated church" status. Otherwise, it submits a motion proposing the refusal of the request, which must contain due reasoning. Parliament then decides whether to adopt the bill or the motion for refusal. The lawfulness of a refusal may be challenged before the Constitutional Court within fifteen days.

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

Religious activities 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 be established and operate primarily for the purposes of religious activities.

(3) Religious activities relate to a set of beliefs directed towards the transcendental which has a system of faith-based principles and whose teachings focus on existence as a whole, and which embraces the entire human personality and lays down 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) charitable activities;

(j) family, child or youth protection activities;

(k) cultural activities;

(l) sports activities;

(m) animal protection, environmental protection or nature conservation activities;

(n) information technology activities which go beyond the information technology necessary for faith-based activities;

(o) social work activities.

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

Section 7

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

Section 9

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

Organisation performing religious activities

Section 9/A

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

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

Section 9/B

"(1) The Budapest High Court shall have exclusive jurisdiction to register organisations performing religious activities.

(2) On receiving a registration request, the High Court shall examine only whether

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

(b) the activity to be performed by the organisation does not violate section 6, sub sections (4) and (5);

(c) the organisation's founding was declared, and its statute adopted, by ten members at least;

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

(3) The registration request shall be rejected only if the organisation fails to meet the requirements enumerated under sub-section (2), points (a) to (d), above.

(4) The statute of organisations performing religious activities may regulate the following subjects in a manner which differs from the rules applying to associations:

(a) admittance to the organisation and exercise of membership rights;

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

b.a adopt and oversee internal decisions concerning the organisation's activity or

b.b manage and represent the organisation."

(5) Organisations performing religious activities may merge only with other organisations performing religious activities."

Section 9/C

"(1) The review of lawfulness exercised by the prosecutor's office in respect of an organisation performing religious activities shall extend only to verifying whether the organisation's activity conforms to section 6, sub-sections (4) and (5). If the organisation fails to meet those requirements even after a warning from the prosecutor's office, the latter may initiate court proceedings against the organisation.

(2) At the request of the prosecutor's office the court may

(a) order the organisation to restore its activity to a lawful footing and dissolve it in the event of non-compliance;

(b) dissolve the organisation if its activity violates the Fundamental Law in 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 comprising natural persons confessing the same principles of faith, on which Parliament confers 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 Appendix to this Act."

Person in the service of a religious community

Section 13

"(1) An ecclesiastic (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 from the State authorities any personal information which they acquire during ecclesiastical service.

(3) Ecclesiastics shall enjoy enhanced protection under the law on regulatory offences and under 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

c.a internationally for at least one hundred years or

c.b in an organised manner as a religious community in Hungary for at least twenty years and its membership equals at least 0.1 per cent of the national population;

(d) it has adopted internal ecclesiastical rules;

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

(f) its representatives declare that the activities of the organisation established by them are not contrary to sub-sections (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 the course of its operation and;

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

Rules on 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 shaping social values. To this end, the community (either itself or through an institution which it establishes for this purpose) may also exercise the activities defined in section 9(1) which are not statutorily reserved for the State itself or a State institution. ...

(5) Religious communities may enter freely into civil-law relationships; they may establish businesses and NGOs and participate therein."

Section 19/A

"(3) On the basis of statutory rules churches may receive funding from the subsidiary organs of central government, from programmes financed out of 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 under the law on regulatory offences and under criminal law, in particular to ensure the undisturbed performance of rites and operation according to internal rules."

Rules on the functioning of ecclesiastical legal persons

Section 20

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

(2) The conditions of employment within ecclesiastical legal persons performing the activities enumerated in section 9(1) shall conform to those in the public sector in respect of wages, working time and rest periods. The central wage-policy measures applicable to employees of State and local government institutions shall cover the employees of ecclesiastical legal persons, subject to the same conditions.

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

Section 21

"(1) With a view to cooperation to promote public-interest goals, ecclesiastical legal persons may organise, according to statutory regulations, religious education in educational institutions maintained by the State, local government 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, on the basis of statutory regulations or an 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 core activities, even beyond the limits defined in section 19(5).

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

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

(b) the use of holiday homes as a service to church personnel;

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

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

(e) the maintenance of cemeteries;

(f) the sale of non-material goods, objects ... serving exclusively religious, pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural, sports or

environmental protection activities, including the reimbursement of the cost of work clothes;

(g) the provision of services complementary to religious, pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural, sports or environmental protection activities, or the not-for-profit use of equipment serving these activities;

(h) the production or sale of products, notes, textbooks, publications or studies linked to the performance of public duties taken over from the State or local government;

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

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

(3) The revenues generated from the activities listed in sub-section (2) shall include, in particular, the following:

(a) payments, fees and reimbursement in respect of services;

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

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

(d) the portion of interest, dividends and yields paid by financial institutions and issuers on deposits and securities made or acquired using uncommitted 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 in hospitals, or other special ministries as laid down in statutory rules."

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 an exclusively materialist and atheist outlook, restricted the confessional life and social role of churches to a bare minimum by confiscating their assets and dissolving most of their organisations, and through other instruments 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 necessary financial means.

Act no. IV of 1990 on churches ... already made reference 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, it was not yet possible at that time to generate the material and financial assets necessary for these tasks.

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

Act no. CXXIV of 1997 on the financing of the religious and public interest activities of churches ("the Church Funding Act") provides as follows:

Preamble

"Recognising the Hungarian churches' millennium-long work on behalf of the life and interests of the nation;

Mindful of the importance of religious convictions in Hungarian society;

Taking into account the fact that the Hungarian churches were subjected to measures depriving them of their rights after 1945;

Considering the requirements of separation of State and church as well as the requirement for them to cooperate to promote community goals;

Parliament hereby enacts the following law: ..."

Section 1

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

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 donate their tax for that purpose. 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 for in sub-sections (3) and (4) below.

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

(4) Incorporated churches shall be entitled to the subsidy in proportion 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 subsidies'), based on the decision of the persons provided with public services to procure 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 churches and State in connection with 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 freedom of religion.

[134] ... The Fundamental Law guarantees that 'religious communities (in addition to other institutional forms proposed by the law on associations) may freely avail themselves of the legal status which national law refers to as that of a 'church'. By providing for this legal form, the State acknowledges the unique characteristics of churches and enables them to find their place within the legal order ...'

[141] ... Therefore, Parliament cannot decide, under the Fundamental Law, to abolish 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 freedom of religion would be unconstitutional.

[143] 2.3. On issues of substance, the State relies on the self-definition of religions and religious communities. However, in accordance with freedom of religion and the right to practise a religion in community, it may define objective and reasonable conditions for recognition as a special legal entity, that is to say, a 'church'. In particular, such conditions may include a minimum number of members in order to submit 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 for conferring legal personality on organisations and communities established in accordance with freedom of religion by means of rules which take into account the specific characteristics of the organisation or community concerned. Nevertheless, the Constitutional Court would point out that ... 'it would raise ... constitutionality issues if the legislature were to grant the possibility to become a legal person or to establish a specific legal entity for some organisations while arbitrarily excluding others in a comparable situation or making it disproportionately 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) in defining public-interest goals. In general, the State is not obliged to cooperate on the achievement of targets defined by a church or religious community if it has not otherwise undertaken to accomplish tasks in that sphere.

[153] The State also enjoys a wide margin of appreciation in granting 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 specific requirements imposed by freedom of religion and must ensure that none of the churches is discriminated against in comparison with similarly situated churches and organisations [see 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 cooperate equally with every church. Practical differences in securing rights related to 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 executing public-interest tasks undertaken by the State, the allocation of subsidies to churches and mandatory 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 special church status (allowing them to function independently), and other entitlements conferred on churches, in a manner consistent with 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, and subject to a remedy. ...

[158] ... The Constitutional Court has reached 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 follows.

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

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

[161] Under Act no. CXXVI of 1997 on the use of a specified amount of personal income tax in accordance with the taxpayer's instructions, religious associations are considered as associations in accordance with the 2011 Church Act. As a consequence, they may be entitled to the portion of personal income tax which may be donated to associations. ... [T]hese associations are also considered to be beneficiaries, but not of religious subsidies ...

[162] Incorporated churches may use donations to provide their ministers performing 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 are entitled to ... a subsidy on a similar basis to the institutions maintained by the State.

[164] The public-interest activities and institutions of [incorporated] churches are entitled to budgetary funds to the same extent as State and local government institutions performing similar activities. In these church institutions the conditions of employment must conform to those in the public sector in respect of wages, working time and rest periods. The central wage-policy measures applicable to employees of

State and local government institutions also apply to the employees of church institutions, subject to the same conditions. ...

[165] The State authorities are prohibited from examining the religion-related revenues of the [incorporated] churches and the use of those revenues. ...

[166] The costs of religious and moral education are 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 confers on incorporated churches additional rights which place them in a substantially advantageous situation compared with religious associations and which assist 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 possibly withdrawn if it subsequently transpires that the conditions for conferring it were not met. ... [I]t is a constitutional requirement that, in similar fashion to proceedings for the acquisition of church status, the review of such status must also be fair and subject to a remedy.

[196] When deciding to confer church status on religious communities which request it, Parliament does not legislate but applies the law (as an 'authority' in the sense of Article XXIV of the Fundamental Law), since it is deciding on the applicant's rights in a particular case. ...

[200] The Constitutional Court has previously established that the risk of some kind of political assessment being made in connection with the recognition of churches cannot be excluded ...

[212] For the above reasons, the Constitutional Court holds that section 14, sub sections (1) and (3) to (5), as well as section 34, sub-sections (2) and (4), of the 2011 Church Act, do not meet the requirements flowing from the right to a fair trial and the right to a remedy and that, as a consequence, the law gives rise to a violation of freedom of religion and of 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 section 14, sub-sections (3) to (5), 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 subsidiary autonomous organisations established for religious aims were converted ex lege into associations by section 34(1) of the 2011 Church Act (in force between 1 January 2012 and 31 August 2012).

[224] ... [The Constitutional Court] declares section 34(1) (in force between 1 January 2012 and 31 August 2012) of the 2011 Church Act to be inapplicable with retroactive effect in respect of the applicants."

35. Section 34(1) of the 2011 Church Act stipulated that, as of 1 January 2012, every church and religious organisation was to be considered as an association, with the exception of those "defined in the Appendix to 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 sub-section (1) of section 34, and not only the expression "defined in the Appendix", for the sake of legal certainty.

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

36. The relevant excerpts from the minutes of the meeting of 10 February 2012 read as follows:

"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 as a communal right. I would add that, in a sense, the freedom to exercise religion in community has even been extended, since in the case of legal persons, today as few as ten members, in contrast to the formerly required one hundred, may exercise their communal rights under the law on associations; associations are also entitled to one per cent donations and, if they maintain institutions, the State may enter into 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 include ninety-seven per cent of the persons who claim to be religious – I will be able to give exact numbers when the 2011 census data have been processed. ...

There are eleven countries in Europe where 'church' status is granted by a Ministry or State organ or by Parliament. ... We can support 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 subsequent procedures further churches cannot be granted this status. ...

As 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 numbers or international significance and requests 'church' status, we shall proceed according to the procedure prescribed by law. ...

The number of entities which, up until 20 December, applied to the Ministry of Public Administration and Justice to maintain their 'church' status was eighty-four or eighty-five. ... Of those, thirty-four undoubtedly meet the twenty years' registration criterion or have submitted certification from their international organisation demonstrating compliance with the hundred years' criterion. From among those, these thirteen have been selected. ...

Slovakia amended a similar law last year and recognised a total of fourteen churches, with 'church' status being conferred on 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 leaders on the basis of social considerations. Let us make clear that the issue of authenticity may be examined neither by Parliament nor by any other political organisation, since the assessment 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 way, with their role as keepers of institutions, since in practical terms this issue 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 within 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 most of the European continent this two-tier system is applied. 'Church' status is not a right to be secured to everyone. Under decision no. 8/1993 of the Constitutional Court the legislature may differentiate between churches on the grounds of their social significance, their historical role, the role they play in the nation and on other grounds. This is exactly what has been done here.

Mr P. HARRACH: ... Deciding on the social function of religious communities is, however, a task for Parliament, and it is a Europe-wide practice."

37. The relevant excerpts from the minutes of the meeting of 13 February 2012 read as follows:

"CHAIRMAN: ... Under the adopted Act, obtaining '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 a similar intention also exists in the Islamic communities. This is good because we would not be able to analyse Buddhism or Islam in the same depth as they themselves can. ...

There are some churches and religious communities which in the meantime have submitted written statements to the Committee or to the Ministry of Public Administration and Justice stating that they do not wish to obtain church status. In view of their statements they have not been included in this list. There is another ecclesiastical

community which gave a statement to MTI [the Hungarian news agency] according to which it would not request church status. However, I cannot accept this as a valid legal statement. I could only accept it if they were to make a statement to similar effect to the Committee or to the Ministry of Public Administration and Justice. ...

...

In 1947 legal continuity was interrupted in Hungary. After the entry into force of the 1947 Act and the setting-up of the State Office for Church Affairs, church affairs changed completely, with churches being run as dictated by Moscow, complying with the instructions from Moscow. ...

We therefore decided to 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 a 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. The relevant excerpts from the minutes of the meeting of 14 February 2012 read as follows:

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

Therefore it should be clear to 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 MATERIALS

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 ("the Venice Commission"), in its Opinion on the 2011 Church Act (adopted by the Venice Commission at its 90th Plenary Session (Venice,

16-17 March 2012)), stated as follows (footnotes omitted):

"... 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. ...

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 (organisation) 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 recognised, and old ones de-recognised 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 Opinion 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 (footnotes omitted):

"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:

"... III.B.3. Equality and non-discrimination. States are obligated 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 genuine objective factors and that the risk of prejudicial treatment is minimized or better, 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.

...

III.F.1. ... Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations. 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 to join them in accordance with 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 deregistration and discretionary re-registration of

churches amounted to a violation of their right to freedom of religion and their right to freedom of association.

45. The Court observes that in a recent case it examined a substantially similar complaint, concerning the refusal to re-register 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 to be unconstitutional in the light of the principles articulated 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 the performance of 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 which did not meet the statutory requirements are concerned, 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 should be examined jointly with the merits.

52. The Government also 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 registered office in London, had never been "within the jurisdiction of Hungary" for the purposes 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 that 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 as 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 had 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 the conversion of the existing churches into associations to be unconstitutional as of 1 January 2012, it has not been demonstrated that the applicants have been afforded adequate redress. It further reiterates in this connection that, even in the absence of prejudice and damage, a religious association may claim to be a "victim" when the refusal of re-registration has directly affected its legal position (see Moscow Branch of the Salvation Army, cited above, §§ 64-65). The Court considers that this approach is likewise applicable to the present situation pertaining to the actual deregistration of the applicants.

Consequently, the Court is satisfied that these applicants have retained their victim status and that the applications cannot be rejected as being incompatible ratione personae in their regard.

54. The Government further requested that applications nos. 70945/11, 23611/12 and 41553/12 be declared inadmissible under Article 35 § 3 (a) of the Convention in respect of those applicants which had abused the right of individual petition by not submitting to the domestic courts any declaration of intention to continue their religious activities.

The Court considers that the submission of a declaration of intention to the judicial authorities was not apt to prevent or remedy the alleged violation of the applicants' religious freedom, in that such declarations had, in the circumstances, no prospect of successfully restoring the applicants' 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 rather their 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, and 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, leaving aside the issue of non-exhaustion of domestic

remedies (see paragraph 51 above). They must therefore be declared admissible, with the exception of application no. 41463/12.

B. Merits

1. The parties' submissions

(a) The Government

57. The Government submitted that the acts and events complained of did not constitute interference with the applicants' right to freedom of religion and their right to freedom of association.

58. Firstly, they noted that recognition as a church under the 2011 Church Act did not affect the various rights associated with 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, social care and child care and in penal institutions, the freedom to impart religious beliefs through the media, and the protection of personal data concerning one's religion. Contrary to the applicants' allegations, these rights, which were essential elements of freedom of religion, were not reserved for recognised churches and their members.

59. Secondly, the Government submitted that, in contrast to other 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 dispute the fact that they had not been deprived of their legal personality. They had not been dissolved and had retained the full capacity of legal entities. Their legal personality had been converted by law into another form without any period of interruption. Therefore, there had been no interference with the applicants' rights under Articles 9 and 11 in this respect either.

60. The Government further maintained that freedom to manifest one's religion or beliefs under Article 9 did not confer on the applicant communities or their members any entitlement to secure additional funding from the State budget. Nor did it entail a right to receive the State subsidies that were due to churches as such. Therefore, the loss

of such subsidies could not be regarded as 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 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 had been found to be unconstitutional did not affect the applicants' situation, while other provisions complained of by the applicants had not been declared unconstitutional.

62. Moreover, the alleged interference had 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 personal income tax in accordance with the taxpayer's instructions 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 created by the 1989 Constitution. The new Act had been 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 providing 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 the light of the dwindling budgetary resources of the State and a parallel decrease in the resources available to organisations carrying out genuine religious activities, there had been a pressing social need to put an end to the abuse of church subsidies.

63. Furthermore, the ongoing reform of the general system of financing social and educational institutions had also required changes to the system of State financing of such institutions operated by religious communities. Accordingly, there had been a pressing social need to amend the rules on the registration of churches.

64. While retaining the principle that the State had to refrain from interfering with religious communities' self-definition in theological

terms, the 2011 Church Act had defined the notion of religious activities for the purposes of the recognition of churches as participants in the system of State-church relations from an exclusively legal perspective. The Hungarian legislature had introduced a two-tier system of legal-entity status for religious communities similar to the model prevailing in a number of European States. 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 latter's social responsibilities 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 had relied on the position of the domestic authorities in defining "religion" for the purposes of registration (they referred to 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 specific characteristics of one particular religion and was apt 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 had been 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 where 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 covered by the statutes of the self-defined churches

requesting registration; however, this review had not been systematic and there had been no legal definition of religion and religious activities; therefore, there had been divergent judicial practice in this field. It was only this decision of the Constitutional Court that had made clear that, contrary to the applicants' allegations, the 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 had 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 had originally intended to obtain an impartial opinion from an independent institution, the Hungarian Academy of Sciences, along the lines of the procedure for recognition of national minorities. When the Academy had refused to provide the decision-makers with its expertise in the relevant fields, the parliamentary committee on religious affairs had 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 whether or not it enjoyed international recognition. Having regard to the fact that the Court also referred to the European consensus as a guiding principle in defining religion, this approach by the Hungarian authorities could not be regarded as arbitrary or as falling outside their margin of appreciation.

68. As to the proportionality of the measures applied to achieve the above aims, the Government were of the opinion that the method of "re registration" provided for by the 2011 Church Act was the least restrictive measure possible and therefore proportionate to the aim pursued. It did not place a disproportionate burden on religious organisations: they were required only to submit a simple declaration of intention 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 reclaim their status as

churches by following a simple procedure for recognition by Parliament.

(b) The applicants

69. The applicants submitted that the loss of their proper church status as a result of the 2011 Church Act had constituted interference with their freedom of religion. The proper functioning of religious communities necessitated the enjoyment of a specific and appropriate legal status, that is, church status in the legal sense. In Hungary, religious communities had had a reasonable opportunity to be registered as churches since 1990, and the applicants had indeed enjoyed that status. The fact that on 1 January 2012 the vast majority of churches (including theirs) had lost their proper church status and had been forced to convert into ordinary civil associations or else cease to exist legally had constituted in itself interference with their freedom of religion, especially 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 relationships arbitrarily; any interference in that sphere had to be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. The requirements relating to the registration of churches had to be objective and reasonable, because in this matter the State was required to remain neutral and impartial. Consequently, if a religious community met the legal requirements it had to be entitled to be registered as a church, and the registration procedure had to offer guarantees of fairness.

71. However, the conditions and procedure governing their re registration as churches had not only become stricter in comparison to the system under the 1990 Church Act, but had also become unreasonably burdensome and unfair, allowing Parliament to thwart

their attempts at re registration arbitrarily, on the basis of political considerations.

72. As to the condition requiring an established existence over a long period, the applicants conceded that it was objective but nonetheless argued that this criterion was unreasonable. They pointed out that the Communist regime had ended little more than twenty years previously 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 the requirement 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 posed any threat to the State or public order.

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

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, and 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 reiterates 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 v. Bulgaria [GC], no. 30985/96, §§ 77 78, ECHR 2000 XI). 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 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 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 was also 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 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 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.

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 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 issue in the present case effectively amounted to the deregistration of the applicants as churches and constituted interference with their rights enshrined in 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 other authorities, Metropolitan Church of Bessarabia, cited above, § 106).

84. The State's power in this field must be used sparingly; 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 reiterates its position as formulated in the cases 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 when it comes to demonstrating 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 with regard to confessional activities, that is, the manifestation of religion.

(ii) Prescribed by law

85. This issue was not 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 striving only for financial benefits. The applicants contested this view.

The Court considers that the measure in question can be considered to serve the legitimate 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 articulated in the case of Kimlya and Others (§ 79, see paragraph 65 above), according to which the disputed nature of Scientology teachings made it necessary to defer to the national authorities' assessment thereof, the Court notes that in that case the lack of European consensus was considered to be demonstrated by the fact that the authorities in various countries had initiated proceedings against the representatives of that religious group. In the Court's view, these actions demonstrated the presence of an actual official dispute about the religious nature of the teachings. 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 part in assessing its teachings.

88. However, the Court is of the view that this approach cannot automatically be transposed to situations where a religious group is simply not recognised legally as a fully-fledged 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 authorities' assessment, especially when the matter concerns the framework of organisational recognition of otherwise accepted religions (formerly fully-fledged churches) rather than the very acceptance of a certain set of controversial teachings as a religion. 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 render the guarantees afforded by Articles 9 and 11 largely illusory in terms of guaranteeing proper organisational forms for religions.

89. The Court therefore considers that, although States have a certain margin of appreciation in this field, this cannot extend to total deference to the national authorities' assessment of religions and religious organisations; the applicable legal solutions adopted 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 also in terms of defining the notions of religion and religious activities. In the Court's view, 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 reiterates 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 public-law status be accorded to them.

92. Distinctions in the legal status granted to religious communities must not portray their adherents in an unfavourable light in public opinion, which is sensitive to the official assessment of a religion – and of the church incarnating it – made by the State in public life. In the traditions of numerous countries, designation as a church and State recognition are the key to social standing, without which the religious community may be seen as a dubious sect. In other words, the refusal to recognise a religious community as a church may amplify

prejudices against the adherents of such, often small, communities, especially in the case of religions with new or unusual teachings.

93. When assessing differences in legal status and the resulting treatment between religious communities in terms of cooperation with the State (where the State, within its margin of appreciation, chooses a constitutional model of cooperation), the Court further notes that these distinctions have an impact on the community's organisation and hence 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 a context for the development of individual self-determination and serve pluralism in society. The protection granted to freedom of association for 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 adherents of a religion may feel merely tolerated – but not welcome – if the State refuses to recognise and support their religious organisation whilst affording that benefit to other denominations. This is so because the collective practice of religion in the form dictated by the tenets of that religion may be essential to the unhampered exercise of the right to freedom of religion. In the Court's view, such a situation of perceived inferiority goes to the freedom to manifest 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 fully-fledged churches eligible to benefit from privileges, subsidies and donations, lost that status and were relegated to, at best, the status of associations, which largely lack those possibilities. It is true that the subsequent ruling of the Constitutional Court nominally put an end to this interference. In the Government's submission, this provided full redress for the alleged grievance; however, the applicants argued that they could never again enjoy their former status unimpaired.

96. When assessing this effective deregistration of the applicant communities, it is important to note that they had previously been recognised as churches by the Hungarian authorities under legislation which had been in force at the time of Hungary's accession to the

Convention system and which remained applicable until the entry into force of the 2011 Church Act.

Moreover, the Court notes – while recognising the Government's legitimate concern regarding the problems connected with 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 to deprive existing and operational churches of their legal framework, in some cases with far-reaching consequences in material terms and in terms of their reputation.

(δ) Possibilities of re-registration for 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" since August 2013, are in a much less privileged situation, with only limited possibilities to move from this category to that of an incorporated church. The applicants in the present case, formerly fully-fledged churches, now belong to the second category, with substantially reduced rights and material possibilities to manifest their religion, when compared either with their former status or with the currently incorporated churches.

99. The Court notes the Government's arguments, which seem to focus on the one hand on the feasibility of moving to incorporated church status, and on the other hand on the reasonableness of the conditions attached to such a move, notably the objective criteria relating to the church's length of existence and minimum membership and the absence of a 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 per se fall within the States' margin of appreciation (see Sindicatul "Păstorul cel Bun" v. Romania [GC],

no. 2330/09, § 138, ECHR 2013 (extracts)). Nevertheless, any such scheme normally belongs to the historical-constitutional traditions of those countries which operate 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 has previously accepted that additional funding from the State budget to the State Church did not violate the Convention, in view, among other considerations, of the fact that the employees of the State Church were civil servants with rights and obligations in that capacity with regard to the general public and not just to the 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 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 incorporated churches contained in the Appendix to the 2011 Church Act as currently applicable reflects Hungarian historical tradition fully, in that it does not encompass the applicant religious communities and can be understood to refer back to the state of affairs prevailing in 1895 (see the excerpts from the minutes of the relevant debate in the competent parliamentary committee in paragraph 37 above) while disregarding more recent historical developments.

102. The Court notes that decisions on the recognition of incorporated churches lie with Parliament, an eminently political body, which has to adopt those decisions by a two-thirds majority. The Venice Commission has observed that the required votes are evidently dependent on the results of elections (see paragraph 40 above, at point 76). As a result, the granting or refusal of church recognition may be

related to political events or situations. Such a scheme inherently entails a disregard for neutrality and a risk of arbitrariness. A situation in which religious communities are reduced to courting political parties for their votes is irreconcilable with the requirement of State neutrality in this field.

103. The Court considers that the applicant religious communities cannot reasonably be expected to submit to a procedure which lacks the guarantees of objective assessment in the course of a fair procedure by a non-political body. Their failure to avail themselves of this legal avenue cannot therefore result in their applications being declared inadmissible for non-exhaustion of domestic remedies, especially if the applicants in question could not objectively meet the requirements in terms of the length of their existence and the size of their membership.

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

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104. Leaving aside the potential for the re-registration procedure to be tainted by political bias, the Court has found that the refusal of registration for failure to present information on the fundamental principles of a religion may be justified in the particular circumstances of a case by the need to determine whether the denomination seeking recognition presents 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 to scrutinise afresh already active churches from the perspective of their possible dangerousness to society, still less the requirement to verify the content 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 evidence of actual danger on the part of the applicant entities (compare Church of Scientology Moscow, cited above, § 93). The Court notes that by the material time the applicants had been lawfully operating in Hungary as religious communities for several years. There is no evidence before the Court that during that time any procedure had

been set in motion by the authorities seeking to challenge the applicants' existence, notably on the ground that they were operating unlawfully or abusively. The reasons for requiring them to re-register should therefore have 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 the applicant religious groups were not offered a fair opportunity (see Religionsgemeinschaft der Zeugen Jehovas, cited above, § 92) to obtain the level of legal recognition sought, notably in view of the political nature of the procedure.

(ε) Possibilities for the applicant communities to enjoy material advantages in order to manifest their religion and cooperate with the State in that regard

106. The Court observes 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 that 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 the privileges obtained by religious societies, in particular in the field of taxation, facilitate their pursuance of religious aims (see Association Les Témoins de Jéhovah v. France, no. 8916/05, §§ 49 and 52-53, 30 June 2011) and that there is therefore an obligation incumbent on the State authorities under Article 9 of the Convention to remain neutral in the exercise of their powers (see Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria, cited above, § 92) when it comes to allocating these resources and granting these privileges. Where, in pursuit of its perceived positive obligations with regard to Articles 9 and 11, the State has voluntarily decided to afford entitlement to subsidies and other benefits to religious organisations – such entitlement 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, and 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 benefits to religious organisations, such a measure may not be discriminatory either.

108. In the Court's view, States must be left considerable liberty in choosing the forms of cooperation with the various religious communities, especially since the latter differ widely from each other in terms of their organisation, the size of their membership and the activities stemming from their respective teachings. This is particularly so in selecting the partners with which the State intends to collaborate on certain activities. The above prerogative of the State assumes even greater importance 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 their 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, and in particular the fact that Hungarian churches were subjected to measures depriving them of their rights after 1945 (see the preambles to the two Acts cited in paragraph 33 above).

109. In its choice of partners for the purpose of outsourcing public interest tasks the State may not discriminate between religious communities. The neutrality of the State requires that, where the State chooses to cooperate with religious communities, the choice of partners must be based on ascertainable criteria relating, for example, to their material capacities. Distinctions made by the State with regard to recognition, partnerships and subsidies must not produce a situation in which the adherents of a religious community feel like second-class citizens, for religious reasons, on account of the State's less favourable stance towards 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 section 20 of the 2011 Church Act, cited in paragraph 32, and also paragraph 33). The advantages obtained by

incorporated churches are substantial and facilitate their pursuance of religious aims on account of their special organisational form.

111. In the Court's view, the freedom afforded to States in regulating their relations with churches should include the possibility of modifying such privileges by means of legislative measures. However, this freedom cannot extend so far as to encroach upon the neutrality and impartiality required of the State in this field.

In the present case, the withdrawal of benefits (resulting from the deregistration of churches and the consequent lack of incorporated church status) concerned only certain denominations, including the applicants. It is true that the applicant communities do not appear to fulfil the cumulative criteria established by the lawmaker, notably as regards the minimum number of members and the minimum length of existence. These criteria have arguably placed the applicants, some of which are new and/or small communities, in a disadvantageous situation which is at odds with the requirements of neutrality and impartiality. As regards the question of the duration of religious groups' existence, the Court accepts that the stipulation of a reasonable minimum period may be necessary in the case of newly established and unknown religious groups. But it is hardly justified in the case of religious groups which were established once restrictions on confessional life were lifted after the end of the Communist regime in Hungary and which must be familiar to the competent authorities by now, whilst just falling short of the required period of existence. 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, a status 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 religious associations, a factor which in the Court's view 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 conferred only on churches (see

points 158 to 167 of the decision, cited in paragraph 34 above). In particular, only incorporated churches are entitled to the one per cent of personal income tax earmarked by believers and to the corresponding State subsidy. These sums are intended to support faith-related activities. For that reason the Court finds that such differentiation fails to satisfy the requirement of State neutrality and is devoid of objective grounds. Such discrimination imposes a burden on believers of smaller religious communities without any objective and justifiable reason.

113. In this connection, the Court adds that wherever the State, in conformity with Articles 9 and 11, legitimately decides to retain a system in which the State is constitutionally mandated to adhere to a particular religion (see Darby, cited above), as is the case 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 it unnecessary to examine possible discrimination with regard to the operation of cemeteries, religious publications and the production and sale of religious objects, which are often related to religious practice. It likewise finds it unnecessary to examine the differences in the possibilities for teaching religion, employment or cooperation with the State on 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 as such is open to doubt, and finally, in treating the applicants differently from the incorporated churches not only with regard to the possibilities for cooperation but also with regard to entitlement to benefits for the purposes of faith-related activities, the authorities disregarded their duty of neutrality vis-à-vis the applicant communities. These elements, taken in isolation and together, are

sufficient for 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 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, and 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 victims has been sufficiently taken into account in the above assessment leading 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, and 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 applications 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 owing 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 paid to churches is to a large extent identical to the issues examined in the context of Articles 9 and 11 of the Convention. The privileges denied to the applicant associations have been sufficiently taken into account in that context (see paragraphs 106 to 115 above), especially 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 with regard to the deregistration 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 by which to complain of 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; and 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:

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

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

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

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

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

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

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

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

(i) 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 expected 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 remuneration as ministers.

127. In respect of non-pecuniary damage, 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. The applicants claimed the following sums in respect of the costs and expenses incurred before the Court:

(i) in application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12 and 56581/12, the applicants claimed, jointly, EUR 41,910, corresponding to 165 hours' 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' 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, corresponding to 120 hours' 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, as regards the claims in respect of non pecuniary damage made by 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 as to the application of Article 41 are not ready for decision, especially in view of the complex array 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 these questions 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, application no. 41463/12 inadmissible;

3. Joins the Government's objection of failure to exhaust 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 as 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 of the Convention;

10. Holds, by five votes to two, that the finding of a violation constitutes sufficient just satisfaction in respect of the non-pecuniary damage sustained by 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 as to the 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 on 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 issue ... effectively amounted to the deregistration of the applicants as churches and constituted interference with their rights enshrined in 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 deregistered 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, a

status 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 State's less favourable stance towards 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, no. 11581/85, Report of the Commission, 9 May 1989, § 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.

ANEXO III

CASE OF MLADINA D.D. LJUBLJANA v. SLOVENIA

(Application no. 20981/10

JUDGMENT

STRASBOURG

17 April 2014

In the case of Mladina d.d. Ljubljana v. Slovenia,

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

Mark Villiger, *President,*

Angelika Nußberger,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Helena Jäderblom,

Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 25 March 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 20981/10) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian company, Mladina d.d. Ljubljana ("the applicant company"), on 8 April 2010.

2. The applicant company was represented by Mrs N. Zidar Klemenčič, a lawyer practising in Ljubljana. The Slovenian Government ("the Government") were represented by their Agent, Mrs N. Pintar Gosenca, State Attorney.

3. The applicant company alleged that its right to freedom of expression had been violated through the awarding of damages against it, by the domestic courts, for statements published in the company's magazine.

4. On 10 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, the private company Mladina d.d. Ljubljana, whose registered office is in Ljubljana, is the publisher of the weekly magazine *Mladina*.

6. On 16 and 22 June 2005 the National Assembly (hereinafter – "Parliament") examined a draft law on same-sex civil partnerships. At a later date it adopted the Registration of Same-Sex Civil Partnerships Act (hereinafter – "the Act"). During the parliamentary debate on the issue, certain deputies of the Slovenian National Party (hereinafter – "the SNP"), which opposed legal recognition of same-sex partnerships, took the floor in order to express their disagreement with the proposed draft.

7. On 27 June 2005 the *Mladina* magazine published a one-page article entitled "Registration of Same-Sex Civil Partnerships Act adopted", with the standfirst: "Right-wingers full of pride, but according to non-governmental organisations the Act is not consistent with the Constitution", summarising the parliamentary debate preceding the adoption of the Act. The first three paragraphs of the article read as follows:

"Last week, the second reading of the proposed Act on the registration of same-sex civil partnerships ended up as a crash course in narrow-mindedness, pervaded by a Stone Age mentality. Our elected representatives were so keen to reject amendments to the draft [and the] actual rights of same-sex oriented citizens that they decided to pass the Act at the third attempt within one single parliamentary session. On Wednesday, the Act came to fruition, the outcome being 44 votes to 3 ...

The SNP's gunslingers ... shone brilliantly during the explanation of their votes. [B.Z.] spouted forth all the same stupidities as at the previous reading (such as that the Act was completely unnecessary, that the Act had been extorted by marginal groups, that there were other groups which merited the legislature's priority), and touched on the objections against his use of words such as 'faggots' and 'lesbians' a week ago. He stated: '*Where I come from, we call them "faggots" and "lesbians"; in Primorska* [a region in Slovenia], *they are called "kulotini" and in Ljubljana they are "gays". I am not someone who would change his way of speaking just because he has come to Ljubljana. In Štajerska* [another region in Slovenia], *we simply have faggots and lesbians.*'

[S.P.], also from the SNP, assured with a playful smile that there was probably not a single person in the assembly hall who wished for the '*fruit of their loins to declare themselves to be what we are voting on today, with our rights ... in other words, none of us would want to have a son or a daughter who would opt for this kind of marriage*'. If our homeless people could follow the breadcrumb trail to Finland or even further, let these ladies and gentlemen also go there to marry. But the biggest victims of this law would be the children of such a marriage: '*Just imagine a child whose father comes to pick him up from school and greets him with "Heeeeey, I've come to take you hooooome! Have you got your coat on yet*?' He accompanied this brilliant remark with a coffeehouse imitation which was probably supposed to clearly illustrate some orthodox understanding of a stereotypically effeminate and mannered faggot, whereas in reality [what it illustrated was] just the typical attitude of a cerebral bankrupt who is lucky to be living in a country with such a limited pool of human resources that a person of his characteristics can even end up in Parliament, when in a normal country worthy of any respect he could not even be a janitor in the average urban primary school."

8. In the second half of the article, the author first described the responses of other parliamentarians to the SNP members' speeches, and in the last two paragraphs concluded with the views on the newly adopted Act expressed by the non-governmental organisations advocating for the rights of same-sex couples, which mainly deplored the fact that the Act accorded a very limited set of rights to these

couples. It ended by reporting the announcement by the representatives of these organisations that they would be challenging the newly adopted Act before the Constitutional Court.

9. On 26 August 2005 the SNP member S.P. brought an action before the Ljubljana District Court for defamation of his honour and reputation against the applicant company, claiming that he had suffered severe mental distress due to the offensiveness of the article. He claimed that the depiction of him as "cerebral bankrupt" was objectively and subjectively offensive, its sole intent being to belittle him.

10. On 20 September 2005 the applicant company replied that it considered its actions to have been lawful, as a balance had to be struck between S.P.'s right to honour and reputation and its own right to the freedom of expression. It invoked the standards and case-law of the European Court of Human Rights regarding the freedom of the press to impart information on matters of public interest. The applicant company considered that S.P.'s statements in the parliamentary debate had amounted to an insulting attack which degraded homosexuals, and hence the criticism published in *Mladina*. Nevertheless, the critical article had not been aimed at belittling S.P. as a person, but constituted a reaction to his own extreme statements in similar terms.

11. On 28 February 2006 the Ljubljana District Court held an unsuccessful settlement hearing.

12. On 16 May 2006 another hearing was held at which the court heard S.P., who stated that he had not offended anyone with his remarks, nor had he wished to do so. He had taken the offensive remarks in *Mladina* as an attack on his character and had been very hurt by them, especially as he had become the subject of ridicule in his local community.

13. On the same date, the Ljubljana District Court handed down its judgment, in which it partially upheld S.P.'s claim and ordered the applicant company to pay him damages in the amount of 700,000 Slovenian Tolars (2,921.05 euros (EUR)). The applicant company was also ordered to publish the introductory and operative part of the judgment in *Mladina*. The remainder of S.P.'s claim was dismissed.

The court acknowledged that the applicant company had had the right to publish critical comments on S.P.'s conduct in the parliamentary debate; however, the term "cerebral bankrupt" had referred to his personal characteristics and was therefore objectively offensive. In the court's opinion, the use of such offensive language did not simply serve the purpose of imparting information to the public. Moreover, the description in the article did not constitute a serious criticism of S.P.'s work.

14. As to S.P.'s conduct, the court held that the gestures he had used to mimic the behaviour of a homosexual man were simply reminiscent of gestures made by actors to convey the idea of homosexuality. The court neither found S.P.'s speech and conduct to be offensive to homosexuals, nor considered it to have been aimed at promoting prejudice and intolerance against them. It held that S.P. had merely expressed his opinion, which, wrong as it might have been, was not to be regarded as extreme and thus justifying the treatment in the impugned article.

15. Both parties appealed against the judgment before the Ljubljana Higher Court.

16. On 24 January 2007 the Ljubljana Higher Court dismissed the applicant company's appeal. It upheld S.P.'s appeal in respect of the text to be published in *Mladina* informing the public of the judgment, but dismissed his claim for greater damages. The Higher Court upheld the District Court's finding that the statements in the impugned article constituted an offensive judgment of S.P.'s personality which he was not required to endure. The court further held that, even assuming that S.P.'s speech had been offensive to homosexuals, that did not justify the applicant company's crude response aimed at him personally.

17. On 10 November 2007 the applicant company lodged a constitutional complaint with the Constitutional Court. It claimed, *inter alia*, that the impugned article was to be considered a political satire in which the author had merely expressed his opinion on S.P.'s conduct in a public parliamentary debate. It further maintained that the words "typical attitude of a cerebral bankrupt" had not been aimed at S.P. as a person but at his mimicking of the gestures allegedly typical of homosexual men.

18. On 10 September 2009 the Constitutional Court, by a majority of six votes to three, dismissed the applicant company's complaint, holding that the lower courts had struck a fair balance between its freedom of expression and S.P.'s personal dignity. The court acknowledged the broad boundaries associated with the freedom of the press, especially when reporting on matters of great public interest, but found on the facts of the case in issue that the lower courts had appropriately applied the criteria resulting from their own case-law and the case-law of the European Court of Human Rights. The court dismissed the applicant company's assertion that the criticism in question had not been aimed at S.P. as a person but at his mimicking of homosexuals, concluding that the average reader would understand the remark as an assessment of S.P.'s intelligence and personal characteristics.

19. It also dismissed the applicant company's argument that the article was to be regarded as a satire, as it was evident from the text that it was intended to inform the public about the content of the parliamentary debate and to express a critical opinion of the speeches of the individual deputies. As regards the applicant company's argument that the offensive statement had been a response to S.P.'s own offensive remarks, the Constitutional Court acknowledged that in such cases sharper criticism might be permissible, but only if there was a sufficient factual basis for it. As the court found no substantive connection between S.P.'s speech and the assessment of his intellectual abilities, it concluded that the criticism was not justified. In the Constitutional Court's view, the impugned article and its author's offensive characterisation of S.P. had not contributed either to people being informed or to a socially responsible public discussion on the position of homosexuals.

20. Constitutional judge C.R. submitted a dissenting opinion in which he referred to a climate of general tolerance towards intolerant and offensive statements against homosexuals. He further expressed the view that the lower courts had been biased and also that the Constitutional Court had failed to appropriately apply the standards of freedom of the press developed in the case-law of the European Court of Human Rights.

II. RELEVANT DOMESTIC LAW

A. The Constitution

21. The relevant constitutional provisions read as follows:

Article 15

(Exercise and Limitation of Rights)

"...

Human rights and fundamental freedoms shall be limited only by the rights of others and in such cases as are provided by this Constitution.

..."

Article 34

(Right to Personal Dignity and Security)

"Everyone has the right to personal dignity and security."

Article 35

(Protection of the Right to Privacy and Personality Rights)

"The inviolability of the physical and mental integrity of every individual, his privacy and his personality rights shall be guaranteed."

Article 39

(Freedom of Expression)

"Freedom of expression of thought, freedom of speech and public appearance, freedom of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive, and disseminate information and opinions.

..."

B. Applicable civil law

22. Article 179 of the Code of Obligations, which constitutes the statutory basis for awarding compensation for non-pecuniary damage, provides that such compensation may be awarded in the event of the infringement of a person's personality rights, provided that the circumstances of the case, and in particular the level and duration of the distress and fear caused thereby, justify an award. Moreover, where a personality right such as reputation is infringed, by virtue of

Article 178 of the Code a court may order that the judgment be published at the respondent's expense, or that the impugned statement be corrected or retracted.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant company complained that the decisions of the domestic courts had violated its right to the freedom of expression as provided in Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ..."

A. Admissibility

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

25. The applicant company pointed out that the Court had already found generally offensive expressions such as "idiot" or "fascist" to be acceptable criticism in certain circumstances. It emphasised in this regard that S.P., a parliamentarian at the time, was a public figure and that the article in issue, which concerned the legal regulation of same-sex relationships, had without a doubt contributed to a debate on an important matter of public concern.

26. With regard to the context of the controversial statement in issue, the applicant company argued, first of all, that the public debate on the legal acknowledgment of same-sex relationships was subject to constant unfavourable and often discriminatory remarks by right-wing parties, among them the SNP. In the applicant company's view, the impugned statement was a reaction to S.P.'s – and his colleagues' – discriminatory language and use of homophobic stereotypes. The applicant company considered it unacceptable that the domestic courts had been unwilling to expose the harmful stereotypes for what they were, and had instead used them to justify an interference with its right to freedom of expression. In its view, S.P. must have been aware that his conduct might expose him to harsh criticism by a large sector of the public. Moreover, having regard to the context of the article as a whole, it was of the opinion that the controversial value judgment nevertheless had a sufficient factual basis.

27. Further, even if the statement in issue could be regarded as objectively defamatory, it was an expression of the author's satirical style, as also acknowledged by the Government. Satirical illustrations of events, people and their statements had been used in many parts of the article, and not only in the paragraph concerning S.P. According to the applicant company, any reader would therefore have been aware that the author's comments contained a degree of exaggeration. In conclusion, the applicant company claimed that the domestic courts had failed to make a proper assessment of the context in which the statement in issue had been written and had disregarded S.P.'s own controversial behaviour. In the applicant company's opinion, they had therefore failed to strike a fair balance between its right to freedom of expression and S.P.'s right to reputation.

(b) The Government

28. The Government acknowledged that the award of damages against the applicant company constituted an interference with its right to freedom of expression, pointing out that the interference had a basis in law – Articles 178 and 179 of the Code of Obligations – and had pursued one of the legitimate aims referred to in Article 10 § 2 of the Convention, namely the protection of the reputation or rights of others. As to the necessity of the interference, the Government argued that the domestic courts had carefully weighed the two conflicting

rights, namely the applicant company's right to freedom of expression and S.P.'s right to reputation, with due regard to the fact that they could both only be exercised to a limited extent.

29. As regards the factors considered by the domestic courts in carrying out their balancing exercise, the Government stated, firstly, that the article in issue contained some inaccurate and misleading information. Among other things, the journalist had omitted to mention that S.P.'s imitation of a homosexual man picking up a child from school had been accompanied by an explanation to the effect that that child would be made to feel mocked and humiliated. In the Government's view, this last part of S.P.'s statement would have contributed to balancing the introductory part and shed a different light on it.

30. The Government emphasised that the incomplete representation of S.P.'s parliamentary speech had gone even further, as the article had contained rude and objectively defamatory remarks about S.P.'s character and his personal and intellectual characteristics. They maintained in this connection that even value judgments were required to have a sufficient factual basis. In the present case, such a basis was lacking. Thus, the mere fact that S.P. had opposed the proposed Act, albeit in a possibly unacceptable manner, did not allow any particular conclusion to be drawn about his personal or intellectual characteristics, even though he was a politician and a public figure and as such had to expect to be exposed to more criticism of his work than a private individual.

31. As regards the applicant company's argument that the critical article had been a reaction to S.P.'s inappropriate conduct, which had been ignored by the domestic courts, the Government pointed out that S.P.'s speech had in fact been subject to an assessment by the courts. The first-instance court had examined the video footage of S.P.'s parliamentary speech and had qualified it as an imitation of the gestures and speech of a same-sex-oriented male. According to that court, his words were not to be understood as promoting prejudice and inciting people against same-sex-oriented individuals, but rather as simply expressing his own, albeit negative, views on those individuals. Moreover, the article had been published five days after

the parliamentary debate, so its author had had sufficient time to distance himself from the event and report on the debate in the manner duly expected of him.

32. Further, as to the applicant company's assertion that its article was satirical in style, the Government referred to the decision of the Constitutional Court, according to which, while certain parts of the article had been written in such a style, as a whole the aim of the article had been to inform the public about the parliamentary debate on the proposed Act, the participants in the debate, the voting, and so on.

33. In conclusion, the Government pointed out that the case involved no criminal prosecution, but only a civil claim for damages. S.P. had been awarded EUR 2,921.05 and the applicant company had been ordered to publish the introductory and operative part of the judgment in its magazine. In the Government's opinion, payment of damages and publication of the judgment could not be considered to be an excessive burden on the applicant company.

2. The Court's assessment

34. The Court considers, and this is not disputed between the parties, that the domestic courts' decisions complained of by the applicant company amounted to an "interference" with the exercise of its right to freedom of expression.

35. Such an interference will infringe the Convention if it does not meet the requirements of Article 10 § 2. It must therefore be determined whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in Article 10 § 2, and whether it was "necessary in a democratic society" in order to achieve those aims.

(a) Lawfulness and legitimate aim

36. The Court finds that the interference complained of was prescribed by law, namely Articles 178 and 179 of the Code of Obligations, and was intended to pursue a legitimate aim referred to in Article 10 § 2 of the Convention, namely, to protect "the reputation or rights of others".

(b) Necessity of the interference

37. It remains for the Court to consider whether the interference was "necessary in a democratic society".

38. The Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). The Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII).

39. In the present case, the applicant company published in its magazine an article harshly criticising S.P., who was at the time a parliamentary deputy, for his remarks and, in particular, conduct during a parliamentary debate on the legal regulation of same-sex relationships. The statement in issue was thus made in the press, which has been held by the Court to play an essential role in a democratic society. Although journalists are required to respect certain boundaries, in particular with regard to the reputation and rights of others, their duty is nevertheless to impart – in a manner consistent with their obligations and responsibilities – information and ideas on all matters of public interest (see, among many other authorities, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 30, ECHR 2003-XI).

40. Moreover, the impugned statement was made in the context of a political debate on a question of public interest, where few restrictions are acceptable under Article 10 § 2 of the Convention (see, among many other authorities, *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV), and was directed against a politician. The Court has emphasised on many occasions that a politician must in this regard

display a greater degree of tolerance than a private individual, especially when he himself makes public statements that are susceptible of criticism (see, among many other authorities, *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103; *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 29, *Reports* 1997-IV; and *Lopes Gomes da Silva v. Portugal*, no. 37698/97, § 30, ECHR 2000-X). In this connection, the Court reiterates that journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation, or in other words, somewhat immoderate statements (see *Lopes Gomes da Silva*, cited above, § 34, and *Mamère v. France*, no. 12697/02, § 25, ECHR 2006-XIII).

41. The Court notes that the domestic courts acknowledged the importance of the applicant company's freedom of expression and its right to publish critical comments about S.P. (see paragraphs 12 and 17 above). However, they were of the view that the characterisation of S.P.'s parliamentary contribution as "typical attitude of a cerebral bankrupt" constituted an offensive judgment of his personality and thus exceeded the boundaries of permissible criticism.

42. In the Court's view the reasons adduced by the domestic courts were relevant for the purposes of the necessity test to be applied under Article 10 § 2. It will next examine whether they were also sufficient.

43. In this regard, the Court reiterates that the domestic decisions must be reviewed in the light of the case as a whole, including the content of the comments held against the applicant company and the context in which it made them (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 52, ECHR 2000-I). The Court agrees that describing S.P.'s conduct as that of a "cerebral bankrupt" who, in a country with less limited human resources, would not even be able to find work as a primary school janitor, was indeed extreme and could legitimately be considered offensive. However, it is noted that the impugned remark was a value judgment, as acknowledged by the Government. It is true that in the absence of any factual basis even value judgments can be considered excessive. Nevertheless, in the present case the facts on which the impugned statement was based were outlined in considerable detail; with the exception of his concluding remark, S.P.'s parliamentary speech was quoted almost in its entirety, along with a mention of his accompanying imitation of a

homosexual man. This description was followed by the author's commentary which, in the Court's opinion, was not only a value judgment, but also had the character of a metaphor. In the context of what appears to be an intense debate in which opinions were expressed with little restraint (see paragraphs 7 and 8 above), the Court would interpret the impugned statement as an expression of strong disagreement, even contempt for S.P.'s position, rather than a factual assessment of his intellectual abilities. Viewed in this light, the description of the parliamentarian's speech and conduct can be regarded as a sufficient foundation for the author's statement.

44. Moreover, the controversial statement was construed as a counterpoint to S.P.'s own remarks. In his speech, S.P. followed the line of other members of his party and portrayed homosexuals as a generally undesirable sector of the population, whether as children, same-sex couples or parents. In order to reinforce his point, he imitated a homosexual man through the use of specific gestures which, according to the domestic courts, were reminiscent of gestures used by actors to portray homosexuals. The Court, however, considers that S.P.'s imitation may be regarded as ridicule promoting negative stereotypes.

45. Lastly, the Court observes that, at least in the part which included the statement in issue aimed at S.P., the article matched not only the latter's provocative comments, but also the style in which he had expressed them. The author's critical opinions were coloured by a number of evocative, exaggerated expressions. Having already held that Article 10 protects both the content and the form of expression (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204), the Court considers that even offensive language, which may fall outside the protection of freedom of expression if its sole intent is to insult, may be protected by Article 10 when serving merely stylistic purposes (see *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 48, 21 February 2012).

46. In the Court's opinion the context in which the impugned statement was made, and the style used in the article were not given sufficient consideration by the domestic courts. Viewed in the light of these two factors, the Court considers that the statement did not

amount to a gratuitous personal attack on S.P. Moreover, in this regard the Court also points out that political invective often spills over into the personal sphere; such are the hazards of politics and the free debate of ideas, which are the guarantees of a democratic society (see *Lopes Gomes da Silva*, cited above, § 34).

47. In the light of the above, the Court considers that the domestic courts did not convincingly establish any pressing social need for placing the protection of S.P.'s reputation above the applicant company's right to freedom of expression and the general interest in promoting freedom of expression where issues of public interest are concerned. The Court thus concludes that the reasons given by the domestic courts cannot be regarded as a sufficient justification for the interference with the applicant company's right to freedom of expression. The domestic courts therefore failed to strike a fair balance between the competing interests. Moreover, this conclusion cannot be affected by the fact that the proceedings complained of were civil rather than criminal in nature.

48. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

49. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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."

A. Damage

51. The applicant company claimed 2,921.05 euros (EUR) in respect of pecuniary damage, the amount of the sum it had been ordered to pay to S.P. in the domestic proceedings. Moreover, it claimed EUR 10,000 in respect of non-pecuniary damage on account of damage to its reputation incurred as a result of the outcome of the domestic proceedings.

52. The Government did not raise any objection to the payment of the sum claimed with regard to pecuniary damage in the event that a violation of the Convention was found. However, they objected to the sum claimed with regard to non-pecuniary damage, arguing that it was excessive in view of the Court's case-law in similar cases.

53. The Court is satisfied that there is a causal link between the applicant company's claim in respect of pecuniary damage and the violation found. Hence, it considers it appropriate to award the applicant company the entire sum claimed with regard to pecuniary damage, plus the statutory interest applicable under domestic law, running from the date when the applicant company paid it (see *Tuşalp v. Turkey*, cited above, § 57). However, the Court considers that in the circumstances of the present case, the finding of a violation constitutes sufficient just satisfaction in respect of any non-pecuniary damage.

B. Costs and expenses

54. The applicant company also claimed EUR 4,026.29 for the costs and expenses incurred before the domestic courts, and EUR 1,824 for those incurred before the Court.

55. The Government disputed the amount of costs and expenses actually incurred in the domestic proceedings. Moreover, they considered that the costs for legal representation were not supported by sufficient documents.

56. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the entire amount claimed by the applicant company in respect of the domestic proceedings and the proceedings before the Court.

C. Default interest

57. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT ,UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant company;

4. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 2,921.05 (two thousand nine hundred and twenty one euros and five cents), plus the statutory interest applicable under domestic law, running from the date of that payment, and any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,850.29 (five thousand eight hundred and fifty euros and twenty-nine cents), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek — Registrar

Mark Villiger — President