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Hungary's New Constitution and Its New Law on Freedom of Religion and Churches: The Return of the Sovereign

*Renáta Uitz**

On January 1, 2012, Hungarians witnessed the passage of their new Constitution, called the Fundamental Law of Hungary.¹ It added important transitional provisions on church status² and a new cardinal law³ on freedom of conscience and religion, the legal status of churches, religious congregations, and religious communities.⁴ The new Constitution introduced changes in tone as well as in substance in the legal regime applicable to freedom of religion and church-state relations. The lasting impact of this cannot be fully appreciated yet; nonetheless, the first measures indicate clear departures from European and international human rights standards.

Compared to these elated phrases, the provisions on freedom of religion sound sobering. The new Constitution in its chapter entitled "Freedom and Responsibility" guarantees the right to freedom of thought, conscience and religion as an individual right (Article VII(1)),⁵

* Professor of Law; Head of Department at Central European University, Legal Studies, Budapest. I am grateful to W. Cole Durham, Jr. for extensive comments on an advanced draft, to the participants of the "Oxford Journal of Law and Religion Seminars," held in April 2012 in Balliol College (Oxford) and to panelists at the "Registration, Religious Autonomy and Freedom of Religion or Belief" conference held in Jun 2012 at Central European University for further discussion and insight. All translations from Hungarian are mine unless otherwise noted. All websites were visited for the last time on September 17, 2012.

1. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY], Jan. 1, 2012 (Hung.). [hereinafter THE FUNDAMENTAL LAW OF HUNGARY]. The English translation is available at <http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>. Unless otherwise noted, I am relying on this translation.

2. The Transitional Provisions were adopted on December 30, 2011. THE FUNDAMENTAL LAW OF HUNGARY, art. 21(1).

3. THE FUNDAMENTAL LAW OF HUNGARY, art. T(4): "Cardinal Acts shall be Acts of Parliament, the adoption and amendment of which requires a two-thirds majority of the votes of Members of Parliament present."

4. Act No. 206 of 2011 on freedom of conscience and religion, and the legal status of churches, religious congregations, and religious communities.

5. THE FUNDAMENTAL LAW OF HUNGARY, art. VII(1): "Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or

prohibits discrimination on the basis of religion (Article XV(2)), and also provides for the continued separation of church and state (Article VII(2)). In addition, the new Constitution makes the regulation of church-state relations subject to a statute passed with a qualified majority (a so-called ‘cardinal law’) (Article VII(3)).

The new Constitution was first tested in the summer of 2011, when the first cardinal law was passed to entrench its provisions on freedom of religion and church-state relations.⁶ This new cardinal law was meant to replace the 1990 law on churches⁷ under which 100 persons could request the registration of a church from a court of law, showing a charter of operations with a self-governing organizational structure, and a declaration that the founders intended to pursue a religious activity (Article 8(1) and Article 9). Under the new law, all of the nearly 300 previously registered churches (with the exception of fourteen listed in the Appendix) would have had to seek re-registration under more demanding conditions, which most of them would not meet. The original bill was introduced in the summer of 2011; however, it never went into effect, as parliament abruptly withdrew it in December 2011. Soon afterwards, a replacement bill was tabled in parliament. It was first read on December 23, 2011, and it was passed on December 30, 2011. At the same time, parliament also adopted so-called Transitional Provisions to the new Constitution. The Transitional Provisions contain additional rules on church-state relations, expressly authorizing parliament to recognize churches and determine the conditions for church status (Article 21(1)). The new rules were published in the Official Journal on December 31, 2011, and entered into force on January 1, 2012.

The latest cardinal law of December 2011 essentially reinstates largely the same registration procedure and criteria which were introduced in the summer of 2011. Parliament remains in charge of registering churches through an altered popular initiative (*népi*

change religion or any other persuasion, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other persuasion by performing religious acts, ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.”

6. Act No. 100 of 2011 on freedom of conscience and religion, and the legal status of churches, religious congregations and religious communities.

7. Under Act No. 4 of 1990. For an English translation of the 1990 Hungarian law *in* W. COLE DURHAM, JR. & SILVIO FERRARI, LAWS ON RELIGION AND THE STATE IN POST-COMMUNIST EUROPE 153 et seq. (2004). For a comprehensive English language account on the law see BALÁZS SCHANDA, RELIGION AND LAW IN HUNGARY (2011).

kezdeményezés) procedure. Parliament *may* recognize a church upon the request of 1,000 petitioners (Article 14(3)) and twenty years of presence in Hungary or 100 years of operations internationally (Article 14(2)(c)). With the exception of the fourteen recognized churches listed in the cardinal law's appendix, all previously registered churches are transformed into a so-called religious association (Article 43(1)), and have to seek re-registration under the new law if they intend to preserve their church status.

In February 2012, parliament assessed the status of over eighty previously recognized churches. In doing so, parliament followed the ordinary procedure for statutory amendments, and not the church recognition procedure prescribed in the cardinal law. On February 27, 2012, parliament adopted an amendment to the cardinal law on churches, adding another eighteen communities to the list of "recognized churches."⁸ On the same day, parliament in a resolution refused to recognize the church status of some sixty-six previously registered churches without providing any reasons for the refusal.⁹ Some of the eighteen newly-recognized churches clearly do not meet the statutory criteria for church status, while some churches which were turned down clearly satisfy statutory conditions. It was argued in parliament that when amending the cardinal law to the effect of recognizing further churches parliament took discretionary decisions alongside political criteria, and it purposefully did not follow the process for church recognition in the new cardinal law. Furthermore, it was confirmed in the parliamentary debate that the conditions for church recognition in the new cardinal law do not grant church status as a matter of a right, so parliament retains its discretion in granting church status even if an applicant clearly meets statutory criteria.

Irregularities in the first round of parliamentary recognition of churches aside, the new cardinal law introduces a church recognition regime which is much harsher than its predecessor, and indeed is much more demanding than most of the registration regimes currently in force in the OSCE region.¹⁰ In authorizing the State to distinguish between churches based upon their "actual social role" (Article 9(2)), the new

8. Act No. 7 of 2012 amending the act on freedom of conscience and religion, and the legal status of churches, religious congregations and religious communities.

9. 8/2012 (II. 29.) OGY Resolution on the refusal of church registration.

10. For a comparative summary of existing regulatory frameworks, see W. Cole Durham, Jr., *Legal Status of Religious Organizations: A Comparative Overview*, 8(2) REVIEW OF FAITH & INTERNATIONAL AFFAIRS 3-14 (2010).

Hungarian cardinal law on churches distributes previously-registered churches in three categories. The top tier is reserved for recognized churches with a notable social role, the middle tier is for other recognized churches, and the bottom level is for religious associations.

The new Constitution and its Transitional Provisions, as well as the cardinal laws, were passed by a parliament in which a Christian-Conservative governing coalition has two-thirds (i.e., constitution-making) majority. These instruments were introduced somewhat unexpectedly: constitution-making was not a campaign promise of the governing coalition, while the idea of a new law on churches surfaced rather unexpectedly, at a time when constitution-making was already in full swing in parliament. The withdrawal of the cardinal law, which was passed earlier in the summer, and its reintroduction with an accompanying adjustment to constitutional rules in December 2011 was also a surprise. The hasty recognition of additional churches in February 2012 was an admittedly political decision where the rights of the affected churches had to yield to political considerations.

This Article will first introduce constitutional changes in light of their broader context (Part I), will then provide some insight into the origins of the new law (Part II), and finally will reflect on the key provisions of the new law on religion and churches in light of European standards of human rights protection, as developed by the European Court of Human Rights (Part III). This Article argues that the provisions of the new Constitution, together with the new law on churches, appear to solidify the *status quo* of church-state relations, signified by the state's cooperation with preferred churches with proper "actual social status," while also formalizing long-held reservations about "small churches." Although the new constitutional framework appears to facilitate the new statutory arrangement, this Article will demonstrate that the key provisions of the new Hungarian law on freedom of religion and churches violates human rights commitments under the European Convention on Human Rights. The conclusions of this Article resonate the concerns expressed in the opinion of the Venice Commission on the new Hungarian law in March, 2012.¹¹

I. THE NEW HUNGARIAN CONSTITUTION: REINFORCING HISTORICAL

11. Opinion 664/2012, CDL-AD(2012)004 (hereinafter: Venice Commission on Hungary), available at [http://www.venice.coe.int/docs/2012/CDL-AD\(2012\)004-e.pdf](http://www.venice.coe.int/docs/2012/CDL-AD(2012)004-e.pdf). The Commission's website also offers an English language translation of the Hungarian law via http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=664.

IDEALS

On its face, the new Hungarian Constitution (Fundamental Law)—which entered into force on January 1, 2012—appears to bring little change to the existing church-state regime. Its operative articles protect free exercise of religion (Article VII(1)), prohibit discrimination on the basis of religion (Article XV(2)), and call for the “separate functioning” of church and state (Article VII(2)). There are two significant, fundamental differences in comparison to the previous 1989 Constitution.¹² The new provision on separation of church and state proclaims that the “state shall cooperate with the churches for community goals.” (Article VII(2)). As the cooperation requirement was absent from the 1989 Constitution, the new provision suggests a shorter distance between church and state than envisioned in the early days of transition to democracy.¹³ As another notable distinction, while the 1989 Constitution required freedom of religion to be regulated by a qualified majority (Article 60(4)),¹⁴ the new Constitution requires a qualified majority (i.e., cardinal law) for the regulation of church-state relations (Article VII(3)) but not for imposing limitations on individual religious liberty. Thus, in light of these two subtle departures from the previous constitutional framework one may sense that the new Hungarian Constitution intended to fundamentally readjust church-state relations.

The Hungarian parliament added Transitional Provisions to the articles of the new Constitution on December 30, 2011. A dedicated provision makes it the task of parliament to pronounce “recognized churches” and to determine the conditions for church status dependent on the length of church operations, membership, historical traditions and social support (Article 21(1)). This rule is clearly not transitional in nature: instead of assisting in the entry into force of the new constitutional provisions on freedom of religion and church state relations, it clearly empowers parliament to recognize churches one by

12. Act No. 31 of 1989 on the Constitution of the Republic of Hungary, as available in English translation of the website of the Constitutional Court at <http://mkab.hu/index.php?id=constitution>.

13. The corresponding provision of the 1989 Constitution, Article 60(3), reads as follows: “In the Republic of Hungary the church and the State shall operate separately.” A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY], Oct. 23, 1989 (Hung.).

14. *Id.* art. 60(4) (a “majority of two-thirds of the votes of the Members of Parliament present shall be required to pass the statute on the freedom of conscience and religion”).

one, a power which was not mentioned in Article VII of the new Constitution. Therefore, the constitutional status of the Transitional Provisions is at least problematic. Nonetheless, it is clear that the re-adopted church law which was also passed on December 30, 2011, seeks to comply with the Transitional Provisions, since it authorizes parliament to take a discretionary decision on the recognition of previously registered churches in individual cases (Article 14(3)).

Furthermore, under the new Constitution the era of formal legal equality of recognized churches appears to be over. In the new regime, the prominence of certain preferred churches over others is apparent, a development which is not completely out of line with the spirit of constitutional jurisprudence under the 1989 Constitution.¹⁵ The new cardinal law's authorization for different treatment of select churches on the basis of their actual social role (Article 9(2)) creates a three-tier system that privileges certain recognized churches over others, while newly created religious associations remain at the bottom of the hierarchy. This solution furthers inequality between previously registered churches in a political climate where time and again new religious movements and minority faiths came under suspicion and political attacks.

A. *A Brief Account on Religious Toleration in Hungary Before the 2011 Act*

Forces of toleration have always competed with legally-reinforced preferential treatment in Hungary. Despite Hungary's multi-confessional make up ever since the Reformation, the Roman Catholic Church has always held a prominent position. Starting with a conversion to Catholicism by its monarch at the turn of the previous millennium, the country had been ruled by the Catholic Habsburg monarchs¹⁶ since 1526 until the end of WWI. Since the early days of the Reformation, periods of toleration were followed by intense counter-Reformation or re-Catholicization.

For instance, in the Seventeenth Century, the Peace Treaty of

15. See Gábor Attila Tóth, *Unequal Protection: Historical Churches and Roma People in the Hungarian Constitutional Jurisprudence*, 51(2) ACTA IURIDICA 122 (2010); see also Renata Uitz, *Aiming for State Neutrality in Matters of Religion, The Hungarian Record*, 83 U. DET. MERCY L. REV. 761 (2006).

16. On the role of Catholicism in Habsburg state ideology, see Marie-Elizabeth Ducreux, *Emperors, Kingdoms, Territories: Multiple Versions of the Pietas Austriaca?* 97(2) CATH. HIST. REV. 276 (2011).

Vienna—as a side note— brought religious toleration for Calvinists and Lutherans (Protestants)¹⁷ in Hungary while preserving the primacy of Roman Catholicism under Act No. 1 of 1608 on Religion.¹⁸ The precepts of toleration applied not only to the high estates but also to the villages and peasants; public and military offices in Hungarian affairs were opened for Hungarians, irrespective of their religious denomination. The legal reinforcement of toleration for the so-called “accepted religions”—with the primacy of Roman Catholicism intact—came in a detailed regulatory scheme adopted by parliament in a series of statutes in 1647.¹⁹ The Toleration Act of 1647 confirmed the rights established in the 1608 Act and provided undisturbed access to church bells and cemeteries.²⁰ The prohibition of coercion in matters of conscience was reaffirmed in a separate article.²¹ Another act of parliament settled the return of seized Protestant church property in admirable detail.²²

Despite all these favorable developments towards toleration, the end of the seventeenth century brought a period of aggressive counter-Reformation in Hungary following the uncovering of an aristocratic conspiracy against the Habsburg court (the so-called Wesselényi conspiracy of 1666-1670). Although there were several prominent Roman Catholics among the still surviving participants, the measures affecting Hungary included not only a show trial of the conspirators, but also brought another trial of thirty-three Protestant preachers and schoolmasters in 1673 in Bratislava. This was followed by another trial of 700 Protestant preachers and schoolmasters.²³ The ones who refused to convert to Catholicism were sold as galley slaves. They were finally saved from their plight due to the support of a Europe-wide Protestant support network, and their ransom was paid by the Dutch Admiral

17. In contemporary statutes, Calvinists are referred to as “Helvets,” while Lutherans are mentioned as “Augsburgians.” Contemporary Hungarian terminology mentions Calvinists as “Reformed” Protestants, while Lutherans are “Evangelicals.” My text keeps with Lutheran and Calvinist to the extent practicable, while Protestant refers exclusively to “old / traditional European” Reformation denominations.

18. For a discussion of parallel contemporary developments in Europe, see MALCOLM EVANS, *RELIGIOUS LIBERTY AND INTERNATIONAL LAW IN EUROPE* 49 *et seq.* (2008).

19. Acts No. 5–15 of 1647.

20. Act No. 5 of 1647, art. V.

21. Act No. 5 of 1647, art. VI.

22. The fact that the property restoration clause needed to be reinforced two years afterwards, in Act Nos. 10 and 12 of 1649, suggests that the restoration did not go without opposition.

23. The records of the 1674 trial are translated and edited in KATALIN S VARGA, *VITETNEK ÍTÉLŐSZÉKRE . . . AZ 1674-ES GÁLYARAPBER JEGYZŐKÖNYVE* [Being taken before judgment... The records of the 1674 galley slave trial] (2000) (in Latin and in Hungarian).

Michiel de Ruyter.

It was not until the late nineteenth century that a more or less comprehensive scheme of religious toleration was established in Hungary under Act no. 53 of 1895, which—with some adjustments—lasted until 1990. In the 1895 regime, a three-tier church registration system distinguished between accepted (*bevett*) and recognized (*elismert*) churches, whilst at the bottom of the hierarchy were those faiths which did not belong to either class which were simply “tolerated” (i.e., not persecuted). For its time it was a considerable achievement that the 1895 Act allowed for the state recognition of further religious communities, even if in a lesser class, and established legal rules for their recognition. This three-tier system was described as an intermediate solution between retaining an established church and separating churches from the state.²⁴

Importantly, until 1918 the Hungarian monarch retained profound control functions over all religious communities functioning in Hungary, including the Roman Catholic Church. Despite its contested origins, according to tradition, the Hungarian monarchs since the beginning of statehood were to be regarded as “apostolic.”²⁵ By the seventeenth century it was common wisdom that the apostolic Hungarian king retains powers equivalent to those of the first king, Saint István (Saint Stephen), the recipient of the crown. In time, Saint Stephen’s crown became enlarged beyond its physical boundaries in the doctrine of the Holy Crown.²⁶ The apostolic quality (which is usually granted to kings responsible for historic conversions of their subjects, but not to entire dynasties), coupled with the doctrine of the Holy Crown, permitted the Hungarian monarchs to retain significant influence over the Catholic Church. Historically, royal powers over the Catholic Church (the so-called *főkegyúri jog*) expanded to creating the internal divisions of the church (seats of bishops and archbishops), appointments of church leaders as well as to lesser positions, the distribution of church property, and the power to assent to the communication of church letters and circulars to the general public.²⁷ When other religions were recognized

24. BÉLA SZATHMÁRY, FEJEZETEK AZ ÁLLAMI VALLÁS- ÉS EGYHÁZJOGBÓL, TANULMÁNYI SEGÉDLET AZ V. ÉVFOLYAMOS JOGHALLGATÓK SZÁMÁRA 36 (2006) (chapters from state religion and church law, study aid for 5th year law students).

25. Margit Balogh, *Regnum et sacerdotium, Állam és egyház történetileg változó viszonyai Magyarországon* (Regnum et sacerdotium, The historically changing relations of church and state in Hungary), 6(4) VALLÁSTUDOMÁNYI SZEMLE 9, 11-15 (2010).

26. *Id.* at 12, n.5.

27. The Catholic congregation of Transylvania was exempted from these royal powers. *Id.* at

by the Hungarian government over the centuries, an equivalent of similar powers (the so-called *főfelügyeleti jog*) was extended to the newly recognized religious communities until the end of World War I. It is this Holy Crown that is expressly referred to in the new Constitution's National Avowal as the physical embodiment of the continuity of Hungarian statehood: "We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation."²⁸

The difference between "accepted" and "recognized" churches was only abolished after World War II, with Act No. 33 of 1947. As far as it applied to recognition of churches, however, the 1895 law remained in force in Communist Hungary under the supervision of the State Office of Church Affairs,²⁹ and some churches continued to function even under the state-mandated philosophy of atheism.³⁰ In the 1980s—before transition to democracy began—the Communist government recognized as a proper church the Hungarian Evangelical Brotherhood, the Congregation of Faith, the New Hungarian Apostolic Church, the Hungarian Community of Jehovah's Witnesses, and the Hungarian Community of Krishna Consciousness under the 1947 Act.³¹

At the time of transition to democracy, a new law (Act No. 4 of 1990) on religious freedom and churches was prepared by the outgoing Communist parliament in consultations with the existing churches.³² The 1990 law opened up the same church status for communities of at least 100 believers, a charter of operations with a self-governing organizational structure, and a declaration that the founders intend to pursue a religious activity on an equal footing (Article 8(1) and Article 9). As a result, during the last twenty years over 300 religious communities (among them representatives of world religions, new religious movements and home-grown congregations) had operated

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28. THE FUNDAMENTAL LAW OF HUNGARY, National Avowal.

29. The office was disbanded with the arrival of democracy. It is not a major surprise that the 1990 Act on Freedom of Religion expressly prohibits the creation of any agency or office the sole purpose of which is the monitoring or management of church affairs (Article 16(1)).

30. Péter Paczolay, *The Role of Religion in Reconstructing Politics in Hungary*, 4 CARDOZO J. INT'L & COMP. L. 261, 264–65 (1996).31. Here I follow Balázs Schanda, *in* 3 A MAGYAR ALKOTMÁNY KOMMENTÁRJA 2244 n.1 (András Jakab ed., 2009) (Commentary to the Hungarian Constitution).32. *Id.* at 2245.

undisturbed under the law.³³ Registration used to be granted as a matter of formal compliance with the language of the 1990 law, with no further in-depth inquiry. Although the 1990 law did not distinguish between “historic” or “proper churches” and “sects,” the distinction clearly existed in the vocabulary of the constituency affected by the 1990 law. As an eminent Hungarian expert on church-state relations remarked on the reception of the registration regime of the 1990 Act, “many representatives of the traditional churches felt offended at having been put into the same category as ‘sects.’”³⁴

B. The Words of the National Avowal Under Scrutiny

The fact that the new Constitution opens with the phrase “God bless the Hungarians” will strike few Hungarians as religious in tone: this is the opening line of the National Anthem which survived several regime changes and in general is not associated with a religious spirit. Prominent in setting the tone of the new Constitution is the opening section, the so-called National Avowal which proclaims that “[w]e are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago;” “We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country;” “We promise to preserve the intellectual and spiritual unity of our nation torn apart in the storms of the last century;” and that “We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary’s statehood and the unity of the nation.”³⁵ As vague and symbolic as the above passages may appear, these phrases are meant to influence the application of the provisions of the new Constitution in practice.

In a key sentence, the National Avowal praises “the role of Christianity in preserving nationhood. We value the various religious traditions of our country.”³⁶ Despite the reference to religious diversity, this language may be read easily as if it provided primacy to the one

33. For the latest data in English, see US DEPARTMENT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010 – HUNGARY, available at <http://www.state.gov/g/drl/rls/irf/2010/148942.htm>. As it was also reflected in the parliamentary debate, there is no firm data on the number of registered (and still operating) churches.

34. Balázs Schanda, *Religion and State in the Candidate Countries to the European Union: Issues Concerning Religion and State in Hungary*, 64(3) SOCIOLOGY OF RELIGION 333, 342 (2003).

35. THE FUNDAMENTAL LAW OF HUNGARY, National Avowal.

36. *Id.*

strain of Christianity which was instrumental in preserving nationhood (i.e., Roman Catholicism). With this gesture, the new Constitution and the new cardinal law on freedom of religion and churches are shown not to be based on the protection of religious liberty, but rather they reflect the well-known, pre-Enlightenment pattern wherein the scope of religious toleration reflects the state-of-power struggles of competing political elites. This approach is antithetical to the protection of religious liberty as a fundamental right.

Against the background of historical developments in Hungary, the reference to the Holy Crown in the National Avowal is equally problematic. After all, as was mentioned above, it was the historical doctrine of the Holy Crown which permitted the monarch to select between religious communities worthy of recognition, as well as to interfere with the internal affairs of churches which were selected. A constitutional or regulatory regime based on benevolent gestures of a sovereign is clearly in contravention of the protection of religious liberty as a human right.

If the language of the National Avowal is vague, there is even less guidance on what one shall regard as “an achievement of the historic constitution” of Hungary as understood in Article R(3) of the new Constitution. For instance, the regulation of religious toleration and church-state affairs in Hungary certainly has an extensive history, and the selection of achievements from this record is a clearly value-driven exercise. One may point to periods of increased toleration as much as to periods of re-Catholicization as an example of an achievement, depending on one’s personal preferences. The extent to which a strong constitutional attachment to a particular strain of Christianity will in practice allow for the recognition of pluralism and tolerance in a neutral fashion under the new Constitution is not clear.

As even such a brief overview suggests, in Hungary the development of the legal framework on church-state relations was gradual. Historic developments (such as the 1608 Toleration Act or the 1895 Act) stand as clear testament of the increasingly undeniable richness and plurality of the Hungarian religious scene. At the same time, it is not an exaggeration to say that before the entry into force of the first democratic Constitution in 1989 and the 1990 Law on Churches, the Hungarian legal system did not recognize full legal equality of religious communities and preserved a prominent position for the Catholic Church throughout much of Hungarian history. Recognition for other religious communities depended on the whims of the political process, was highly dependent on

the religious affiliation or personal philosophy of key decision-makers, and, at least historically, included major backlashes. Therefore, the new Constitution's determination to privilege the strain of Christianity which was instrumental in preserving Hungarian nationhood is highly suspect from the perspective of the protection of religious freedom and equality.

II. THE NEW HUNGARIAN LAW ON FREEDOM OF RELIGION AND CHURCHES ENTERS THE SCENE

The new Hungarian law on freedom of religion and churches came into existence in several stages. The new conditions for church registration under the 2011 law are much harsher than under its predecessor. The mandatory waiting period of twenty years, together with the requirement of 1,000 petitioners to request recognition, makes the law the second-most demanding in Europe (right after Slovakia), while parliamentary recognition of churches is unique for a law of its kind. While under the 1990 law, more than 300 churches were registered, the new law initially recognized only fourteen churches in its Appendix, to which another eighteen were added in the first round of church registration in February 2012. At the same time, the application of sixty-six previously registered churches was rejected by parliament.³⁷ As these are undoubtedly profound changes, the debates on the various bills in parliament themselves are worthy of closer attention as they provide insight into legislative intent, an essential factor for the assessment of the law in light of European human rights standards in the last section of this Article.

A. *The Road to a New Hungarian Law on Freedom of Religion and Churches*

The cardinal law on freedom of religion and churches was among the very first laws adopted under the new Constitution. The reason for the rush is not entirely easy to trace, as the 1990 Law on Churches has not been a matter of major public concern in the recent past.³⁸ Nonetheless, by the Autumn of 2010—around the same time when the making of the new Constitution was starting to accelerate—the fight against “business

37. 8/2012 (II. 29.) OGY resolution.

38. See, e.g., Balázs Schanda, *Stabilitás és bizonytalanság a magyar állami egyházjogban, Húsz évvel az 1990. évi IV. törvény után* [Stability and uncertainty in Hungarian church regulation, Twenty years after Act no 4 of 1990], 65(1) JOGTUDOMÁNYI KÖZLÖNY 3 (2010) (arguing that it is not necessary to adopt a new law).

sects” became a prominent topic in the Hungarian media space. In the middle of November 2010 the conservative television channel HírTV ran a report on “Judas cents” (Júdásfillérek) in search of hundreds of millions of forints of government funding channeled to business sects. In December 2010, the secretary of state for the Ministry of National Resources, Imre Nyitrai, told the press that the budget could save three billion forints, if church status were made less accessible.³⁹ In early 2011—i.e., before the new Constitution was passed and ratified—László Szászfalvi, the secretary of state in the Ministry of Public Administration and Justice, promised a new church law, indicating that the optimal threshold for registration would be at 10,000 founding members.

The basic vision of the new law arrived in the spring of 2011.⁴⁰ According to Secretary Szászfalvi, the aim of the new law is “to reinforce communities which engage in credible church and religious activities and to remove from the scope of the law those organizations which were formed expressly for business purposes.”⁴¹ In a refined version, Secretary Szászfalvi announced in early April 2011 that under the new law the Catholic, the Reformed, the Lutheran and the Evangelical churches, as well as the Unitarian and the Orthodox communities would be recognized as historic churches. In addition, he clarified that “[h]istoric churches will be expected to have a nation-wide institutional network of public service, for which they will continue to receive public funding.”⁴² In closing, he observed that the new law would finally bring some order, and that it would be successful in significantly reducing the number of registered churches. According to the government, a new law had also become necessary because the 1990 law became outdated by international standards.⁴³

Following an eventful spring filled with skirmishes, the church bill

39. Magyar Rádió, *Szigorodik az egyházalapítás* (Church registration to be tightened) (Dec. 2, 2010), available at <http://www.mr1-kossuth.hu/hirek/szigoritjak-az-egyhzalapitas-szabalyait.html>.

40. *Új korszak kezdődik az egyházaknál* (The beginning of a new era for churches), official portal of the Hungarian Government, KORMÁNYPORTÁL (Mar. 17, 2011), available at <http://www.kormany.hu/hu/emberi-eroforrasok-miniszteriuma/egyhazi-nemzetisegi-es-civil-ugyekert-felelos-allamtitkarsag/hirek/uj-korszak-kezdodik-az-egyhzaknal>.

41. The details of the first concept differed significantly from the provisions of the law which was finally adopted and will not be discussed here in detail.

42. *Száz éves működés után járna a történelmi egyház megnevezés* (Historic church label is due after 100 years of operation), MTI / ORIGO (Mar. 17, 2011), available at <http://www.origo.hu/itthon/20110317-szaszfalvi-laszlo-legalabb-100-eves-multtal-kell-rendelkezniuk-a-tortenelmi.html>.

43. *Id.*

finally emerged in June 2011, after alleged widespread societal consultations and some name-calling directed mostly at the Congregation of Faith, a widely popular new religious movement. For church status, the bill required twenty years of operation and 1,000 founding members.⁴⁴ In the registration process, courts were to be assisted by a body of experts.⁴⁵ The Appendix to the bill included the names of forty-four churches already duly registered under the 1990 law in three clusters, which were to continue in their church status by the force of the statute, without being required to undergo separate re-registration. In a number of other respects, like in offering a definition for religious activities,⁴⁶ or listing activities which are not “primarily religious” in nature,⁴⁷ the 2011 bill is clearly reminiscent of the bill which was introduced unsuccessfully in parliament by the previous government lead by FIDESZ’s Prime Minister Viktor Orbán between 1998 and 2002.⁴⁸

In less than a month, at the end of an extraordinary session in parliament that ended far after midnight, parliament accepted an altered version of the bill, adopting amendments proposed by the parliamentary committee on constitutional affairs. Accordingly, churches which have operated in Hungary for at least twenty years (Article 14 (3)(c)) and at least 1,000 founding members (Article 15(1)(c)) would be registered not by a court of law, but by a super-majority of parliament (Article 11(1)) upon the initiative of the responsible minister (Articles 16 and 17). The Appendix to the law in its final form listed fourteen churches recognized *ex lege*, while the others—among them Christians, Buddhists and Muslims—were required to seek re-registration with a super-majority of parliament after the law took force. As a transitional measure, churches that faced losing their church status until their re-registration could expect to enter into a separate agreement with the government concerning the continued financing of their public interest tasks (Article 30). Formerly registered churches that did not receive re-registration were meant to continue as associations.

In the summer of 2011, churches that were left off the Appendix took

44. Bill No. T/3507, Article 14(3)(c) .

45. Bill No. T/3507, Article 37.

46. Bill No. T/3507, Article 6(1).

47. Bill No. T/3507, Article 6(2).

48. For a description of the previous bill in English, see Schanda, *Religion and State in the Candidate Countries*, *supra* note 34, at 343. For a critical commentary on the bill from an international human rights perspective, see Péter Buda, *Állam és egyház: A polgári átalakulás eredményeinek leépítése* [State and church: Demolishing the achievements of civic reforms], 5(2) FUNDAMENTUM 127, 131 *et seq.* (2001).

various steps. These requests took a variety of forms and reflected a range of different concerns. Some, like the Hungarian Evangelical Brotherhood, petitioned both parliament and the Minister of Justice, urging the amendment of the new law.⁴⁹ Many others petitioned parliament for their recognition before the new law took force. These petitions were driven by concerns that under the new law it was unclear how essential criteria of church status (such as membership or length of operation) would be ascertained, while potential loss of acquired rights was also a widespread fear. Some issues raised were more specific. The Society of Krishna Consciousness was most concerned for title over their lands which have spiritual significance to the community as a whole. At the time title in land was reserved exclusively for natural persons, the state, and churches under Hungarian law, while legal persons (such as commercial corporations, foundations, or associations) could not acquire title in arable land.⁵⁰ The new Hungarian law on churches attracted such international attention that on September 6, 2011, Bence Rétvári (a secretary for parliament in the Ministry of Justice and Public Administration) attended a videoconference on the Hungarian law convened by Johns Hopkins University.⁵¹ It finally became apparent that parliament was not planning to amend the new church law significantly when it took steps to amend the land law to open up ownership rules for arable land before associations.⁵²

Then, in mid-December 2011, it was rumored in the press that the Constitutional Court was prepared to invalidate the new church law due to irregularities in the legislative process. On December 19, 2011, when the Constitutional Court's decision was read out (but not yet published in the Official Journal),⁵³ parliament withdrew the first cardinal law in a rider appended to the Act on National Minorities.⁵⁴ Soon afterwards, the second cardinal law on church-state relations was introduced in

49. To read the exchange between the pastor of the church, the minister of justice, and the chairman of the parliamentary committee for human rights, see *Levélváltás az egyházi törvényről* [Correspondance on the church law], 15(3) FUNDAMENTUM 97–100.

50. Act no. 55 of 1994 on arable land, Articles 4–8.

51. Available with the website of the Hungarian Embassy in Washington at <http://washington.kormany.hu/videoconference-on-hungary-s-new-law-on-churches>.

52. The motion was first tabled by the human rights committee of parliament, chaired by Tamás Lukács, as rider No. 31 to Bill No. T/5001, as available in Hungarian at <http://www.parlament.hu/irom39/05001/05001-0031.pdf>. The amendment finally became part of the transitional provisions of the latest cardinal law on churches as Article 42.

53. Alkotmánybíróság (AB) (Constitutional Court): 164/2011 (XII. 20) AB decision.

54. Act No. 179 of 2011, Article 241.

parliament. The bill was first read on December 23, 2011, and was passed on December 30, 2011.⁵⁵ The latest cardinal law on freedom of religion and churches entered into force at the same time as the new Constitution and its transitional provisions, on January 1, 2012.

The latest cardinal law of December 2011 essentially reinstates the same registration procedure and criteria that were introduced in the summer of 2011. Parliament remains in charge of registering churches in an adjusted procedure for the popular initiative (*népi kezdeményezés*) (Article 14(3)), the details of which remain unclear.⁵⁶ As a new element, the Hungarian Academy of Sciences is required to assist parliament with an expert opinion on certain religious qualities of the applicants (Article 14(4)). Church status may be granted by parliament upon the request of 1,000 petitioners (Article 14(3)) and after twenty years of presence in Hungary or 100 years of operations internationally (Article 14(2)(c)). With the exception of the fourteen recognized churches listed in the cardinal law's Appendix, all previously-registered churches are transformed into a so-called religious association (Article 43(1)) and have to seek re-registration under the new law if they intend to preserve their church status.

In February 2012, parliament assessed the status of over eighty previously recognized churches. These applications (or, at times, inquiries about church status) were submitted under the first version of the cardinal law, which never entered into force; therefore, the formal criteria of a potentially successful submission were far from clear. When handling the applications of previously duly registered churches for recognition under the latest cardinal law, parliament seems to have followed (more or less) the ordinary procedure for statutory amendments, and not the church recognition procedure prescribed in the cardinal law. It added flavor to the discussion in parliament that although the new law requires the Hungarian Academy of Sciences to certify the religious qualities of the applicants, after establishing a panel of experts,⁵⁷ the chairman of the Academy refused to assist parliament with the recognition of individual churches. In an opinion which was kept confidential for many days, the Academy submitted that it did not wish

55. Act No. 206 of 2011 on freedom of conscience and religion, and the legal status of churches, religious congregations, and religious communities.

56. Popular initiative is a form of direct democracy in Hungary. Through popular initiative 50,000 voters may request parliament to discuss a particular issue.

57. Press Release, Academy of Science (in Hungarian) (Jan. 10, 2012), available at http://mta.hu/data/cikk/12/91/3/cikk.../sajtokozlemeny_egyhazi_mta.pdf.

to assist parliament as the matter was clearly not for academic judgment or assessment, quite to the dismay of the sponsor of the amendment, who was essentially in charge of the registration process.⁵⁸

On February 27, 2012, parliament adopted an amendment to the cardinal law on churches, adding another eighteen communities to the list of “recognized churches.”⁵⁹ On the same day, parliament, in a resolution, refused to recognize the church status of some sixty-six previously registered churches without providing any reasons for the refusal.⁶⁰ Some of the eighteen new registered churches clearly do not meet the statutory criteria for church status as they undisputedly did not appear to have 1000 believers in Hungary. When recognizing the Anglican Church, the chairman of the Human Rights Committee of parliament openly admitted that the motivation for the decision was that four ambassadors belong to the Church.⁶¹ When recognizing the Coptic Church, the same chairman reasoned that in order to prevent the persecution of Christians in the world, it was important to recognize the oldest Christian churches and also the churches of world religions, in the hope of reciprocity in international relations.⁶² Still, the Taoist and the Hindu Vaishnava community did not receive recognition, although their inclusion would follow from this logic. At the same time, some churches that were turned down clearly satisfy statutory conditions. The Hungarian Evangelical Brotherhood, although it undisputedly met the statutory conditions, was turned down at this time, with the committee finding that they can apply next time, in the round when parliament is not making discretionary decisions, but following the recognition procedure (complete with popular initiative) as prescribed by the law.

In the round of amendments in February 2012, it was argued in parliament that when amending the cardinal law to the effect of recognizing further churches, parliament took discretionary decisions

58. Tamás Lukács, Speech No. 361 (General Debate, Day No. 162) (Feb. 13, 2012) (in Hungarian), [available at http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=361&p_szoveg=&p_felszig=361](http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=361&p_szoveg=&p_felszig=361).

59. Act No. 7 of 2012, amending the act on freedom of conscience and religion, and the legal status of churches, religious congregations and religious communities.

60. OGY Resolution on the Refusal of Church Registration, 8/2012 (II. 29).

61. Tamás Lukács, Committee of Human Rights, Records of Committee Meeting in the Journal of Parliament in Hungarian, p. 11 (Feb. 13, 2012), <http://www.parlament.hu/biz39/bizjky39/EMB/1202131.pdf>.

62. *Id.* at 7.

alongside political criteria, and it purposefully did not follow the process for church recognition in the new cardinal law.⁶³ Furthermore, it was confirmed in the parliamentary debate that the conditions for church recognition in the new cardinal law do not grant church status as a matter of a right, so parliament retains its discretion in granting church status even if an applicant clearly meets statutory criteria.⁶⁴

B. The Debate in Parliament: Uncovering Legislative Intent

Although initially the debate in parliament was scattered with vague justifications on the aims the church law is meant to serve, the parliamentary record on the first cardinal law of the summer of 2011, the improved cardinal law of December 2011, and its subsequent amendment in February 2012 reveals that the Hungarian parliament regards the recognition of churches not as a question concerning freedom of religion but as a matter reserved for the discretion of the sovereign. It is in this logic that with the first cardinal law the task of church registration was removed from the competence of courts and became transferred to a qualified majority of parliament. It was the result of a conscious and calculated decision to enable parliament to decide on “who is a church and who is not.” This conception was further confirmed in the parliamentary debates in February 2011 when diplomatic relations and concern for the persecution of Christians in the world became a measure for church recognition.

In the summer of 2011, in his opening statement introducing the bill, the sponsor of the bill Tamás Lukács (KDNP / Christian Democratic People’s Party) took it for granted that it is not necessary to prove an abuse of rights on a sensitive field, when Hungary has 343, or according to others, 362 religious organizations registered. It is not the topic of a parliamentary exposé to list the numerous types of abuses, but compared to the church numbers of other European countries it is not an exaggeration to say that abuse of rights in our country obtained increasingly large domains in the last 20 years.⁶⁵

63. See Gergely Gulyás, Meeting of the Committee of Human Rights, Records of Committee Meeting in the Journal of Parliament in Hungarian, p. 13 (Feb. 14, 2012), <http://www.parlament.hu/biz39/bizjvk39/EMB/1202141.pdf>.

64. See, e.g., *supra* note 55 (Tamás Lukács introducing the amendment). To the same effect, see Tamás Lukács, *supra* note 58, at 5.

65. Speech No. 2 (General Debate, Day No. 103), Journal of Parliament (June 23, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=103&p_felsz=2&p_szoveg=&p_felszig=2.

It is certainly not impossible that several entities which were registered under the old law did abuse the advantageous economic (predominantly tax) status which church registration entailed. Under the 1990 law it was clearly possible to dissolve churches that operated in violation of the law, as this opportunity could have been sufficient to remove the so-called business sects.⁶⁶ It certainly would not have been impossible in the last twenty years to review the tax records of those religious groups with respect to which there were credible indicia of abuse (using the avenues of monitoring available under the 1990 law). This avenue would have been all the more advisable to take, as church status may have become so appealing as a legal form of operation for certain non-religious actors because of the wide range of economic advantages attached to it by the state. It is important to emphasize, therefore, that granting legal entity status to religious communities does not automatically entail that the state should also award tax exemptions to such organizations, or provide them with public funds. It was the peculiarity of the Hungarian law that certain economic benefits were automatically granted to churches. With a permissive church registration regime under the 1990 law, church status became easy to obtain, and ultimately easy to abuse. Nonetheless, despite occasional waves of outbursts against business sects and new religious movements, we have little information regarding the true extent of this problem.

The government's complaints about the unacceptably high number of registered churches prompted the lead speaker of the Socialist party on the opposition side, István Nyakó (MSZP / Hungarian Socialist Party) to note in the general debate of the first bill: "[According to the sponsors of the bill] the boundless and untransparent flourishing of various communities, denominations, churches devalued the existence and operation of churches which meet a real social demand."⁶⁷ Thus, it seems that in addition to an objection against the sheer number of churches, the parliamentary majority also had value preferences concerning which churches are acceptable in the Hungary of the new Constitution. In the summer the desire to serve justice over centuries was a prevalent theme offered to justify the new law. Chairman Lukács noted several times that the purpose of the new law was to ensure that a new

66. Act No. 4 of 1990, Article 20(2).

67. Speech No. 367 (Closing Debate, Day No. 108), Journal of Parliament (July 11, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=108&p_felsz=367&p_szoveg=&p_felszig=367.

legal order is introduced reflecting the historical role of and injustices suffered by certain churches. Apparently, pluralism, or at least religious diversity, is not a welcome phenomenon.

Despite the above statements, for a long time it seemed that the debate in parliament would not reveal the real purpose behind the new church law, and the only articulated justification would be the need to suppress business sects and to respect historic churches. The events of the summer finally took an exciting turn when the committee on constitutional affairs, upon the proposal of the faction leader of the governing party, János Lázár (FIDESz / Alliance of Young Democrats), introduced a last minute amendment to make the registration of churches the task of a qualified majority in parliament.⁶⁸ He justified this amendment—which was ultimately adopted—by submitting that, similar to the recognition of national minorities, the recognition of churches was an act of sovereignty. Faction leader Lázár continued by saying:

You should not delude yourselves with trying to transfer the responsibility for the decision to judges, because you are the ones who make the law on the basis of which the judges will decide who is a church and who is not [sic]. In 1990 the law on the basis of which it was determined who is a church and who is not was also made by deputies in parliament. This time we will make this law, and the responsibility is on us, whether we are ready to name in concrete terms who do we find as worthy and befitting for church status in 2011, or whether we are not Why could we not offer to churches, depending on whether the government concludes an agreement with them or not, to decide whether they want to maintain their church status, or not, as this will not prevent them from exercising their freedom of religion. This law opens the way for them to exercise their religious freedom. This much you have to admit. I believe that it is much more transparent, more open; and – starting from the responsibility we have towards national minorities – I believe that following from their oath all members of parliament are willing to undertake the responsibility for churches, to take decisions in the case of people who wish to exercise their religious freedom.⁶⁹

68. The text of the amendment is available in Hungarian at http://www.mkogy.hu/internet/plsql/ogy_irom.irom_madat?p_ckl=39&p_izon=3507&p_alsz=98.

69. Speech No. 403 (Closing Debate, Day No. 108), Journal of Parliament (July 11, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=108&p_felsz=403&p

In the parliamentary debate, the recognition of churches was likened to the recognition of national minorities. Note, however, that the recognition of national minorities does affect the exercise of state sovereignty to the extent that under the new Constitution national minorities (“a velünk élő nemzetiségek”) qualify as constitutive parts of the state.⁷⁰ The political representation of national minorities has remained a component of Hungarian representative democracy under the new Constitution.⁷¹ In contrast, churches have never been envisioned as constitutive parts of the state under either modern Hungarian Constitution.

In this logic, freedom of religion is granted to communities of believers on the basis of their commendable qualities and contributions, depending on the government's assessment. The basis of this exercise is detached from freedom of religion as an individual right, and is dependent on the decision of the government and ultimately on the decision of parliament to grant church status. In this logic, therefore, it is the government or parliament (thus, ultimately, of the sovereign) that distributes a privilege to practice freedom of religion, pending further qualifications.

The parliamentary debate in December 2011 was heavily underscored by the need to tailor church registration in a manner which reflects Hungarian identity, understood as a means of responding to “real social needs.” After all, the transitional provision appended to the new Constitution identifies social support for churches as a basis for permissible governmental discrimination between them (Article 21(1)). In this spirit, in December 2011, Secretary Szászfalvi justified the latest bill with a new argument by pointing out that the list of fourteen recognized churches indeed corresponds to the religious affiliations of ninety-nine percent of the population according to the 2001 census, adding that in 2010, ninety-one percent of the redirected transfers of one percent tax donations to churches went to those 14 churches which were

_szoveg=&p_felszig=403.

70. THE FUNDAMENTAL LAW OF HUNGARY, National Avowal: “The nationalities living with us form part of the Hungarian political community and are constituent parts of the State.” In this respect, the new Constitution does not depart from the 1989 Constitution, and it is only the rhetoric which became more emotional, exchanging the terminology of “national and ethnic minorities” (1989 Constitution, Article 68(1)) for “nationalities living with us.” (2011 Constitution). The 1989 Constitution also provided for representation of national and ethnic minorities (Article 68(4)).

71. THE FUNDAMENTAL LAW OF HUNGARY, art. XXIX.

on the list of recognized churches.⁷² This almost mechanical argument about responding to the religious makeup of the population (measure at a census and with tax transfers) was flavored by the need to recognize those churches only which the population identifies as real churches⁷³ and, invariably, emphasized that the task of parliament was to register only those churches which correspond to the value system of the new Constitution.⁷⁴ These strains of argument revolving around the religious identity of Hungarians were finally connected to Secretary Szászfalvi in December 2011 when he said that, under the new law, the decision about registration does not even really rest with parliament and that, with the new criteria, the decision on church status “was taken by the people during previous centuries.”⁷⁵

Along with the above justifications, this round of amendments, which ultimately added eighteen more recognized churches to the list, also emphasized the discretionary nature of parliament’s decisions to grant church status to religious communities, the preference to recognize the representatives of world religions, and the need to defend Christianity in the world (instead of complying with statutory conditions for church

72. Secretary Szászfalvi, Speech No. 80 (General Debate, Day No. 158), Journal of Parliament (Dec. 23, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=158&p_felsz=80&p_szoveg=&p_felszig=80; *see also, e.g.*, József Varga (Fidesz), Speech No. 176 (General Debate, Day No. 158), Journal of Parliament (Dec. 23, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=158&p_felsz=176&p_szoveg=&p_felszig=176. For a reiteration of the same argument in February 2012, see Secretary Szászfalvi, Speech No. 363 (General Debate, day. No. 162), Journal of Parliament (Feb. 13, 2012) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=363&p_szoveg=&p_felszig=363.

73. Béla Turi-Kovács (Fidesz), Speech No. 146 (General Debate, Day No. 158), Journal of Parliament (Dec. 23, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=158&p_felsz=146&p_szoveg=&p_felszig=146; *see also* Béla Turi-Kovács (Fidesz), Speech No. 172 (General Debate, Day No. 158), Journal of Parliament (Dec. 23, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=158&p_felsz=172&p_szoveg=&p_felszig=172.

74. János Kóvári (Fidesz), Speech No. 244 (Second Reading, Day No. 160), Journal of Parliament (Dec. 28, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=160&p_felsz=244&p_szoveg=&p_felszig=244.

75. Sec’y Szászfalvi, Speech No. 250 (Second Reading, Day No. 160), Journal of Parliament (Dec. 28, 2011) (in Hungarian), *available at* http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=160&p_felsz=250&p_szoveg=&p_felszig=250

status).⁷⁶ These considerations clearly fit the logic of the exercise of sovereign powers, which emerged in the debate on the first bill in the summer of 2011.

Note, however, that in the Hungarian Constitutional tradition if the language of sovereignty is invoked in relation to religious manifestations in general, or to churches in particular, it is best understood as a reference to the powers of the monarch to closely manage and govern churches under the doctrine of the Holy Crown (see Part II.B). The exercise of this power visibly violates the autonomy of religious communities and is antithetical to the separation of church and state, a requirement of the new Constitution. A sovereignty-based regulatory model which distributes the opportunity to exercise religious freedom according to the discretionary decision of the sovereign is by definition unfit for a constitutional democracy entrusted with protecting freedom of religion as a human right.⁷⁷ Therefore, the concept of sovereignty as reheated in the parliamentary debate of the new church law is an extremely dangerous and inadequate instrument.

From this unorthodox perspective, the basis of parliamentary authority to recognize churches with a super-majority becomes clear. The question remaining for analysis is whether this justification for the exercise of discretionary parliamentary power can be squared in terms of its justifications and consequences with European human rights standards. The following section will raise concerns not only about the justifications advanced by the Hungarian government in support of the new law (prominently: the need to keep the number of recognized churches low) but also about deprivation from

previously uncontested legal entity status and the adequacy of entry level status offered for religious associations in the new regime.

76. See Tamás Lukács, Speech No. 361 (General Debate, Day No. 162), Journal of Parliament (Feb. 13, 2012) (in Hungarian), available at http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=162&p_felsz=361&p_szoveg=&p_felszig=361; see also Tamás Lukács, Speech No. 134 (Second Reading, Day No. 163), Journal of Parliament (Feb. 14, 2012) (in Hungarian), available at http://www.mkogy.hu/internet/plsql/ogy_naplo.naplo_fadat?p_ckl=39&p_uln=163&p_felsz=128&p_szoveg=&p_felszig=134.

77. For the significance of the tension arising out of this distinction, see EVANS, *supra* note 18, at 44.

III. THE 2011 HUNGARIAN LAW IN LIGHT OF EUROPEAN HUMAN RIGHTS STANDARDS

In order to fully appreciate recent developments in Hungary under the new Constitution, the last part of this article will briefly analyze the new law in light of European human rights standards. The new Hungarian law applies to all previously registered churches, with the exception of the ones listed in the extended Appendix of the new law. All other churches that wish to continue their operation as a church, and not as an association, will have to seek re-registration. As even a brief and superficial analysis finds, the new Hungarian law appears to violate a number of established rules of European human rights jurisprudence.

A General Considerations on Access to Legal Entity Status as an Aspect of Freedom of Religion as a Human Right

As a preliminary issue, it is important to briefly reflect on the relationship of freedom of religion and church registration, especially since in the Hungarian parliamentary debate it was suggested that, through regulation, the state may define the circle of acceptable practitioners of religious freedom. It is well known that freedom of religion as a human right is protected in Article 18 of the Universal Declaration, Article 18 of the International Covenant for Civil and Political Rights, Article 9 of the European Convention on Human Rights and, most recently, in Article 10 of the European Union Charter. It is also widely accepted that freedom of religion has individual as well as collective aspects, and that the desire to operate in an organized manner and to seek legal entity status in order to assist this organized operation is a protected manifestation of the right.⁷⁸ Churches are not worthy of protection because of their mere existence, but because they serve as the means and the framework of the meaningful enjoyment of one of the oldest fundamental human rights. In the words of the European Court of Human Rights (ECtHR): “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.”⁷⁹ Despite suggestions to the contrary to this effect in the Hungarian parliamentary debate, freedom of religion is a human right recognized in international and human rights laws, the exercise of which

78. The evolution of Article 9 in this respect is explained in detail in PIETER VAN DIJK ET AL., THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 764–65 (4th ed. 2006).

79. *Moscow Branch of the Salvation Army v. Russia*, 44 Eur. Ct. H. R. at 912 (2007).

does not (and cannot) depend on the good will or benevolence of the government or parliament.

The ECtHR has been consistent in reaffirming that, although the member states may regulate the exercise of freedom of religion, this may only be done in a neutral and impartial fashion,⁸⁰ in a manner that promotes religious diversity and pluralism. These are features that the ECtHR regards to be key characteristics of European democracies.⁸¹ The state is not expected, and is clearly not required, to act as an umpire between competing religious communities, and it cannot become involved in settling either inter- or intra-faith disputes.⁸²

As emphasized by the ECtHR, the legal registration of a religious community as a church cannot become the precondition or prerequisite of the free exercise of religion as an individual right.⁸³ As the following analysis will also demonstrate, it is also accepted that access to legal entity status may be subject to certain narrowly defined conditions so long as these do not interfere with a religious group's ability to carry out "the full range of religious activities and activities normally exercised by registered non-governmental entities."⁸⁴ For instance, it is appropriate for the state to keep record of various entities to which it grants legal personality.⁸⁵ Furthermore, due to the specificities of the Hungarian context, it might be important to add that criteria for obtaining legal entity status may be separate from conditions for state funding, as is the case in many leading jurisdictions.

80. For an analysis of the early jurisprudence on "neutral and generally applicable laws," see CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 168 *et seq.* (2001).

81. *Hasan and Chaush v. Bulgaria*, 1339 Eur. Ct. H. R. at 1362 (2002); *Metropolitan Church of Bessarabia*, 35 Eur. Ct. H. R. at 13 (2002); *see also Refah Partisi (the Welfare Party) and Others v. Turkey (GC)*, 37 Eur. Ct. H. R. at 33 (2003). For a critical discussion of the ECtHR's conception of diversity and pluralism, see Judge Francois Tulkens, *The European Convention on Human Rights and Church-State Relations: Pluralism v Pluralisms*, 30 *CARDOZO L. REV.* 2275 (2009).

82. *Metropolitan Church of Bessarabia*, 306 Eur. Ct. H. R. at 336 (2002); *Hasan and Chaush*, 1339 Eur. Ct. H. R. at 1358-1359 (2002); *Serif v. Greece*, 561 Eur. Ct. H. R. at 572-573 (2001); *see also VAN DIJK, THEORY AND PRACTICE, supra* note 75, at 770 (discussing such restrictions in the context of the legitimate aim requirement).

83. *Masaev v Moldova*, (unreported) Application no. 6303/05; Judgment of 12 May 2009, § 26; ROBIN WHITE & CLARE OVEY, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 421 (2006); *see also* OSCE / ODIHR, *GUIDELINES FOR REVIEW OF LEGISLATION PERTAINING TO RELIGION OR BELIEF* 17 (2003), *available at* <http://www.osce.org/odihr/13993>.

84. *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 (14 September 2007), § 123.; *Church of Scientology Moscow v. Russia*, App. No. 18147/02, 5 April 2007, §84; *The Moscow Branch of The Salvation Army*, App. No. 72881/01, 5 Oct. 2006, §74.

85. OSCE / ODIHR *GUIDELINES, supra* note 80, at 17.

The relationship of churches and states is described by many models in the literature, admitting that the wide array of national variations is due to the historical circumstances of each country.⁸⁶ Therefore, a careless international comparison may easily yield to misleading conclusions, since several national legal systems might not have straightforward comparators. The Guidelines of the OSCE / ODIHR on legislation pertaining to freedom of religion emphasize that the primary reason to provide legal entity status to religious communities is to facilitate their religious life and not to install state control over them. As a result, the Guidelines in line with ECtHR jurisprudence urge the member states to make such solutions available for religious communities which permit “at a minimum, access to the basic rights associated with legal personality—for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued—should be available without excessive difficulty.”⁸⁷ Importantly, as Carolyn Evans points out, despite profound differences between member states, unlike in other contexts under Article 9, “the margin of appreciation was not used by the Court in any of the registration cases to dilute the religious freedom rights of groups applying for registration.”⁸⁸

B. Specific Concerns About the New Hungarian Law in Light of ECtHR Jurisprudence

During the past decade, the ECtHR has developed well-discernible principles and thresholds in its jurisprudence concerning church registration.⁸⁹ The ECtHR regards legal personality (i.e., legal entity status) acquired as a result of governmental registration as a prominent aspect of freedom of religion protected by Article 9 of the Convention.⁹⁰ Denial of access to legal entity status to a group of believers amounts to a violation of freedom of religion (Article 9) and freedom of association

86. The European Convention does not prescribe a particular church-state regime. *See, e.g.*, Carolyn Evans & Christopher A. Thomas, *Church-State Relations in the European Court of Human Rights*, 2006 BYU. L. REV. 699, 699 (2006).

87. OSCE / ODIHR GUIDELINES, *supra* note 80, at 17-18.

88. Carolyn Evans, *Individual and Group Religious Freedom in the European Court of Human Rights: Cracks in the Intellectual Architecture*, 26 J. L. & RELIGION 321, 335 (2010-11).

89. *Id.* at 321, 327-29.

90. *Relionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 424 Eur. Ct. H. R. at 440 (2009); *Metropolitan Church of Bessarabia and Others*, 306 Eur. Ct. H. R. at 336 (2002); *see also* *Koretsky and Others v. Ukraine*, (unreported) Application no. 40269/02, 3 April 2008, § 40; *Kimlya v. Russia*, (unreported), Application no. 72881/01, Judgment of 6 October, 2006, § 85.

(Article 11) of the Convention.⁹¹ The ECtHR pays special attention to multi-tiered systems wherein recognition at the lowest level does not provide access to legal personality. This is due to the fact that lack of access to legal personality deprives religious communities of those rights and opportunities, without which these religious communities clearly suffer disadvantage. In one case, the ECtHR found a violation because “the applicants were unable to obtain recognition and effective enjoyment of their rights to freedom of religion and association in any organisational form.”⁹²

In the last fifteen years, the ECtHR decided a number of cases on registration and re-registration of churches that shed light on European standards.⁹³ Most of the cases originated in Russia after a 1997 law introduced a burdensome re-registration procedure for already recognized churches.⁹⁴ The most important lesson from these ECtHR cases is that re-registration of churches does not *per se* violate the Convention. With regards to the re-registration procedures, however, the ECtHR emphasized that (since re-registration requirements affect churches which have already obtained legal entity status) with the new procedure the state shall provide very weighty reasons for denying registration if the affected church had not otherwise violated the law (apart from operating without the required new registration while waiting for their re-registration process to conclude).⁹⁵

These cases suggest that the delays of the re-registration process may themselves violate the Convention, because during the transitional period the state forces previously registered churches to operate in a less advantageous (and less beneficial) legal framework. This conclusion is in line with other components of ECtHR jurisprudence, as the ECtHR also considers it to be a violation if delays imposed by a member state force a

91. ROBIN C. A. WHITE ET AL., *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 419 (5th ed. 2010); see also VAN DIJK, *supra* note 75, at 765 (quoting Hasan and Chaush, 1339 Eur. Ct. H. R. 1358–59 (2002)).

92. *Kimlya v Russia*, (unreported), Application no. 72881/01, Judgment of 6 Oct., 2006, § 87.

93. PAUL M. TAYLOR, *FREEDOM OF RELIGION, UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE* 246 (2005) (noting that the ECtHR came rather late into assessing the impact of restrictive registration laws, thus following in the footsteps of the UN Special Rapporteur).

94. *Church of Scientology Moscow v. Russia*, 46 E.H.R.R. at 16 (2008); *Moscow Branch of the Salvation Army v. Russia*, 44 E.H.H.R at 46 (2007); *Jehovah's Witnesses of Moscow and Others v. Russia*, (unreported) Application no. 302/02, Judgment of 10 June 2010.

95. *Church of Scientology Moscow*, 46 E.H.R.R. at 16; *Moscow Branch of the Salvation Army*, 44 E.H.H.R. at 46.

religious community to operate without registration.⁹⁶ Under the new Hungarian law, previously registered churches that are not listed in the Appendix of the law will be able to function as religious associations until their new recognition is processed (Article 34(1)). The Venice Commission found it problematic that the new law foresees a one-year long window for re-recognition of previously registered churches (Article 14(5)), a waiting period which is excessive by international standards.⁹⁷ Furthermore, as the procedure of recognition leaves parliament broad discretion (i.e. parliament *may* recognize as churches the religious groups which meet the statutory conditions) and as the contours of religious association status (especially the scope of autonomy) are unclear, it is beyond doubt that newly-minted religious associations will be deprived of key benefits of church status for an indefinite period.

Arguably, under the latest Hungarian church registration regime, entry-level legal entity status is provided to religious communities in the form of the newly-created, so-called religious associations operating under the Civil Code and the new cardinal law on associations (Article 6(1)).⁹⁸ Such religious associations differ in one respect only from other associations: resolutions of religious associations passed in connection with their religious operation are exempt from judicial review.⁹⁹ Since associations are required to operate with a registered membership under Hungarian law,¹⁰⁰ this format is unfit for the exercise of religious freedom as the registration requirement runs counter to negative confessional freedom. In addition, under Hungarian law, associations are expected to operate in a democratic, self-governing fashion. Insisting on this type of structure is perfectly reasonable for typical secular associations, but it can be highly problematic for religious communities that believe as a matter of religious principle in a different form of organization (e.g., a church with a hierarchical ecclesiastical polity or with representational structures that do not conform to standard association law). Indeed, it is important to remember that the

96. Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria, 424 Eur. Ct. H. R. at 440 (2009).

97. Venice Commission on Hungary, paras 43-45.

98. Act No. CLXXV of 2011 on the freedom of association, on public purpose status, and the operation of civic organizations replaces Act No. 2 of 1989 on the freedom of association.

99. See Article 62(7) of the Civil Code, and Article 62(7) of Act No. CLXXV of 2011 on the freedom of association.

100. Article 61(1) of the Civil Code, also Article 5 of Act No. CLXXV of 2011 on the freedom of association.

organizational structure of religious communities is often a matter of deep religious conviction.

The ECtHR also examines the length of the mandatory waiting period, and the government has to justify the length of the waiting period prescribed in national law. Not long after finding that a fifteen-year waiting period (required for re-registration) violated the Convention in the Russian context,¹⁰¹ the ECtHR also found that, in the Austrian context, a ten-year waiting period (required for upper tier registration) violated the Convention. In the Austrian case, the ECtHR took into account that the affected religious community had already operated in the country for over half a century on a lower level of registration, and it also considered that the government decided to enter into a concordat with another religious community that had operated in Austria for a shorter period than the applicant had.¹⁰² Consequently, it is reasonable to conclude that the twenty-year waiting period imposed in the Hungarian law does not meet the level of protection expected by the ECtHR.

Although the ECtHR has examined the length of the statutory waiting period a number of times, it somewhat surprisingly has not assessed the threshold membership requirements set for access to legal entity status. Since the ECtHR has been consistent—if not persistent—in reminding the member states that under Article 9 it was their task to preserve religious diversity and pluralism, the Hungarian justification according to which parliament wished to curb the number of registered churches is unlikely to be accepted under Article 9(2). Since the Hungarian parliament decided to significantly raise the number of supporters required for recognition (more precisely, by ten times), it is expected that if the law is challenged in Strasbourg, the ECtHR will wish to hear the reasons behind raising the minimum membership requirement in particular.

Currently, only Slovakia requires more founding members for a registered church with its infamous 20,000 threshold. After the Hungarian law, the second-highest requirement is in Croatia (500),¹⁰³ followed by the Czech (300),¹⁰⁴ and Austria (300 at entry level)¹⁰⁵

101. *Kimlya v Russia*, (unreported), Application no. 72881/01, Judgment of 6 Oct., 2006.

102. *Relionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 424 Eur. Ct. H. R. at 17 (2009).

103. For an English translation of the law (Article 21(1)), see *LAWS ON RELIGION AND THE STATE IN POST-COMMUNIST EUROPE 93 et seq.* (W. Cole Durham, Jr. & S. Ferrari eds., 2003).

104. For an English translation of the law (Article 10(2)(3)) see *id.* at 105.

105. For a recent English language description of the Austrian law, see Stefan Schima, *Focus: Freedom of Religion in Austria*, 3 *VIENNA J. INT'L CON. L.* 199, 202 (2009), available at www.icl-

Therefore, despite the optimism in the parliamentary debate, the new Hungarian requirement became the second highest in Europe. With such a high requirement, the Hungarian government certainly did not live up to the OSCE / ODIHR guidelines which suggest abandoning high minimum membership requirements.¹⁰⁶ The opinion of the Venice Commission insisted that the new Hungarian law does not require 1,000 founding members, but instead, it prescribes 1,000 sympathizers who petition on behalf of the religious group. While the Venice Commission did not find the threshold too high by definition, the opinion noted that “it is clear that this condition constitutes an obstacle for small religious groups benefiting from the protection afforded by the Act.”¹⁰⁷

International comparison matters not only for national pride and self-respect but also because the ECtHR is known to regularly take into account European trends and consensus (where it exists) when it determines the level and intensity of rights protection.¹⁰⁸ Recently, in a party registration case, the ECtHR compared national rules on minimum membership requirements and found that although thirteen countries prescribed a threshold, the Russian requirement of 50,000 founding members for party registration is considerably higher than any other rule in Europe.¹⁰⁹ This Russian requirement is similar to the one of the new Hungarian law to the extent that the Russian law raised the existing threshold requirement by five times and required the re-registration of already registered and functioning political parties. The ECtHR consulted the parliamentary record as well as arguments submitted before the Russian Constitutional Court in prior proceedings to find that, with this adjustment, the Russian government intended “to strengthen political parties and limit their number in order to avoid disproportionate expenditure from the budget during electoral campaigns and prevent excessive parliamentary fragmentation and, in so doing, promote stability of the political system.”¹¹⁰ Upon a thorough analysis, the ECtHR rejected these justifications in light of its findings.¹¹¹

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106. OSCE / ODIHR GUIDELINES, *supra* note 80, at 17.

107. Venice Commission on Hungary, ¶ 53.

108. For a recent, famous example of consensus analysis in the religion domain, see *Lautsi v Italy* (GC), Application no. 30814/06, Judgment of 18 March 2011.

109. *Republican Party of Russia v Russia*, (unreported) Application no. 12976/07, Judgment of 12 April 2011, § 110.

110. *Id.* § 111.

111. *Id.* §§ 112–14.

It remains to be seen how the ECtHR will react to some of the primary reasons offered by the Hungarian government in defense of a higher threshold, such as the need to reduce the number of registered churches to bring order to the religious scene or to make the church sector better reflect Hungarian traditions. Considering key similarities between the Russian and the Hungarian laws, it would be rather surprising to see the ECtHR depart from the stance it took about an unnecessarily high registration threshold preventing the meaningful exercise of a Convention right.

Regarding religious communities awaiting re-registration, it is clear that the ECtHR leaves the member states considerable discretion in deciding which faiths to accept. At the same time, it is easy to detect a certain impatience in the jurisprudence when the member states appear to delay the registration or recognition of communities that have an established record of unproblematic presence in the country (especially when the case involves registration on a higher level in a multi-tier system) and also of churches which are known to freely operate in other member states.¹¹² While the Hungarian parliament was particularly concerned with the illegal operations of business sects, it is important to emphasize that at the time of the passing of the latest law in December 2011 and its subsequent amendment in February 2012, no records of successful prosecutions of registered churches for financial irregularities surfaced. Therefore, it is reasonable to expect that a potential refusal to re-register internationally well-known and respected congregations which functioned smoothly for twenty years will be met with disapproval in Strasbourg.

As the above analysis already indicated, in addition to the conditions of church registration, the ECtHR also examines the nature of the proceedings. It is a well-established requirement in its jurisprudence that the protection of rights cannot be illusory, and that the procedures associated with the exercise of various rights cannot become an obstacle to the enjoyment of the right. In the context of church registration, it does not only mean that the requirements of the registration process have to be clear and predictable, but it also follows that the conditions for registration have to be such that they could be met realistically.¹¹³ The

112. *Jehovah's Witnesses of Moscow and Others v Russia*, (unreported) Application no. 302/02, Judgment of 10 June 2010, § 155; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 424 Eur. Ct. H. R. at 446 (2009)

113. *Church of Scientology Moscow v Russia*, 304 Eur. Ct. H. R. at 325–26 (2008) (e.g. requiring the submission of numerous originals of documents, in multiple proceedings).

ECtHR also expects the state to be consistent throughout the registration process as it amounts to a violation if the state makes self-contradictory representations at different stages of the same registration process.¹¹⁴ It is highly questionable whether a registration procedure that hinges upon parliament's discretionary decision in individual cases meets these standards concerning the nature of the registration procedure itself.

The Achilles heel of the new Hungarian law is certainly the provision that hands over the registration of churches to a qualified majority of parliament from courts of law. The new law does not indicate any opportunity for appeal or seek judicial review of a rejection at any stage of the process. The parliamentary resolution in which the request of sixty-six previously registered churches was rejected is not eligible for judicial or constitutional review in Hungary.¹¹⁵ Apart from being in clear violation of Article XXVIII(7) of the new Hungarian Constitution, this is clearly in contravention of ECtHR jurisprudence which requires under Article 6(1) access to a court outside the criminal process.¹¹⁶ More specifically, in the freedom of religion context, the ECtHR has found that lack of access to court in a dispute over church property violated the Convention.¹¹⁷ Considering that the ECtHR found that the absence of a judicial avenue violated Articles 9 and 6 of the Convention in case where the applicants sought to contest much less than a refusal to register a church, it is reasonable to expect that the ECtHR will find the Hungarian law to violate the Convention.

As was mentioned already several times, it is a fundamental requirement of the ECtHR jurisprudence that member states strive to preserve religious diversity as an aspect of democracy in a neutral and impartial fashion. The requirement of neutrality, also expressed in the form of the principle of non-discrimination (Article 14),¹¹⁸ applies irrespective of the histories and national traditions of the member states. It is an important caveat for the Hungarian legislator that the decisions that the state takes regarding particular churches also fall within the general human rights framework established by the Convention and

114. *Moscow Branch of the Salvation Army v Russia*, 912 Eur. Ct. H.R. at 934 (2007).

115. Judicial review of executive and administrative action is regulated by Act No. 115 of 2004 on the general rules of administrative action and services.

116. *Golder v the United Kingdom*, 524 Eur. Ct. H. R. at 534 (1979–80).

117. *Sambata Bihor Greek Catholic Church v. Romania*, (unreported) Application no. 48107/99, Judgment of 12 January 2011. In this case, petitioners had to turn to a commission (but not an independent court) to settle their dispute.

118. Note that Hungary signed, but did not ratify, Protocol no. 12.

developed by the ECtHR. In practice, this means that concordats and similar bilateral agreements with churches are assessed within the legal framework applicable to the exercise of freedom of religion and to church-state relations as a whole.

For instance, in addition to its multi-tier church registration system, Austria maintains a concordat regime with select churches. Thus, while the Austrian authorities were unwilling to register Jehovah's Witnesses at a higher tier, the government concluded a concordat with the Coptic church. Since the latter has operated in Austria for a much shorter time than the Witnesses, the ECtHR took the concordat as evidence of discrimination in the application of the waiting period requirement imposed by Austrian law.¹¹⁹ The ECtHR followed a similar track in a Croatian case where the government refused to conclude concordats (required for access to hospitals and prisons) with certain Protestant communities. Since the applicant communities met the statutory requirements on the basis of which other churches were selected for their concordats, the ECtHR rejected the government's justification claiming that the other churches performed a historic role and found Croatia in violation.¹²⁰ In the light of these lessons from the discrimination context, it is highly unlikely that the distinctions drawn by the Hungarian parliament between previously registered churches under the new cardinal law will be accepted by the ECtHR. The historic role of certain churches already proved an unacceptable reason in defense of discrimination, and the need to protect the status quo or to improve diplomatic relations does not sound much more pertinent. Although the ECtHR so far has not ruled on the need to exercise state sovereignty in selecting religious communities for registration as churches, this reason does not appear to come within any of the legitimate aims accepted for the limiting Convention rights, either.

In closing, note that this brief overview reflects only on those features of the new Hungarian law which raise concerns even before the law enters into force and is applied in practice. It is difficult to predict how the law will function when claims for registration start to reach parliament. Nonetheless, as even such a short overview reveals, the Hungarian law clearly falls short of the applicable European human rights standards.

119. *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, 424 Eur. Ct. H. R. at 444-45 (2009).

120. *Savez Crkava "Rijec Zivota" and Others v. Croatia*, (unreported) Application no. 7798/08, Judgment of 9 December 2010.

IV. CONCLUSION

This article introduced the new Hungarian legal framework entering into force on January 1, 2012 concerning freedom of religion and church-state relations. The Article first reviewed the changes to the constitutional framework, placing developments in their broader historical and jurisprudential context. This was followed by a detailed analysis of the emergence of the new law, its coverage in the press, and the parliamentary debate itself. While the new law notably introduced a relatively long waiting period (twenty years domestically or 100 years internationally), a remarkably high threshold for registration (1,000 members), and a requirement of re-registration for already registered churches, the feature which distinguishes the new Hungarian law is the requirement that gives parliament discretionary authority over church registration. As such, the new rules amount to a serious departure from the regime that was in place in Hungary under the 1989 Constitution and the 1990 law on churches. Since the new rules impose significant burdens on the exercise of religious liberty and affect profoundly and negatively the overwhelming majority of religious communities that have been registered as churches for two decades or more, it was necessary to explore carefully the reasons motivating such profound changes. In its last part, the Article assessed key components of the new Hungarian statute in light of the requirements of the European Convention on Human Rights as interpreted in ECtHR jurisprudence.

The analysis reveals that the Hungarian parliament was committed to redefining the framework of freedom of religion and church-state relations in Hungary. While initially justified by the need to reduce the number of registered churches and to reinforce Hungarian traditions, the new law was ultimately explained in parliament as an exercise of state sovereignty, a decision taken by parliament on “who is a church and who is not.” The references to the unlimited powers of the sovereign, the vision of parliament as an ultimate arbiter of matters of identity and distributor of privileges of engagement in matters of civil and political rights, together with an utter distrust of the judiciary as voiced in the parliamentary debate, are equally problematic. These propositions suggest that the parliament of a constitution-making majority clearly does not view the new Constitution or European human rights commitments as a constraint on their own powers for present or future decisions.

Although rather tempting, it would be a serious mistake to blame the new cardinal law completely on the language of the new Constitution, or

of the National Avowal. This Article argued that the new law cozily fits within the unstable pattern of centuries of religious toleration in Hungary. In this pattern, periods of toleration exchange places with periods of repression and intolerance, where the enemy of the day is chosen according to political demands and interests. The new Constitution's National Avowal commits Hungarians to add their rich national culture to European diversity. In order to do so, Hungary's new Constitution is not expected to be diverse and European, though it is sufficient for it to be unique.¹²¹ As this Article demonstrates, Hungary with its new Constitution and new cardinal law on freedom of religion and churches is on the track of straying far away from the European standard and building a unique, if unusual, regime of its own. The only hope for change stems from the fact that the Hungarian parliament decided to make its mark and stand out in a terrain where the ECtHR seems to leave the member states with a narrower-than-usual margin of appreciation.

121. THE FUNDAMENTAL LAW OF HUNGARY, National Avowal: "We are proud that our people has over the centuries defended Europe in a series of struggles and enriched Europe's common values with its talent and diligence We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin."

