



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

**CASE OF MAGYAR KERESZTÉNY MENNONITA EGYHÁZ  
AND OTHERS v. HUNGARY**

*(Applications nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12,  
41463/12, 41553/12, 54977/12 and 56581/12)*

JUDGMENT  
*(Merits)*

STRASBOURG

8 April 2014

**FINAL**

**08/09/2014**



**In the case of Magyar Keresztény Mennonita Egyház and Others v. Hungary,**

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

Guido Raimondi, *President*,

Işıl Karakaş,

András Sajó,

Nebojša Vučinić,

Helen Keller,

Egidijus Kūris,

Robert Spano, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 18 February 2014,

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

## PROCEDURE

1. The case originated in nine applications (nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by various religious communities allegedly active in Hungary, and their ministers and members, on 16 November 2011, 3 and 24 April, 25 and 28 June, and 19 and 29 August 2012.

2. The applicants were represented by Mr D. Karsai (applications nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12 and 56581/12), Mr L. Baltay (application no. 41553/12) and Mr Cs. Tordai (application no. 54977/12), lawyers practising in Budapest, Gyál and Budapest respectively.

The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

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

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

5. In respect of application no. 41463/12, the United Kingdom Government did not exercise their right under Article 36 § 1 of the Convention to submit written comments in the case.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are religious communities and individuals. The applicant communities originally existed and operated lawfully in Hungary as Churches registered by the competent court in conformity with Act no. IV of 1990 (“the 1990 Church Act”).

7. In application no. 70945/11, *Magyar Keresztény Mennonita Egyház* (Hungarian Christian Mennonite Church<sup>1</sup>) is a religious community active in Hungary since 1998. Mr J. Izsák-Bács is a Hungarian national who was born in 1959 and lives in Budapest. He is a minister of *Magyar Keresztény Mennonita Egyház*.

8. In application no. 23611/12, *Evangéliumi Szolnoki Gyülekezet Egyház* (Evangelical Szolnok Congregation Church) is a religious community active in Hungary since 1998. Mr P.J. Soós is a Hungarian national who was born in 1954 and lives in Budapest. He is a minister of *Evangéliumi Szolnoki Gyülekezet Egyház*.

This applicant community was involved in social activities outsourced by the municipality of Szolnok and had concluded an agreement with the State Treasury on the provision of services for homeless people. In 2011 the Treasury cancelled this agreement and granted the relevant subsidy only until 30 June 2011. As a consequence the applicant had to terminate the corresponding contract with the municipality, but was obliged to continue to perform its social services up to and including July 2011, thereby allegedly sustaining damage in the amount of 691,407 Hungarian forints.

9. In application no. 26998/12, *Budapesti Autonóm Gyülekezet* (Budapest Autonomous Congregation) is a religious community active in Hungary since 1998. Mr T. Görbicz is a Hungarian national who was born in 1963 and lives in Budapest. He is a minister of *Budapesti Autonóm Gyülekezet*.

10. In application no. 41150/12, *Szim Salom Egyház* (Sim Shalom Church) is a religious community active in Hungary since 2004. Mr G.G. Guba is a Hungarian national who was born in 1975 and lives in Budapest. He is a member of *Szim Salom Egyház*.

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1. Names translated by the Registry.

11. In application no. 41155/12, *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* (Alliance of Hungarian Reformed Jewish Communities Church) is a religious community active in Hungary since 2007. Ms L.M. Bruck is a Hungarian national who was born in 1931 and lives in Budapest. She is a member of *Magyar Reform Zsidó Hitközségek Szövetsége Egyház*.

12. In application no. 41463/12, the European Union for Progressive Judaism is a religious association with its registered office in London. It acts as an umbrella organisation for progressive Jewish congregations in Europe. *Szim Salom Egyház* (see application no. 41150/12) and *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* (see application no. 41155/12) are among its members.

13. In application no. 54977/12, *Magyarországi Evangéliumi Testvérközösség* (Hungarian Evangelical Fellowship) is a religious community active in Hungary since 1981.

14. In application no. 56581/12, *Magyarországi Biblia Szól Egyház* (“The Bible Talks” Church of Hungary) is a religious community active in Hungary for over twenty years.

15. In application no. 41553/12, the applicants (*ANKH Az Örök Élet Egyháza* (ANKH Church of Eternal Life), *Árpád Rendjének Jogalapja Tradicionális Egyház* (Traditional Church of the Legal Basis of Árpád’s Order), *Dharmaling Magyarország Buddhista Egyház* (Dharmaling Hungary Buddhist Church), *Fény Gyermekei Magyar Esszénus Egyház* (“Children of Light” Hungarian Essene Church), *Mantra Magyarországi Buddhista Egyháza* (Mantra Buddhist Church of Hungary), *Szangye Menlai Gedün A Gyógyító Buddha Közössége Egyház* (Szangye Menlai Gedun, Community of Healing Buddha Church), *Univerzum Egyháza* (Church of the Universe), *Usui Szellemi Iskola Közösség Egyház* (Usui Spiritual School Community Church), *Út és Erény Közössége Egyház* (Community of Way and Virtue Church)) are religious communities active in Hungary since 1999, 2008, 2005, 2001, 2007, 1992, 1998, 2008 and 2007 respectively.

16. On 30 December 2011 Parliament enacted Act no. CCVI of 2011 on the right to freedom of conscience and religion and the legal status of Churches, denominations and religious communities (“the 2011 Church Act”). It entered into force on 1 January 2012 and was subsequently amended on several occasions, most recently on 1 August and 1 September 2013.

17. Apart from the recognised Churches listed in the Appendix to the 2011 Church Act (see paragraph 22 below), all other religious communities previously registered as Churches lost their status as Churches but could continue their activities as associations. If intending to continue as Churches, religious communities were required to apply to Parliament for individual recognition as such.

18. In decision no. 6/2013 (III. 1.), the Constitutional Court found certain provisions of the 2011 Church Act to be unconstitutional and annulled them with retrospective effect.

Meanwhile, several applicants filed requests to have the minister responsible register them as Churches, but these applications were refused on the ground that – despite the decision of the Constitutional Court – the 2011 Church Act precluded the registrations requested.

19. After the Constitutional Court’s decision, several applicants applied to the National Taxation and Customs Agency seeking to be reissued with the number which is necessary in order to remain entitled to the 1% of income tax which taxpayers may donate to Churches. The National Taxation and Customs Agency suspended the procedure and invited the applicants to initiate a recognition procedure before Parliament. In the applicants’ submission, this demonstrated further disregard for the Constitutional Court’s decision.

20. Several applicants regained their status as Churches pursuant to the Constitutional Court’s decision.

## II. RELEVANT DOMESTIC LAW

### A. Overview of developments in the relevant legislation

21. Between 12 February 1990 and 31 December 2011 religious activities were regulated by the 1990 Church Act, which defined religious communities with a membership exceeding one hundred as Churches.

22. As of 1 January 2012, the 1990 Church Act was replaced by Act no. CCVI of 2011 (“the 2011 Church Act”). Under the new Act, religious communities could exist either as Churches or as associations carrying out religious activities (“religious associations” according to the terminology used by the Constitutional Court). The only entities which qualified as Churches were those listed in the Appendix to the 2011 Church Act and those classified as Churches by Parliament subject to certain conditions, originally until 29 February 2012. The constitutional basis of this regulation was provided by Article 21 § 1 of the Transitional Provisions of the Fundamental Law, which vested in Parliament the power to identify the recognised Churches in the relevant cardinal law and to determine the criteria for the recognition of Churches that might additionally be admitted in the future. Formerly registered Churches could be converted, at their request, into associations and carry on their activities on that basis; however, under the new rules they were not entitled to any budgetary subsidies. Originally (under the 1990 Church Act), there had been 406 registered Churches, whereas the Appendix to the 2011 Church Act contained only fourteen. The Appendix, in force as of 1 March 2012, lists twenty-seven Churches and Church alliances, giving a total of thirty-two

Churches. According to the information published by the tax authorities, these thirty-two Churches do not fully coincide with the thirty-two most supported Churches if such support is measured by the number of taxpayers making voluntary tax donations in their favour.

On 28 December 2012 the Constitutional Court repealed, among other provisions, those rules of the Transitional Provisions of the Fundamental Law which had granted Parliament the right to identify recognised Churches. On 26 February 2013 it also annulled those provisions of the 2011 Church Act which had led to the applicants' being deprived, by force of law, of their Church status.

23. Partly in response to the above-mentioned Constitutional Court decisions, the power of Parliament to grant special Church status was reintroduced into the Fundamental Law itself, notably by its Fourth Amendment, which came into force on 1 April 2013. This introduced the terms "Churches" and "other organisations performing religious activities", with Churches being defined as those organisations with which the State cooperates to promote community goals and which the State recognises as such. In a similar vein, under the rules of the 2011 Church Act as amended with effect from 1 August 2013, the term currently in use is that of "religious communities"; this term encompasses "incorporated Churches" (*bevett egyház*) as well as "organisations performing religious activities" (*vallási tevékenységet végző szervezet*). However, all these entities are entitled to use the word "Church" (*egyház*) in their names.

24. Under the rules in force, for a religious community to become an "incorporated Church" it must prove either one hundred years of international existence or that it has functioned in Hungary for twenty years in an organised manner and must prove a membership which equals at least 0.1% of the national population. Moreover, it has to prove its intention and long-term ability to cooperate with the State to promote public-interest goals. On the other hand, a group of individuals may become an "organisation performing religious activities" if it has at least ten members and is registered as such by a court.

25. The Fifth Amendment to the Fundamental Law (which came into force on 1 October 2013) was intended to emphasise, also at constitutional level, the principle that everyone is entitled to establish special legal entities ("religious communities") designed for the performance of religious activities, and that the State may cooperate with some of those communities to promote community goals, conferring on them the status of "incorporated Church". To reflect the uniformity of "[incorporated] Churches" and "other organisations performing religious activities" in terms of freedom of religion, those terms were replaced by the overall term "religious communities" throughout the text of the Fundamental Law.

However, under the present rules of Hungarian law, incorporated Churches continue to enjoy preferential treatment, in particular in the field

of taxation and subsidies. In particular, only incorporated Churches are entitled to the 1% of personal income tax donated by citizens and to the corresponding State subsidy. Moreover, in decision no. 6/2013 (III. 1.), the Constitutional Court identified, in a non-exhaustive list (see points 158 to 167 of the decision in paragraph 34 below), several activities whose exercise is facilitated – in legal, economical, financial and practical terms – by the lawmaker in the case of incorporated Churches but not in the case of other religious communities: these examples include religious education and confessional activities within State institutions, the operation of cemeteries, including religious funerals, the publication of religious printed material and the production and marketing of religious objects.

Notwithstanding the fact that the applicants have nominally regained their legal status, they cannot benefit from preferential treatment of this kind, which is available only to incorporated Churches.

## **B. Constitutional provisions**

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

### **Article VII**

“1. Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other conviction, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other conviction by performing religious acts or ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.

2. The State and the Churches shall be separate. Churches shall be autonomous. The State shall cooperate with the Churches to promote community goals.

3. The detailed rules for Churches shall be regulated by a cardinal Act.”

27. With effect from 1 April 2013, pursuant to the Fourth Amendment to the Fundamental Law of Hungary, the text of Article VII of the Fundamental Law was amended as follows:

### **Article VII**

“1. Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other conviction, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other conviction by performing religious acts or ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.

2. Parliament may pass cardinal Acts recognising certain organisations which perform religious activities as Churches, with which the State shall cooperate to promote community goals. The provisions of cardinal Acts concerning the recognition of Churches may be the subject of a constitutional complaint.



3. The State and Churches and other organisations performing religious activities shall be separate. Churches and other organisations performing religious activities shall be autonomous.

4. The detailed rules for Churches shall be regulated by a cardinal Act. As a requirement for the recognition of any organisation performing religious activities as a Church, the cardinal Act may prescribe an extended period of operation, social support and suitability for cooperation to promote community goals.”

28. With effect from 1 October 2013, pursuant to the Fifth Amendment to the Fundamental Law of Hungary, the text of Article VII of the Fundamental Law was amended as follows:

#### **Article VII**

“1. Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change religion or any other conviction, and the freedom for every person to proclaim, refrain from proclaiming, profess or teach his or her religion or any other conviction by performing religious acts or ceremonies or in any other way, whether individually or jointly with others, in the public domain or in his or her private life.

2. In order to practise their religion, persons sharing the same principles of faith may establish religious communities in organisational forms defined by cardinal Act.

3. The State and the religious communities shall be separate. Religious communities shall be autonomous.

4. The State and the religious communities may cooperate to promote community goals. Such cooperation shall be established by decision of Parliament, at the request of the religious community concerned. Religious communities participating in such cooperation shall operate as incorporated Churches. With a view to their participation in activities promoting community goals, the State shall confer specific rights on the incorporated Churches.

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

### **C. Statutory provisions**

29. In its relevant provisions the 2011 Church Act, as in force on 1 January 2012, read as follows:

#### **Religious activities**

##### **Section 6**

“(1) For the purposes of this Act, religious activities relate to a set of beliefs directed towards the transcendental which has a system of faith-based principles and whose teachings focus on existence as a whole, and which embraces the entire human personality and lays down specific codes of conduct that do not offend morality and human dignity.

(2) The following shall not be considered as religious activities *per se*:

- (a) political and lobbying activities;
- (b) psychological and parapsychological activities;
- (c) medical activities;
- (d) business/entrepreneurial activities;
- (e) pedagogical activities;
- (f) educational activities;
- (g) higher educational activities;
- (h) health care activities;
- (i) charitable activities;
- (j) family, child or youth protection activities;
- (k) cultural activities;
- (l) sports activities;
- (m) animal protection, environmental protection or nature conservation activities;
- (n) information technology activities which go beyond the information technology necessary for faith-based activities;
- (o) social work activities.”

### **Churches**

#### **Section 7**

“(1) A Church, religious denomination or religious community (hereinafter referred to as ‘Church’) shall be an autonomous organisation comprising natural persons sharing the same principles of faith, shall possess self-government, and shall operate primarily for the purpose of exercising religious activities. For the purposes of this Act, religious denominations and religious communities shall also be considered as Churches.

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

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

#### **Section 8**

“The State may enter into agreements with Churches which have substantial social support, preserve historical and cultural values and maintain pedagogical, educational, higher educational, health care, charitable, social, family/child/youth protection, cultural or sports institutions (hereinafter referred to as ‘public-interest activities’) in order to ensure their operation.”

#### **Section 9**

“ ...

(2) The State may take into account the actual social role of Churches and the public-interest activities performed by them, in enacting additional rules of law related to the social role of Churches and in maintaining relations with them.”

#### Section 14

“(1) The representative of an association which primarily performs religious activities (hereinafter referred to as an ‘association’) shall be authorised to initiate the recognition of the represented association as a Church by submitting a document signed by a minimum of 1,000 individuals, applying the rules governing popular initiatives.

(2) An association shall be recognised as a Church if

(a) it primarily performs religious activities;

(b) it has a confession of faith and rites containing the essence of its teachings;

(c) it has been operating internationally for at least one hundred years, or in an organised manner as an association in Hungary for at least twenty years, which includes operating as a Church registered under [the 1990 Church Act] prior to the entry into force of this Act;

(d) it has adopted a statute, an instrument of incorporation and internal ecclesiastical rules;

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

(f) its representatives declare that the activities of the organisation established by them are not contrary to the Fundamental Law, do not conflict with any rule of law and do not violate the rights and freedoms of others;

(g) the association has not been considered a threat to national security during the course of its operation;

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

(3) Based on the popular initiative, the parliamentary committee on religious affairs (hereinafter referred to as ‘the committee’) shall submit a bill to Parliament regarding the recognition of the association as a Church. If the conditions defined in subsection (2) are not fulfilled, the committee shall indicate this in connection with the bill.

(4) At the request of the committee, the association shall certify that it fulfils the conditions defined in points (a) to (f) of subsection (2). The committee shall request the opinion of the President of the Hungarian Academy of Sciences regarding the fulfilment of the conditions defined in points (a) to (c) of subsection (2).

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

#### Section 15

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

#### Section 19

“...

(3) In order to realise their goals, Churches shall be authorised to engage in activities which do not qualify as business or entrepreneurial activities, and shall also

be authorised to engage in business or entrepreneurial activities besides their core activities. Furthermore, they shall be authorised to establish businesses and NGOs and to participate therein.

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

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

(6) Churches may receive funding on a statutory basis from the subsidiary organs of central government, from programmes financed out of EU funds or on the basis of international agreements, by way of application or outside the system of applications, on the basis of a specific decision. ...”

### Section 20

“ ...

(4) In addition to those activities listed in section 6, subsection (2), the following shall not qualify as business or entrepreneurial activities in the case of Churches:

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

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

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

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

(e) the maintenance of cemeteries;

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

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

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

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

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

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

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

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

(d) the portion of interest, dividends and yields paid by financial institutions and issuers on deposits and securities made or acquired using uncommitted funds, in proportion to the revenues generated by activities which do not qualify as business or entrepreneurial activities.

(6) Churches may be granted tax benefits and other similar benefits.”

### **Section 23**

“Churches, and in particular Church rites and the undisturbed conduct of Church governance, as well as Church buildings, cemeteries and other holy places, shall enjoy enhanced protection under the law on regulatory offences and under criminal law.”

### **Section 24**

“(1) In teaching or educational institutions financed by the State or local government, Churches may provide religious and moral education according to the needs of students and their parents; in institutions of higher education Churches may carry out faith-based activities. ... The costs of religious and moral education shall be borne by the State, on the basis of a separate Act or of agreements concluded with the Churches.

(2) Churches may perform pastoral services in the army, in prisons and in hospitals, or other special ministries as provided for by statute.”

### **Section 33**

“(1) The Minister shall, within thirty days of the entry into force of this Act, register the Churches listed in the Appendix to this Act and the internal ecclesiastical legal persons determined by them under section 11.

(2) Churches listed in the Appendix and their internal ecclesiastical legal persons may operate as Churches and as internal ecclesiastical legal persons regardless of the date of their registration under subsection (1). ...”

### **Section 34**

“... ”

(2) Until the expiry of Act no. C of 2011 on the right to freedom of conscience and religion and the legal status of Churches, denominations and religious communities, with the exception of the rules governing popular initiatives, Parliament shall, in the light of the provisions governing the recognition of Churches set out in Act no. C of 2011 ..., make decisions by 29 February 2012 in respect of the recognition of Churches submitting applications for recognition to the Minister in accordance with this Act, under the procedure set out in section 14, subsections (4) and (5).

(3) The Minister shall publish a list of the Churches specified in subsection (2) above on the Ministry’s official website.

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

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

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

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

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

(e) budgetary funding for ecclesiastical purposes may be granted to the Churches specified in subsection (2) up to 29 February 2012.

(5) The organisation

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

(b) where it meets the requirements provided for in this Act, may initiate the recognition of the association as a Church in accordance with the provisions set out in Chapter III.”

### Section 35

“(1) The organisation shall declare its intention to continue or discontinue its activities by 29 February 2012, and where it intends to continue its activities it shall, in accordance with the rules concerning associations, initiate a change-of-registration procedure. In this connection section 37, subsection (1), section 38 and section 63, points (a) and (c), of Act no. CLXXXI of 2011 on the court registration of civil society organisations and related rules of procedure shall apply, with the proviso that the meeting at which the change of registration is decided shall be considered as the constituent assembly.

(2) The requirements for the organisation to be registered as an association must be fulfilled by 30 June 2012 at the latest. However, if the organisation undertakes religious activities from 1 January 2012 within the same organisational framework defined in its internal ecclesiastical rules as in force on 31 December 2011, the court, in the course of the registration of the association and in connection with the requirements set out in section 62, subsection (4), point (b), of Act no. IV of 1959 on the Civil Code, shall refrain from assessing whether the instrument of incorporation of the organisation complies with the legal provisions relating to the establishment and competence of the supreme body, administrative body and representative body. Failure to meet the above deadline shall result in forfeiture of the right to register. ...”

### Section 37

“(1) With the exception of the cases defined in subsection (3), after the entry into force of this Act only Churches listed in the Appendix may be granted budgetary subsidies for ecclesiastical purposes.

(2) For the purposes of Act no. CXXVI of 1996 on the use of a specified amount of personal income tax in accordance with the taxpayer’s instructions, the organisation shall be considered to be an association and shall be entitled to the 1% that can be donated to associations, provided that it complies with the conditions laid down by the laws concerning associations by 30 June 2012.

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

- (a) until 31 August 2012 for public education institutions;
- (b) until 31 December 2012 for social institutions.”

### **Section 38**

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

(2) Until 31 December 2012, the Government may conclude agreements relating to the provision of budgetary funding with organisations performing public duties which do not qualify as Churches under this Act.”

### **Section 50**

“...

(3) The following section 13 shall be added to the Church Funding Act:

‘Section 13: An organisation under section 34, subsection (1), of the Church Funding Act shall be entitled, in 2012, to receive the complementary funding specified under section 4, subsection (3), provided it has been recognised as a Church by Parliament up to 20 May 2012.’”

### **Section 52**

“Section 34 shall be replaced by the following provision:

‘Section 34 (1): With the exception of the Churches listed in the Appendix and their independent organisations established for religious purposes, organisations registered in accordance with [the 1990 Church Act] and their organisations established for religious purposes (hereinafter jointly referred to as ‘organisations’) shall qualify as associations as of 1 January 2012. ...’”

30. The 2011 Church Act was amended on several occasions, in particular on 1 August 2013. Following these amendments, the criteria to be met in order for an organisation performing religious activities to obtain “incorporated Church” status remain similar to those introduced on 1 January 2012, with the following differences: if the organisation has been operating in Hungary, it has to prove a membership which equals at least 0.1% of the national population in Hungary (a requirement not applied to organisations which have been operating internationally); moreover, it has to prove its intention and long-term ability to cooperate with the State to promote public-interest goals. The ability of an organisation to cooperate may be evidenced by its statute, the number of members it has, its previous activities and the accessibility of those activities to a large section of the population.

31. The procedure for recognition as an “incorporated Church” was also amended. A request for recognition must be submitted to the Minister in

charge of religious affairs (instead of Parliament). The Minister examines whether the organisation meets certain statutory criteria and adopts an administrative decision which is open to judicial review. The final decision is communicated to the parliamentary committee on religious affairs which, in turn, examines the organisation's intention and ability to cooperate with the State as well as the conformity of its teachings and activities with others' rights to physical and psychological well-being, the protection of life and human dignity. Parliament's Committee for National Security further examines whether the organisation has been considered a threat to national security. The representatives of the organisation are heard by the parliamentary committee on religious affairs. If, following examination by the committee, the organisation is found to meet all the statutory criteria, the committee submits a bill for the granting of "incorporated Church" status. Otherwise, it submits a motion proposing the refusal of the request, which must contain due reasoning. Parliament then decides whether to adopt the bill or the motion for refusal. The lawfulness of a refusal may be challenged before the Constitutional Court within fifteen days.

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

#### **Religious activities and common rules on the status of religious communities**

##### **Section 6**

"(1) A religious community shall be a Church recognised by Parliament or an organisation performing religious activities. A Church recognised by Parliament shall be an incorporated Church.

(2) A religious community shall be established and operate primarily for the purposes of religious activities.

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

(4) The following shall not be considered as religious activities *per se*:

- (a) political and lobbying activities;
- (b) psychological and parapsychological activities;
- (c) medical activities;
- (d) business/entrepreneurial activities;
- (e) pedagogical activities;
- (f) educational activities;
- (g) higher educational activities;
- (h) health care activities;
- (i) charitable activities;



- (j) family, child or youth protection activities;
- (k) cultural activities;
- (l) sports activities;
- (m) animal protection, environmental protection or nature conservation activities;
- (n) information technology activities which go beyond the information technology necessary for faith-based activities;
- (o) social work activities.

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

#### **Section 7**

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

#### **Section 9**

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

#### **Organisation performing religious activities**

##### **Section 9/A**

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

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

##### **Section 9/B**

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

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

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

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

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

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

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

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

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

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

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

b.b manage and represent the organisation.”

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

#### **Section 9/C**

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

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

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

(b) dissolve the organisation if its activity violates the Fundamental Law in the opinion of the Constitutional Court.”

#### **Ecclesiastical legal person (*Egyházi jogi személy*)**

#### **Section 10**

“The incorporated Churches and their internal ecclesiastical legal entities shall be ecclesiastical legal persons.”

#### **Section 11**

“(1) An incorporated Church shall be an autonomous organisation possessing self-government and comprising natural persons confessing the same principles of faith, on which Parliament confers special public-law status for the purpose of cooperation to promote public-interest goals.

(2) The incorporated Church shall be a legal person.

(3) Incorporated Churches shall have equal rights and obligations.

(4) Incorporated Churches shall be enumerated in the Appendix to this Act.”

**Person in the service of a religious community**

**Section 13**

“(1) An ecclesiastic (*egyházi személy*) shall be a natural person who, according to the internal rules of an incorporated Church, exercises ecclesiastical ministry in the framework of a specific ecclesiastical, labour or other relationship.

(2) Ecclesiastics shall be entitled to keep secret from the State authorities any personal information which they acquire during ecclesiastical service.

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

**Section 13/A**

“(1) A professional minister of an organisation performing religious activities shall be a natural person who is in the service of the organisation and exercises his or her activity in the framework of a labour relationship.

(2) Section 13(2) and (3) shall apply to the professional ministers of organisations performing religious activities.”

**Conditions for recognition as a Church**

**Section 14**

“(1) An organisation performing religious activities shall be recognised as a Church by Parliament if:

- (a) it primarily performs religious activities;
- (b) it has a confession of faith and rites containing the essence of its teachings;
- (c) it has been operating
  - c.a internationally for at least one hundred years or
  - c.b in an organised manner as a religious community in Hungary for at least twenty years and its membership equals at least 0.1% of the national population;
- (d) it has adopted internal ecclesiastical rules;
- (e) it has elected or appointed administrative and representative bodies;
- (f) its representatives declare that the activities of the organisation established by them are not contrary to subsections (4) and (5) of section 6;
- (g) its teaching and activities do not violate the right to physical and psychological well-being, the protection of life and human dignity;
- (h) the association has not been considered a threat to national security during the course of its operation and;
- (i) its intention and long-term ability to maintain cooperation to promote public-interest goals is evidenced especially by its statute, the number of members it has, its previous activity in the areas enumerated in section 9(1) and the accessibility of those activities to a large section of the population.”

**Rules on the functioning of religious communities****Section 19**

“(1) Religious communities shall function according to their internal rules, principles of faith and rites.

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

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

**Section 19/A**

“(3) On the basis of statutory rules Churches may receive funding from the subsidiary organs of central government, from programmes financed out of EU funds or on the basis of international agreements, by way of application or outside the system of applications, on the basis of a specific decision. ...”

**Section 19/C**

“Religious communities, Church buildings, cemeteries and other holy places shall enjoy enhanced protection under the law on regulatory offences and under criminal law, in particular to ensure the undisturbed performance of rites and operation according to internal rules.”

**Rules on the functioning of ecclesiastical legal persons****Section 20**

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

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

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

**Section 21**

“(1) With a view to cooperation to promote public-interest goals, ecclesiastical legal persons may organise, according to statutory regulations, religious education in educational institutions maintained by the State, local government or local minority governments, as well as in higher educational institutions maintained by the State or a national minority government. ...

(3) The costs of religious education ... shall be borne by the State, on the basis of statutory regulations or an agreement concluded with an incorporated Church.”

## Section 22

“(1) In order to realise their goals, ecclesiastical legal persons shall be authorised to engage in activities which do not qualify as business or entrepreneurial activities, and shall also be authorised to engage in business or entrepreneurial activities besides their core activities, even beyond the limits defined in section 19(5).

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

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

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

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

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

(e) the maintenance of cemeteries;

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

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

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

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

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

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

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

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

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

(d) the portion of interest, dividends and yields paid by financial institutions and issuers on deposits and securities made or acquired using uncommitted funds, in proportion to the revenues generated by activities which do not qualify as business or entrepreneurial activities.”

## Section 24

“Incorporated Churches may perform pastoral services in the army, in prisons and in hospitals, or other special ministries as laid down in statutory rules.”

33. Act no. XXXII of 1991 on settling the ownership of former Church properties provides as follows:

**Preamble**

“... The party-State, which was based on the principle of an exclusively materialist and atheist outlook, restricted the confessional life and social role of Churches to a bare minimum by confiscating their assets and dissolving most of their organisations, and through other instruments of power representing a continuous abuse of rights.

In a Hungary based on the rule of law Churches can again, freely and in an unrestricted manner, fulfil their societal role; however, they do not have the necessary financial means.

Act no. IV of 1990 on Churches ... already made reference to the fact that Hungarian Churches, in addition to their confessional activities, fulfil important tasks in the life of the nation, notably through cultural, educational, social and health care activities and fostering national identity. However, it was not yet possible at that time to generate the material and financial assets necessary for these tasks.

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

Act no. CXXIV of 1997 on the financing of the religious and public-interest activities of Churches (“the Church Funding Act”) provides as follows:

**Preamble**

“Recognising the Hungarian Churches’ millennium-long work on behalf of the life and interests of the nation;

Mindful of the importance of religious convictions in Hungarian society;

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

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

Parliament hereby enacts the following law: ...”

**Section 1**

“This Act shall apply to incorporated Churches, religious denominations and religious communities ... within the meaning of the [2011 Church Act].”<sup>1</sup>

**Section 4**

“(1) Incorporated Churches shall be entitled, under the detailed provisions of a separate Act, to 1% of the personal income tax of those individuals who donate their tax for that purpose. Incorporated Churches may make use of this amount according to their internal rules.

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1. As of 1 August 2013, the Act is applicable to ecclesiastical legal persons only.

(2) Beside the [above] amounts ..., incorporated Churches shall be entitled to further subsidies as provided for in subsections (3) and (4) below.

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

(4) Incorporated Churches shall be entitled to the subsidy in proportion to the number of individuals who donated 1% of their personal income tax to them.”

#### Section 6

“(1) Incorporated Churches shall be entitled to further subsidies (hereinafter: ‘complementary subsidies’), based on the decision of the persons provided with public services to procure those services from institutions maintained by incorporated Churches. ...”

### D. Case-law of the Constitutional Court

34. Decision no. 6/2013 (III. 1.) of the Constitutional Court contains the following passages:

[131] The Fundamental Law lays down the principle of separation (detachment) of Churches and State in connection with freedom of religion. Besides being one of the founding principles of the functioning of a secular State, it is also one of the guarantees of freedom of religion.

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

[141] ... Therefore, Parliament cannot decide, under the Fundamental Law, to abolish the special ‘Church’ legal form for religious communities. It would violate the Fundamental Law if religious communities could only function either as associations or as other legal entities whose establishment is open to any group of persons even without any religious context. The lack of a special legal form providing enhanced autonomy for the practice of freedom of religion would be unconstitutional.

[143] 2.3. On issues of substance, the State relies on the self-definition of religions and religious communities. However, in accordance with freedom of religion and the right to practise a religion in community, it may define objective and reasonable conditions for recognition as a special legal entity, that is to say, a ‘Church’. In particular, such conditions may include a minimum number of members in order to submit a request for recognition, or a minimum length of time in operation.

[146] 2.4. In view of the above considerations, the State may regulate the conditions for conferring legal personality on organisations and communities established in accordance with freedom of religion by means of rules which take into account the specific characteristics of the organisation or community concerned. Nevertheless, the Constitutional Court would point out that ... ‘it would raise ... constitutionality issues if the legislature were to grant the possibility to become a legal

person or to establish a specific legal entity for some organisations while arbitrarily excluding others in a comparable situation or making it disproportionately difficult for them to obtain such legal status' ...

[152] The State enjoys a relatively wide margin of appreciation (within the limits imposed by the Fundamental Law) in defining public-interest goals. In general, the State is not obliged to cooperate on the achievement of targets defined by a Church or religious community if it has not otherwise undertaken to accomplish tasks in that sphere.

[153] The State also enjoys a wide margin of appreciation in granting financial subsidies, benefits and exemptions to Churches, as the State has the power to enforce the principle of balanced, transparent and sustainable budget management ... according to Article N of the Fundamental Law. However, the Constitutional Court would stress that in allocating such subsidies, the State has to pay particular attention to the specific requirements imposed by freedom of religion and must ensure that none of the Churches is discriminated against in comparison with similarly situated Churches and organisations [see Articles VII and XV of the Fundamental Law].

[155] There is no constitutional obligation to provide every Church with similar entitlements. Nor is the State obliged to cooperate equally with every Church. Practical differences in securing rights related to freedom of religion remain constitutional in so far as they are not the result of a discriminatory practice. The State's neutrality has to be maintained, in terms of executing public-interest tasks undertaken by the State, the allocation of subsidies to Churches and mandatory societal cooperation between the State and the Churches.

[156] ... [T]he State is constitutionally required to ensure that religious communities have the opportunity to acquire special Church status (allowing them to function independently), and other entitlements conferred on Churches, in a manner consistent with freedom of religion and the specific entitlement in question, under objective and reasonable conditions, in fair proceedings meeting the requirements of Articles XXIV and XXVIII of the Fundamental Law, and subject to a remedy. ...

[158] ... The Constitutional Court has reached the conclusion that, although there are similarities in the regulation of the rights of incorporated Churches and religious associations, the 2011 Church Act also contains several important differences. A non-exhaustive list of them follows.

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

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

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



[162] Incorporated Churches may use donations to provide their ministers performing religious services and rites ... with an income which is exempt from personal income tax. ...

[163] The Church Funding Act stipulates that the archives, libraries and museums of [incorporated] Churches are entitled to ... a subsidy on a similar basis to the institutions maintained by the State.

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

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

[166] The costs of religious and moral education are borne by the State, on the basis of a separate Act or of agreements concluded with the [incorporated] Churches.

[167] In the light of the above, the Constitutional Court holds that the legislation in force confers on incorporated Churches additional rights which place them in a substantially advantageous situation compared with religious associations and which assist their religious and financial functioning and thus promote their freedom of religion. ...

[181] The Church status of an organisation does not constitute an ‘acquired right’ protected by the Fundamental Law, in the sense that it may be reviewed and possibly withdrawn if it subsequently transpires that the conditions for conferring it were not met. ... [I]t is a constitutional requirement that, in similar fashion to proceedings for the acquisition of Church status, the review of such status must also be fair and subject to a remedy.

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

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

[212] For the above reasons, the Constitutional Court holds that section 14, subsections (1) and (3) to (5), as well as section 34, subsections (2) and (4), of the 2011 Church Act, do not meet the requirements flowing from the right to a fair trial and the right to a remedy and that, as a consequence, the law gives rise to a violation of freedom of religion and of the prohibition of discrimination. Therefore, the above-mentioned provisions violate the Fundamental Law.

[215] ... [F]or that reason, the Constitutional Court orders the retroactive annulment of section 14, subsections (3) to (5), of the 2011 Church Act as of 1 January 2012, when the regulation entered into force.

[222] As a general rule, Churches registered under [the 1990 Church Act] and their subsidiary autonomous organisations established for religious aims were converted *ex*

*lege* into associations by section 34(1) of the 2011 Church Act (in force between 1 January 2012 and 31 August 2012).

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

35. Section 34(1) of the 2011 Church Act stipulated that, as of 1 January 2012, every Church and religious organisation was to be considered as an association, with the exception of those “defined in the Appendix to the Act” by Parliament. Although only this arbitrary recognition and enumeration of privileged Churches was found to be unconstitutional, the Constitutional Court decided to annul the entire subsection (1) of section 34, and not only the expression “defined in the Appendix”, for the sake of legal certainty.

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

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

“CHAIRMAN [Dr T. LUKÁCS (KDNP – Christian Democratic People’s Party)]: ... With the Act adopted by Parliament, freedom of religion is fully guaranteed in Hungary both as an individual and as a communal right. I would add that, in a sense, the freedom to exercise religion in community has even been extended, since in the case of legal persons, today as few as ten members, in contrast to the formerly required one hundred, may exercise their communal rights under the law on associations; associations are also entitled to 1% donations and, if they maintain institutions, the State may enter into contracts with them. Thus, under the European model, ‘Church’ status has no direct bearing on freedom of religion. When we adopt this amendment, entities with ‘Church’ status will include 97% of the persons who claim to be religious – I will be able to give exact numbers when the 2011 census data have been processed. ...

There are eleven countries in Europe where ‘Church’ status is granted by a Ministry or State organ or by Parliament. ... We can support this ‘Church’ status in good conscience. ... It does not mean, of course, that from a formal point of view other religious communities do not meet the criteria or that in subsequent procedures further Churches cannot be granted this status. ...

As has previously been mentioned, it has been a priority concern to grant ‘Church’ status to Protestant communities of international importance and to representatives in Hungary of the world religions. ... As I have said, we do not regard this matter as closed once and for all. If in the future someone can prove an important social role, membership numbers or international significance and requests ‘Church’ status, we shall proceed according to the procedure prescribed by law. ...

The number of entities which, up until 20 December, applied to the Ministry of Public Administration and Justice to maintain their ‘Church’ status was eighty-four or eighty-five. ... Of those, thirty-four undoubtedly meet the twenty years’ registration criterion or have submitted certification from their international organisation

demonstrating compliance with the hundred years' criterion. From among those, these thirteen have been selected. ...

Slovakia amended a similar law last year and recognised a total of fourteen Churches, with 'Church' status being conferred on 20,000 members. I would add that in England and Sweden there is only one Church [*sic*]. So, in Europe all sorts [of regulations] can be found. ...

Mr P. HARRACH (KDNP): ... Let me just add a sentence concerning political decisions. Political decisions are not from the devil, they are manifestations made by the State's leaders on the basis of social considerations. Let us make clear that the issue of authenticity may be examined neither by Parliament nor by any other political organisation, since the assessment of the relationship of God and man or of openness to transcendence does not fall within their competence. The State may only classify religious communities as organisations, that is, it may only deal with their social role. Or, to put it in a very narrow way, with their role as keepers of institutions, since in practical terms this issue concerns subsidies granted to Churches. Freedom of religion is fully safeguarded and unimpaired, and this is guaranteed under the Act, irrespective of whether the exercise of religion takes place within an association or a 'Church'. ...

CHAIRMAN: ... In Hungary the freedom of religious communities is fully safeguarded. The granting of 'Church' status is a separate issue almost everywhere in Europe, where in certain countries like, for example, England and Sweden – commonly referred to as democratic States – only one 'Church' is recognised. On most of the European continent this two-tier system is applied. 'Church' status is not a right to be secured to everyone. Under decision no. 8/1993 of the Constitutional Court the legislature may differentiate between Churches on the grounds of their social significance, their historical role, the role they play in the nation and on other grounds. This is exactly what has been done here.

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

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

“CHAIRMAN: ... Under the adopted Act, obtaining 'Church' status is not a right. ... The representation in Hungary of the five world religions is secured. ... The Buddhist Churches concluded an agreement with each other which made interpretation much easier for us and a similar intention also exists in the Islamic communities. This is good because we would not be able to analyse Buddhism or Islam in the same depth as they themselves can. ...

There are some Churches and religious communities which in the meantime have submitted written statements to the Committee or to the Ministry of Public Administration and Justice stating that they do not wish to obtain Church status. In view of their statements they have not been included in this list. There is another ecclesiastical community which gave a statement to MTI [the Hungarian news agency] according to which it would not request Church status. However, I cannot accept this as a valid legal statement. I could only accept it if they were to make a statement to similar effect to the Committee or to the Ministry of Public Administration and Justice. ...

...

In 1947 legal continuity was interrupted in Hungary. After the entry into force of the 1947 Act and the setting-up of the State Office for Church Affairs, Church affairs

changed completely, with Churches being run as dictated by Moscow, complying with the instructions from Moscow. ...

We therefore decided to return to the pre-1947 situation and the present list was based on the 1895 Act of Parliament. Of course, with one exception ... this exception being – in a sociological sense, in terms of membership – the third largest Church today. Present-day logic is based on the premise that if we expect the – mostly – Christian Churches not to be persecuted in Europe or other parts of the world, we should grant ‘Church’ status to representatives in Hungary of the great world religions. ...”

38. The relevant excerpts from the minutes of the meeting of 14 February 2012 read as follows:

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

Therefore it should be clear to everyone that what we wish to attain for the time being is to grant [‘Church’ status to] authentic domestic representatives of the great world religions, while the authenticity and veracity of their certifications is still to be examined...”

#### IV. RELEVANT INTERNATIONAL MATERIALS

39. In General Comment 22 (U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994)), the United Nations Human Rights Committee stated, in so far as relevant, as follows:

“2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

...

4. ... [T]he practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

...”

40. The European Commission for Democracy through Law (“the Venice Commission”), in its Opinion on the 2011 Church Act (adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)), stated as follows (footnotes omitted):

“... 18. The Venice Commission would like to recall that the right to freedom of religion and conscience covers more elements than merely granting privileges, state

subsidies and tax benefits to recognised Churches. Freedom of thought, conscience and religion is one of the foundations of a ‘democracy society’. It is so important that it cannot be derogated at all and cannot be restricted on national security grounds.

19. The freedom of thought, conscience and religion (Article 9 ECHR and 18 ICCPR), is a complex right, which is closely linked to and must be interpreted in connection with the freedom of association (Article 11 ECHR and 22 ICCPR), and the right to non-discrimination (Article 14 ECHR and 26 ICCPR).

...

28. According to Section 7.1 of the Act ‘A Church, denomination or religious community (hereinafter referred to as ‘Church’) shall be an autonomous organisation recognised by the National Assembly consisting of natural persons sharing the same principles of faith; shall possess self-government and shall operate primarily for the purpose of practising religious activities.’

...

32. Thus, the Venice Commission deems the obligation in the Act to obtain recognition by the Hungarian Parliament as a condition to establish a Church as a restriction of the freedom of religion.

33. ... In the opinion of the Venice Commission, whether an obligation to have prior recognition of a two-third majority of the Hungarian Parliament in order to establish a Church in Hungary may be justified in the light of international standards is questionable.

...

39. The Venice Commission has already stated in another context, that reasonable access to a legal entity status with suitable flexibility to accommodate the differing organisational forms of different communities is a core element of freedom to manifest one’s religion.

40. Equally important, is that, if organised as such, an entity must be able ‘to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities’.

...

52. However, [the membership] condition may become an obstacle for small religious groups to be recognised. The difficulty arises primarily for religious groups that are organised as a matter of theology not as an extended Church, but in individual congregations. Some of these congregations may be relatively small, so that having 1,000 individuals who could sign the necessary document is difficult. ...

53. Although the Act does not explicitly require that only members of a religious community sign the document, it is clear that this condition constitutes an obstacle for small religious groups benefiting from the protection afforded by the Act.

54. With regard to membership requirements for registration purposes as such, the Venice Commission, on several occasions, has encouraged limited membership requirements. It has also, along with the Parliamentary Assembly of the Council of Europe’s recommendations, called for considering equalising the minimum number of founders of religious organisations to those of any public organisations.

55. The requirement under consideration aims to only benefit from the protection afforded by the Act and does not concern the registration of religious groups itself. A minimum of 1,000 signatures out of a population of 10 Million is not excessive. The

Austrian Constitutional Court, for instance, found that a higher threshold concerning memberships was not too high in the light of freedom of religion, and even accepted it as an admissible restriction under Article 9 ECHR.

56. To the extent that the signature requirement does not deprive religious groups from access to legal personality as such, the Venice Commission believes that it may not be interpreted as being in breach of Article 9 ECHR.

...

57. Section 14.2 of the Act imposes a duration requirement of ‘at least 100 years internationally or in an organised manner as an association in Hungary for at least 20 years’.

...

64. It is clear to the Venice Commission that the general requirement that an association must have existed internationally for at least 100 years, or for at least 20 years in Hungary, is excessive, both with regard to the recognition of legal personality, and with regard to the other privileges granted to Churches. This is hardly compatible with Articles 9 and 14 ECHR. Consequently, the Venice Commission recommends revising the duration requirement in accordance with the recent benchmark judgment of the European Court of Human Rights.

...

70. The Venice Commission recommends deleting reference to national security in Section 14.2 and specifying with greater precision which particular law an association should comply with in order to satisfy recognition requirements.

...

72. The Venice Commission is worried specifically about the absence in the Act of procedural guarantees for a neutral and impartial application of the provisions pertaining to the recognition of Churches. ...

74. According to the latest information at the disposal of the rapporteurs, Parliament adopted a Bill of Recognition on 29 February 2012, with 32 recognized Churches. It is entirely unclear to the rapporteurs and to the outside world, how and on which criteria and materials the Parliamentary Committee and Members of Parliament were able to discuss this list of 32 Churches, to settle the delicate questions involved in the definition of religious activities and Churches supplied in the Act, within a few days, without falling under the influence of popular prejudice.

....

76. The foregoing leads to the conclusion that the recognition or de-recognition of a Religious community (organisation) remains fully in the hands of Parliament, which inevitably tends to be more or less based on political considerations. Not only because Parliament as such is hardly able to perform detailed studies related to the interpretation of the definitions contained in the Act, but also because this procedure does not offer sufficient guarantees for a neutral and impartial application of the Act. Moreover, it can reasonably be expected that the composition of Parliament would vary, i.e. change after each election, which may result in new Churches being recognised, and old ones de-recognised at will, with potentially pernicious effects on legal security and the self-confidence of religious communities.

77. It is obvious from the first implementation of the Act, that the criteria that have been used are unclear, and moreover that the procedure is absolutely not transparent.

Motives of the decisions of the Hungarian Parliament are not public and not grounded. The recognition is taken by a Parliamentary Committee in the form of a law (in case of a positive decision) or a resolution (in case of a negative decision). This cannot be viewed as complying with the standards of due process of law.

...

90. The deprivation of the legal status of Churches has to be considered as a limitation of the freedom of religion, which has to be justified in the light of the strict limitation clauses provided for in International instruments. The Venice Commission doubts that depriving Churches of the legal status they enjoyed sometimes already for many years can be seen as ‘pressing social need’ and ‘proportionate to the objective pursued’ in the sense of International standards, without providing reasons that can justify this deprivation.

91. It is also not clear to the Venice Commission that this deprivation can be considered ‘to be necessary in a democratic society, in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others’ (Article 9.2 ECHR), or ‘to be necessary to protect public safety, order, health, or morals or fundamental rights and freedoms of others’ (Article 18.3 ICCPR).

92. The Venice Commission recommends redrafting the Act in order to avoid a de-registration process and provisions operating retroactively unless specific reasons can justify it. It also recommends deleting the provision on forfeiture, which constitutes an undue limitation to the right to access to legal-entity status.

...

103. Finally, the deprivation of the legal status of these Churches and of the rights and privileges related to that status implies moreover that Churches are not treated on an equal basis. Unless there is an ‘objective and reasonable justification’ for it, this unequal treatment has to be considered discriminatory under international standards.”

41. The Venice Commission’s Opinion on the Fourth Amendment to the Fundamental Law of Hungary (adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)) contains the following passages (footnotes omitted):

“32. While the original version of Article VII of the Fundamental Law had been found in line with Article 9 ECHR in the Opinion on the new Constitution of Hungary, it is the procedure of parliamentary recognition of Churches that has been raised to the level of constitutional law in Article VII.2. The Commission had criticised this procedure in its Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of Churches, denominations and religious communities of Hungary ...

33. In the Background Document, the Hungarian Government insists on the fact that parliamentary recognition of Churches does not prevent other religious communities from freely practising their religions or other religious convictions as Churches in a theological sense in the legal form of an ‘organisation engaged in religious activities’.

34. In the Commission’s view, this statement leaves doubts concerning its scope. It must be kept in mind that religious organisations are not only protected by the Convention when they conduct religious activities in a narrow sense. Article 9.1 ECHR includes the right to practise the religion in worship, teaching, practice and

observance. According to the Convention, religious organisations have to be protected, independently of their recognition by the Hungarian Parliament, not only when they engage in religious activity *sensu stricto*, but also when they, e.g., engage in community work, provided it has – according to settled case law – ‘*some real connection with the belief*’. Article 9 in conjunction with Article 14 ECHR obliges the ‘*State [...] to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom*’.

35. The Background Document does not address the issue of an appeal against non-recognition. The amended Article VII.2 refers to a remedy against the incorrect application of the recognition criteria: ‘*The provisions of cardinal Acts concerning the recognition of Churches may be the subject of a constitutional complaint.*’ During the meeting in Budapest, the delegation of the Venice Commission was informed that such a remedy would be introduced, but that it would be limited to the control of the recognition procedure in Parliament. It seems that such a Bill is currently being discussed in the Hungarian Parliament but was not submitted to the Venice Commission for an opinion. A merely procedural remedy is, however, clearly insufficient in view of the requirement of Article 13, taken together with Article 9 ECHR. Article VII.2 of the Fundamental Law provides substantive criteria and a review of the procedure applied does not allow for a verification of whether these criteria were followed by Parliament.

36. The Fourth Amendment to the Fundamental Law confirms that Parliament, with a two-thirds majority, will be competent to decide on the recognition of Churches. In addition, the new criterion ‘*suitability for cooperation to promote community goals*’ lacks precision and leaves too much discretion to Parliament which can use it to favour some religions. Without precise criteria and without at least a legal remedy in case the application to be recognised as a Church is rejected on a discriminatory basis, the Venice Commission finds that there is no sufficient basis in domestic law for an effective remedy within the meaning of Article 13 ECHR.”

42. In its 2004 Guidelines for Review of Legislation Pertaining to Religion and Belief (adopted by the Venice Commission at its 59th Plenary Session, (Venice, 18-19 June 2004)), the Venice Commission stated:

“... III.B.3. *Equality and non-discrimination.* States are obligated to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national or other origin, property, birth or other status. Legislation should be reviewed to assure that any differentiations among religions are justified by genuine objective factors and that the risk of prejudicial treatment is minimized or better, totally eliminated. Legislation that acknowledges historical differences in the role that different religions have played in a particular country’s history are permissible so long as they are not used as a justification for discrimination.

...

III.F.1. ... Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations. The following are some of the major problem areas that should be addressed:

...



- High minimum membership requirements should not be allowed with respect to obtaining legal personality.
- It is not appropriate to require lengthy existence in the State before registration is permitted.
- Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned.
- Provisions that grant excessive governmental discretion in giving approvals should not be allowed; official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited.
- Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed. ...
- Provisions that operate retroactively or that fail to protect vested interests (for example, by requiring re-registration of religious entities under new criteria) should be questioned.
- Adequate transition rules should be provided when new rules are introduced.
- Consistent with principles of autonomy, the State should not decide that any particular religious group should be subordinate to another religious group or that religions should be structured on a hierarchical pattern (a registered religious entity should not have ‘veto’ power over the registration of any other religious entity).”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

43. Given that the applications raise the same issue in essence, the Court decides to join them in accordance with Rule 42 § 1 of the Rules of Court.

### II. ALLEGED VIOLATIONS OF ARTICLES 9 AND 11 OF THE CONVENTION

44. The applicants complained under Article 11 – read in the light of Article 9 – that the deregistration and discretionary re-registration of Churches amounted to a violation of their right to freedom of religion and their right to freedom of association.

45. The Court observes that in a recent case it examined a substantially similar complaint, concerning the refusal to re-register a religious organisation, from the standpoint of Article 11 of the Convention read in the light of Article 9 (see *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, §§ 74-75, ECHR 2006-XI). The Court finds it appropriate to apply the same approach in the present case.

46. Article 9 provides as follows:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 11 provides as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others...”

47. The Government contested that argument.

#### **A. Admissibility**

48. The Government submitted several pleas for the applications to be declared inadmissible. The applicants contested these arguments.

49. In particular, the Government argued that the applicants had not pursued all available domestic remedies. Some of them had not applied for parliamentary recognition or initiated a popular initiative (*népi kezdeményezés*) to the same end. It was true that the Constitutional Court had found this remedy to be unconstitutional in the light of the principles articulated in the Court’s case-law on Article 6 of the Convention; however, in the Government’s view, that consideration was not sufficient to exempt the applicants concerned from attempting this remedy, which had been successful in eighteen other cases.

Moreover, the Government noted that fourteen of the applicants had pursued successful constitutional complaints challenging the 2011 Church Act, culminating in decision no. 6/2013 (III. 1.) of the Constitutional Court (see paragraphs 34 and 35 above). Therefore, those applicants which had not done so had not exhausted domestic remedies as required by Article 35 § 1 of the Convention.

50. The Court notes that the Constitutional Court annulled the original form of the impugned legislation with retrospective effect. This resulted in a situation in which the applicant communities regained the formal status of Churches. However, with regard to the ability of Churches to receive donations and subsidies, an aspect of crucial importance from the perspective of the performance of any societal functions they may have, the

grievance has not been redressed. It follows that the constitutional complaint was not capable of entirely remedying the applicants' grievance, whether or not they actually availed themselves of this legal avenue. Consequently, the applications cannot be rejected for non-exhaustion of this remedy.

51. Moreover, in so far as those applicants which did not meet the statutory requirements are concerned, a request for parliamentary recognition, obviously futile, cannot be regarded as an effective remedy to be exhausted in the circumstances. In any case, the question as to whether the parliamentary procedure for recognition is a legal avenue capable of providing redress for the alleged violation is closely linked to the merits of the applications and should be examined jointly with the merits.

52. The Government also requested the Court to dismiss application no. 41463/12 on the ground that it was incompatible *ratione personae* with the provisions of the Convention, since the applicant, the European Union for Progressive Judaism, an entity with its registered office in London, had never been "within the jurisdiction of Hungary" for the purposes of Article 1 of the Convention (that is, it had never been registered as a Church in Hungary and never received any State subsidies in that country).

The Court notes that this applicant's legal status was not affected by the entry into force of the 2011 Church Act and that it is free to continue to exercise its right to freedom of religion under the same legal conditions as before. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

53. The Government also requested the Court to dismiss the applications as being incompatible *ratione personae* with the provisions of the Convention in respect of those applicants which had availed themselves of a constitutional complaint. They could no longer be regarded as victims of a violation of their rights under the Convention, since the Constitutional Court had repealed the provisions affecting the applicants' legal status (see paragraphs 17, 18, 34 and 35 above).

The Court notes that, notwithstanding the decision of the Constitutional Court, which declared the conversion of the existing Churches into associations to be unconstitutional as of 1 January 2012, it has not been demonstrated that the applicants have been afforded adequate redress. It further reiterates in this connection that, even in the absence of prejudice and damage, a religious association may claim to be a "victim" when the refusal of re-registration has directly affected its legal position (see *Moscow Branch of the Salvation Army*, cited above, §§ 64-65). The Court considers that this approach is likewise applicable to the present situation pertaining to the actual deregistration of the applicants.

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

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

The Court considers that the submission of a declaration of intention to the judicial authorities was not apt to prevent or remedy the alleged violation of the applicants' religious freedom, in that such declarations had, in the circumstances, no prospect of successfully restoring the applicants' original status. The failure of the applicants concerned to lodge such a declaration cannot be interpreted as an abuse of the right of individual petition.

55. The Government also contended that the applications were inadmissible *ratione materiae* with the provisions of the Convention, since the applicants' legal capacity had remained unaffected and they could continue their religious activities as associations despite the loss of their Church status.

The Court observes that the subject matter of the case is not the applicants' legal capacity, but rather their recognition as Churches entitled to the relevant privileges. This issue falls within the scope of Articles 9 and 11 of the Convention. The autonomous existence of the applicant religious communities, and hence the collective exercise of religion, was undeniably affected by the new system of registration (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 114, ECHR 2001-XII, and *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 61, 31 July 2008). Therefore, it cannot be argued that the applications are incompatible *ratione materiae* with the provisions of the Convention.

56. Furthermore, the Court considers that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds, leaving aside the issue of non-exhaustion of domestic remedies (see paragraph 51 above). They must therefore be declared admissible, with the exception of application no. 41463/12.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The Government**

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

58. Firstly, they noted that recognition as a Church under the 2011 Church Act did not affect the various rights associated with freedom of religion, namely the right to freedom of conscience and religion, the right to manifest one's religion in community with others, freedom from discrimination on grounds of religion or belief, the right of parents to ensure education in conformity with their own convictions, the right to freedom of religion in education, social care and child care and in penal institutions, the freedom to impart religious beliefs through the media, and the protection of personal data concerning one's religion. Contrary to the applicants' allegations, these rights, which were essential elements of freedom of religion, were not reserved for recognised Churches and their members.

59. Secondly, the Government submitted that, in contrast to other cases previously examined by the Court, notably *Moscow Branch of the Salvation Army* (cited above, §§ 96-97), the legal personality of the applicant communities was not at stake in the present applications. The applicants did not dispute the fact that they had not been deprived of their legal personality. They had not been dissolved and had retained the full capacity of legal entities. Their legal personality had been converted by law into another form without any period of interruption. Therefore, there had been no interference with the applicants' rights under Articles 9 and 11 in this respect either.

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

61. The Government also submitted that, even if the 2011 Church Act complained of could be regarded as interference, it was prescribed by a law adopted by a two-thirds majority of the members of parliament. The applicants' argument that the 2011 Church Act was invalid under public law had not been upheld by the Constitutional Court. Those provisions of the 2011 Church Act which had been found to be unconstitutional did not affect the applicants' situation, while other provisions complained of by the applicants had not been declared unconstitutional.

62. Moreover, the alleged interference had pursued the legitimate aim of protecting public order and the rights and freedoms of others. After the entry into force of Act no. CXXVI of 1996 on the use of a specified amount of personal income tax in accordance with the taxpayer's instructions and the 1997 Vatican Treaty regulating State financing of Church activities, the 1990 Church Act had given rise to unexpected abuses which could not be prevented in the legal context created by the 1989 Constitution. The new Act had been enacted in order to put an end to the so-called "Church business", in which Churches were established for the sole purpose of obtaining State subsidies for maintaining institutions providing social care or education, or even for personal gain, without conducting any genuine religious activities. By the end of 2011 there were, absurdly, 406 Churches registered in Hungary. In the light of the dwindling budgetary resources of the State and a parallel decrease in the resources available to organisations carrying out genuine religious activities, there had been a pressing social need to put an end to the abuse of Church subsidies.

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

64. While retaining the principle that the State had to refrain from interfering with religious communities' self-definition in theological terms, the 2011 Church Act had defined the notion of religious activities for the purposes of the recognition of Churches as participants in the system of State-Church relations from an exclusively legal perspective. The Hungarian legislature had introduced a two-tier system of legal-entity status for religious communities similar to the model prevailing in a number of European States. Self-defined religious communities were free to operate as associations in accordance with Articles 9 and 11 of the Convention, while those religious communities which wished to establish a special relationship with the State and share the latter's social responsibilities were expected to undergo an assessment of the nature of their activities by the authorities.

65. The Government argued that their approach was in conformity with the case-law of the Convention, notably in cases where the Court had relied on the position of the domestic authorities in defining "religion" for the purposes of registration (they referred to *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, § 79, ECHR 2009). Therefore, the definition of religious activities by the 2011 Church Act and the assessment of the religious nature of an organisation by the State authorities were not contrary to Article 9 of the Convention. The 2011 Church Act complied with the requirements of neutrality and impartiality since it was not based on the specific characteristics of one particular religion and was apt to ensure the

recognition of a number of Churches representing a wide range of religions and religious beliefs.

66. Prior registration as a Church in Hungary should not be regarded as decisive for the recognition of the religious nature of an organisation by the authorities, since registration as a Church under the 1990 Church Act had been based exclusively on the self-definition of the founders of the organisation, without any substantive assessment by the authorities. Such assessment had been introduced only by the 2011 Church Act, with the aim of preventing abuses resulting from this excessive deference to self-definition. The Constitutional Court, in decision no. 6/2013 (III. 1.), cited examples where the judicial authorities competent in matters of Church registration under the 1990 Church Act had carried out a review of the religious nature of the activities covered by the statutes of the self-defined Churches requesting registration; however, this review had not been systematic and there had been no legal definition of religion and religious activities; therefore, there had been divergent judicial practice in this field. It was only this decision of the Constitutional Court that had made clear that, contrary to the applicants' allegations, the State authorities were not prohibited from verifying whether the stated beliefs and actual practices of a prospective or existing Church were genuinely of a religious nature. On the other hand, the Constitutional Court had found that further procedural guarantees should be attached to the exercise of that power by the State authorities.

67. The Government asserted that, in spite of the findings of the Constitutional Court as to the deficiencies in the procedural guarantees, the substantive assessment of the religious nature of an organisation's activities was carried out neutrally and impartially under the 2011 Church Act. The legislature had originally intended to obtain an impartial opinion from an independent institution, the Hungarian Academy of Sciences, along the lines of the procedure for recognition of national minorities. When the Academy had refused to provide the decision-makers with its expertise in the relevant fields, the parliamentary committee on religious affairs had decided to seek guidance from other independent and reliable experts, and based its decision as to whether the teachings of a candidate Church were of a religious nature on whether or not it enjoyed international recognition. Having regard to the fact that the Court also referred to the European consensus as a guiding principle in defining religion, this approach by the Hungarian authorities could not be regarded as arbitrary or as falling outside their margin of appreciation.

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

were required only to submit a simple declaration of intention to continue their religious activities and to make some minor adjustments to their statutes in order to retain their legal personality. They also remained entitled to reclaim their status as Churches by following a simple procedure for recognition by Parliament.

**(b) The applicants**

69. The applicants submitted that the loss of their proper Church status as a result of the 2011 Church Act had constituted interference with their freedom of religion. The proper functioning of religious communities necessitated the enjoyment of a specific and appropriate legal status, that is, Church status in the legal sense. In Hungary, religious communities had had a reasonable opportunity to be registered as Churches since 1990, and the applicants had indeed enjoyed that status. The fact that on 1 January 2012 the vast majority of Churches (including theirs) had lost their proper Church status and had been forced to convert into ordinary civil associations or else cease to exist legally had constituted in itself interference with their freedom of religion, especially since the loss of Church status had deprived them of privileges which had facilitated their religious activities. The fact that those privileges were guaranteed henceforth only to Churches recognised by Parliament had placed them in a situation which was substantially disadvantageous *vis-à-vis* those Churches.

70. The applicants claimed that the right to freedom of religion encompassed the expectation that members would be allowed to associate freely without arbitrary State intervention. Therefore, the State was prohibited from regulating State-Church relationships arbitrarily; any interference in that sphere had to be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. The requirements relating to the registration of Churches had to be objective and reasonable, because in this matter the State was required to remain neutral and impartial. Consequently, if a religious community met the legal requirements it had to be entitled to be registered as a Church, and the registration procedure had to offer guarantees of fairness.

71. However, the conditions and procedure governing their re-registration as Churches had not only become stricter in comparison to the system under the 1990 Church Act, but had also become unreasonably burdensome and unfair, allowing Parliament to thwart their attempts at re-registration arbitrarily, on the basis of political considerations.

72. As to the condition requiring an established existence over a long period, the applicants conceded that it was objective but nonetheless argued that this criterion was unreasonable. They pointed out that the communist regime had ended little more than twenty years previously in Hungary. Prior to that, it had hardly been possible for new religious movements to form and exist in the country. Consequently, virtually all new religious movements



were excluded from the advantages of becoming a “Church”, in breach of Article 9.

73. In addition, the 2011 Church Act included less objective criteria as well, notably the requirement that the operation of the religious community should not pose any threat to national security and that its principles should not violate the right to health, the protection of life or human dignity. The applicants’ re-registration requests had been dismissed although there had been no evidence that they posed any threat to the State or public order.

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

## 2. *The Court’s assessment*

### (a) **General principles**

75. The Court reiterates that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. While religious freedom is primarily a matter of individual conscience, it also implies freedom to “manifest [one’s] religion” alone and in private or in community with others, in public and within the circle of those whose faith one shares. Bearing witness in words and deeds is bound up with the existence of religious convictions (see *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260, and *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I).

76. The Court does not deem it necessary to decide *in abstracto* whether acts of formal registration of religious communities constitute interference with the rights protected by Article 9 of the Convention. However, it emphasises that the State has a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs (see *Metropolitan Church of Bessarabia*, cited above, § 116, and *Religionsgemeinschaft der Zeugen Jehovas*, cited above, § 97). Facts demonstrating a failure by the authorities to remain neutral in the exercise of their powers in this domain must lead to the conclusion that the State interfered with the believers’ freedom to manifest their religion within the meaning of Article 9 of the Convention. The Court reiterates that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §§ 77-78, ECHR 2000-XI). Indeed, the State’s duty of neutrality and impartiality, as defined in the Court’s case-law, is incompatible with any

power on the State's part to assess the legitimacy of religious beliefs (see *Metropolitan Church of Bessarabia and Others*, cited above, § 123).

77. In this context Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. The Court reiterates its findings in this respect in *Hasan and Chaush* (cited above, § 62):

“The Court recalls that religious communities traditionally and universally exist in the form of organised structures. They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one's religion, protected by Article 9 of the Convention.

Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable.”

78. The Court further reiterates that the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. The Court has consistently held the view that a refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to interference with the applicants' exercise of their right to freedom of association (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52 et passim, ECHR 2004-I, and *Sidiropoulos and Others v. Greece*, 10 July 1998, § 31 et passim, *Reports of Judgments and Decisions* 1998-IV). States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others*, cited above, § 40). Where the organisation of the religious community was in issue, a refusal to recognise it was also found to constitute interference with the applicants' right to freedom of religion under Article 9 of the Convention (see *Metropolitan Church of Bessarabia and Others*, cited above, § 105).

79. The State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as

exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a “pressing social need”; thus, the notion “necessary” does not have the flexibility of such expressions as “useful” or “desirable” (see *Gorzelik and Others*, cited above, §§ 94-95, with further references).

80. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, Reports 1998-I, and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 49, ECHR 2005-I).

**(b) Application of the above principles to the present case**

*(i) Whether there was interference*

81. The Court observes that the applicant communities had lawfully existed and operated in Hungary as Churches registered by the competent court in conformity with the 1990 Church Act. The 2011 Church Act changed the status of all previously registered Churches, except those recognised Churches listed in the Appendix to the 2011 Church Act, into associations. If intending to continue as Churches, religious communities were required to apply to Parliament for individual recognition as such.

82. The Court has found in two previous cases (see *Moscow Branch of the Salvation Army*, cited above, § 67, and *Church of Scientology Moscow v. Russia*, no. 18147/02, § 78, 5 April 2007) that the refusal of re-registration disclosed interference with a religious organisation’s right to freedom of association and also with its right to freedom of religion.

83. The Court considers that the measure in issue in the present case effectively amounted to the deregistration of the applicants as Churches and constituted interference with their rights enshrined in Articles 9 and 11. It must therefore determine whether the interference satisfied the requirements of paragraph 2 of those provisions, that is, whether it was “prescribed by law”, pursued one or more legitimate aims and was “necessary in a

democratic society” (see, among many other authorities, *Metropolitan Church of Bessarabia and Others*, cited above, § 106).

84. The State’s power in this field must be used sparingly; exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. In this connection, the Court reiterates its position as formulated in the cases of *Gorzelik and Others* (cited above, §§ 94-95) and *Jehovah’s Witnesses of Moscow v. Russia* (no. 302/02, § 100, 10 June 2010). The burden of proof when it comes to demonstrating the presence of compelling reasons is on the respondent Government (see, *mutatis mutandis*, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013). It is therefore for the Government to show in the instant case that it was necessary, in pursuit of the legitimate aims which they relied on, to bar already recognised Churches from maintaining their status with regard to confessional activities, that is, the manifestation of religion.

(ii) *Prescribed by law*

85. This issue was not in dispute between the parties. The Court is satisfied that the interference complained of was prescribed by law, namely by the 2011 Church Act.

(iii) *Legitimate aim*

86. The Government submitted that the impugned interference, if any, could be regarded as pursuing the legitimate aims of protection of the rights and freedoms of others and the protection of public order, within the meaning of Article 9 § 2, namely, by eliminating entities claiming to pursue religious ends but in fact striving only for financial benefits. The applicants contested this view.

The Court considers that the measure in question can be considered to serve the legitimate aim of preventing disorder and crime for the purposes of Article 11 § 2, notably by attempting to combat fraudulent activities.

(iv) *Necessary in a democratic society*

(a) *Width of the margin of appreciation*

87. With regard to the Government’s reliance on the principle articulated in *Kimlya and Others* (cited above, § 79), according to which the disputed nature of Scientology teachings made it necessary to defer to the national authorities’ assessment thereof, the Court notes that in that case the lack of European consensus was considered to be demonstrated by the fact that the authorities in various countries had initiated proceedings against the representatives of that religious group. In the Court’s view, these actions demonstrated the presence of an actual official dispute regarding the religious nature of the teachings. It is in this particular context that the

disputed character of a purported religion may entail a wide margin of appreciation on the State's part in assessing its teachings.

88. However, the Court is of the view that this approach cannot automatically be transposed to situations where a religious group is simply not recognised legally as a fully fledged Church in one or more European jurisdictions. This mere absence of apparent consensus cannot give rise to the same degree of deference to the national authorities' assessment, especially when the matter concerns the framework of organisational recognition of otherwise accepted religions (formerly fully fledged Churches) rather than the very acceptance of a certain set of controversial teachings as a religion. To hold otherwise would mean that non-traditional religions could lose the Convention's protection in one country essentially due to the fact that they were not legally recognised as Churches in others. This would render the guarantees afforded by Articles 9 and 11 largely illusory in terms of guaranteeing proper organisational forms for religions.

89. The Court therefore considers that, although States have a certain margin of appreciation in this field, this cannot extend to total deference to the national authorities' assessment of religions and religious organisations; the applicable legal solutions adopted in a member State must be in compliance with the Court's case-law and subject to the Court's scrutiny.

(β) Positive obligations

90. The Court considers that there is a positive obligation incumbent on the State to put in place a system of recognition which facilitates the acquisition of legal personality by religious communities. This is a valid consideration also in terms of defining the notions of religion and religious activities. In the Court's view, those definitions have direct repercussions on the individual's exercise of the right to freedom of religion, and are capable of restricting the latter if the individual's activity is not recognised as a religious one. According to the position of the United Nations Human Rights Committee (see paragraph 39 above), such definitions cannot be construed to the detriment of non-traditional forms of religion – a view which the Court shares. In this context, it reiterates that the State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see *Metropolitan Church of Bessarabia and Others*, cited above, §§ 118 and 123, and *Hasan and Chaush*, cited above, § 62). However, the present case does not concern the definition of religion as such in Hungarian law.

91. The Court further considers that there is no right under Article 11 in conjunction with Article 9 for religious organisations to have a specific legal status. Articles 9 and 11 of the Convention only require the State to ensure that religious communities have the possibility of acquiring legal capacity as entities under the civil law; they do not require that a specific public-law status be accorded to them.

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

93. When assessing differences in legal status and the resulting treatment between religious communities in terms of cooperation with the State (where the State, within its margin of appreciation, chooses a constitutional model of cooperation), the Court further notes that these distinctions have an impact on the community's organisation and hence on the practice of religion, individually or collectively. Indeed, religious associations are not merely instruments for pursuing individual religious ends. In profound ways, they provide a context for the development of individual self-determination and serve pluralism in society. The protection granted to freedom of association for believers enables individuals to follow collective decisions to carry out common projects dictated by shared beliefs.

94. The Court cannot overlook the risk that the adherents of a religion may feel merely tolerated – but not welcome – if the State refuses to recognise and support their religious organisation whilst affording that benefit to other denominations. This is so because the collective practice of religion in the form dictated by the tenets of that religion may be essential to the unhampered exercise of the right to freedom of religion. In the Court's view, such a situation of perceived inferiority goes to the freedom to manifest one's religion.

(γ) Deregistration of the applicant religious communities

95. The Court notes that the immediate effect of the enactment of the 2011 Church Act was that the applicant entities, formerly fully fledged Churches eligible to benefit from privileges, subsidies and donations, lost that status and were relegated to, at best, the status of associations, which largely lack those possibilities. It is true that the subsequent ruling of the Constitutional Court nominally put an end to this interference. In the Government's submission, this provided full redress for the alleged grievance; however, the applicants argued that they could never again enjoy their former status unimpaired.

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

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

Moreover, the Court notes – while recognising the Government’s legitimate concern regarding the problems connected with the large number of Churches formerly existing in the country (see paragraph 62 above) – that it has not been demonstrated by the Government that less drastic solutions to the problem perceived by the authorities, such as the judicial control or dissolution of Churches proven to be of an abusive character, were not available.

97. The Court cannot but observe that the outcome of the impugned legislation was to deprive existing and operational Churches of their legal framework, in some cases with far-reaching consequences in material terms and in terms of their reputation.

(δ) Possibility of re-registration for the applicant communities

98. The Court notes that under the legislation in force, there is a two-tier system of Church recognition in place in Hungary. A number of Churches, the so-called incorporated ones, enjoy full Church status including entitlement to privileges, subsidies and tax donations. The remaining religious associations, although free to use the label “Church” since August 2013, are in a much less privileged position, with only limited possibilities to move from this category to that of an incorporated Church. The applicants in the present case, formerly fully-fledged Churches, now belong to the second category, with substantially reduced rights and material possibilities to manifest their religion, when compared either with their former status or with the currently incorporated Churches.

99. The Court notes the Government’s arguments, which seem to focus on the one hand on the feasibility of moving to incorporated Church status, and on the other hand on the reasonableness of the conditions attached to such a move, notably the objective criteria relating to the Church’s length of existence and minimum membership and the absence of a threat to national security as ultimately decided by Parliament.

100. As to the two-tier system of Church recognition, the Court is satisfied that such a scheme may *per se* fall within the States’ margin of appreciation (see *Sindicatul “Păstorul cel Bun” v. Romania* [GC], no. 2330/09, § 138, ECHR 2013). Nevertheless, any such scheme normally belongs to the historical-constitutional traditions of those countries which operate it, and a State-Church system may be considered compatible with Article 9 of the Convention in particular if it is part of a situation pre-dating the Contracting State’s ratification of the Convention (see *Darby v. Sweden*, 23 October 1990, opinion of the Commission, § 45, Series A no. 187).

For example, the Court has previously accepted that additional funding from the State budget to the State Church did not violate the Convention, in

view, among other considerations, of the fact that the employees of the State Church were civil servants with rights and obligations in that capacity with regard to the general public and not just to the members of their congregations (see *Ásatrúarfélagið v. Iceland* (dec.), no. 22897/08, § 34, 18 September 2012). On a more general note the Court would add that the funding of Churches and other material or financial benefits granted to them, while not incompatible with the Convention, must not be discriminatory or excessive, that is, clearly disproportionate to those received for comparable activities by other organisations in a given society.

101. However, in the present case the Court finds that the Government have not adduced any convincing evidence to demonstrate that the list of incorporated Churches contained in the Appendix to the 2011 Church Act as currently applicable reflects Hungarian historical tradition fully, in that it does not encompass the applicant religious communities and can be understood to refer back to the state of affairs prevailing in 1895 (see the excerpts from the minutes of the relevant debate in the competent parliamentary committee in paragraph 37 above) while disregarding more recent historical developments.

102. The Court notes that decisions on the recognition of incorporated Churches lie with Parliament, an eminently political body, which has to adopt those decisions by a two-thirds majority. The Venice Commission has observed that the required votes are evidently dependent on the results of elections (see paragraph 40 above, at point 76). As a result, the granting or refusal of Church recognition may be related to political events or situations. Such a scheme inherently entails a disregard for neutrality and a risk of arbitrariness. A situation in which religious communities are reduced to courting political parties for their votes is irreconcilable with the requirement of State neutrality in this field.

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

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

104. Leaving aside the potential for the re-registration procedure to be tainted by political bias, the Court has found that the refusal of registration for failure to present information on the fundamental principles of a religion may be justified in the particular circumstances of a case by the need to determine whether the denomination seeking recognition presents any danger for a democratic society (see *Cârmuirea Spirituală a Musulmanilor*



*din Republica Moldova v. Moldova* (dec.), no. 12282/02, 14 June 2005). However, in the present case the Court observes that the Government gave no reason for the requirement to scrutinise afresh already active Churches from the perspective of their possible dangerousness to society, still less the requirement to verify the content of their teachings, as required implicitly under the 2011 Church Act (see section 14, as amended, in paragraphs 29 and 32 above). Nor did they demonstrate any evidence of actual danger on the part of the applicant entities (compare *Church of Scientology Moscow*, cited above, § 93). The Court notes that by the material time the applicants had been lawfully operating in Hungary as religious communities for several years. There is no evidence before the Court that during that time any procedure had been set in motion by the authorities seeking to challenge the applicants' existence, notably on the ground that they were operating unlawfully or abusively. The reasons for requiring them to re-register should therefore have been particularly weighty and compelling (see *Church of Scientology Moscow*, cited above, § 96, and *Moscow Branch of the Salvation Army*, cited above, § 96). In the present case no such reasons have been put forward by the domestic authorities.

105. However, even assuming that there were such weighty and compelling reasons, the Court cannot but conclude that the applicant religious groups were not offered a fair opportunity (see *Relionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 92) to obtain the level of legal recognition sought, notably in view of the political nature of the procedure.

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

106. The Court observes that the freedom to manifest one's religion or beliefs under Article 9 does not confer on the applicant associations or their members an entitlement to secure additional funding from the State budget (see *Ásatrúarfélagið*, cited above, § 31), but that subsidies which are granted in a different manner to various religious communities – and thus, indirectly, to various religions – call for the strictest scrutiny (see, *mutatis mutandis*, *Gorzelik and Others*, cited above, § 95).

107. The Court has already recognised that the privileges obtained by religious societies, in particular in the field of taxation, facilitate their pursuance of religious aims (see *Association Les Témoins de Jéhovah v. France*, no. 8916/05, §§ 49 and 52-53, 30 June 2011) and that there is therefore an obligation incumbent on the State authorities under Article 9 of the Convention to remain neutral in the exercise of their powers (see *Relionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 92) when it comes to allocating these resources and granting these privileges. Where, in pursuit of its perceived positive obligations with regard to Articles 9 and 11, the State has voluntarily decided to afford entitlement to

subsidies and other benefits to religious organisations – such entitlement thus falling within the wider ambit of those Convention Articles – it cannot take discriminatory measures in the granting of those benefits (see, *mutatis mutandis*, *E.B. v. France* [GC], no. 43546/02, §§ 48-49, 22 January 2008, and *Savez crkava “Riječ života” and Others v. Croatia*, no. 7798/08, § 58, 9 December 2010). Similarly, if the State decides to reduce or withdraw certain benefits to religious organisations, such a measure may not be discriminatory either.

108. In the Court’s view, States must be left considerable liberty in choosing the forms of cooperation with the various religious communities, especially since the latter differ widely from each other in terms of their organisation, the size of their membership and the activities stemming from their respective teachings. This is particularly so in selecting the partners with which the State intends to collaborate on certain activities. The above prerogative of the State assumes even greater importance when it comes to public, societal tasks undertaken by religious communities but not directly linked to their spiritual life (that is, not related to, for example, charitable activities flowing from their religious duties). In this context, States enjoy a certain margin of appreciation when shaping collaboration with religious communities. At this juncture, the Court notes the particular context of Hungarian State-Church relations, and in particular the fact that Hungarian Churches were subjected to measures depriving them of their rights after 1945 (see the preambles to the two Acts cited in paragraph 33 above).

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

110. The Court observes that under Hungarian law incorporated Churches enjoy preferential treatment, in particular in the field of taxation and subsidies (see section 20 of the 2011 Church Act, cited in paragraph 32, and also paragraph 33). The advantages obtained by incorporated Churches are substantial and facilitate their pursuance of religious aims on account of their special organisational form.

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

In the present case, the withdrawal of benefits (resulting from the deregistration of Churches and the consequent lack of incorporated Church status) concerned only certain denominations, including the applicants. It is true that the applicant communities do not appear to fulfil the cumulative criteria established by the lawmaker, notably as regards the minimum number of members and the minimum length of existence. These criteria have arguably placed the applicants, some of which are new and/or small communities, in a disadvantageous situation which is at odds with the requirements of neutrality and impartiality. As regards the question of the duration of religious groups' existence, the Court accepts that the stipulation of a reasonable minimum period may be necessary in the case of newly established and unknown religious groups. But it is hardly justified in the case of religious groups which were established once restrictions on confessional life were lifted after the end of the communist regime in Hungary and which must be familiar to the competent authorities by now, whilst just falling short of the required period of existence. In this connection the Court notes the Venice Commission's view according to which the relevant periods are excessive (see paragraph 40 above).

112. The Court finds no indication that the applicants are prevented from practising their religion as legal entities, that is, as associations, a status which secures their formal autonomy *vis-à-vis* the State. Nevertheless, under the legislation in force, certain religious activities performed by Churches are not available to religious associations, a factor which in the Court's view has a bearing on the latter's right to collective freedom of religion. The Court notes in this connection that, in decision no. 6/2013 (III. 1.), the Constitutional Court identified, in a non-exhaustive list, eight privileges conferred only on Churches (see points 158 to 167 of the decision, cited in paragraph 34 above). In particular, only incorporated Churches are entitled to the 1% of personal income tax earmarked by believers and to the corresponding State subsidy. These sums are intended to support faith-related activities. For that reason the Court finds that such differentiation fails to satisfy the requirement of State neutrality and is devoid of objective grounds. Such discrimination imposes a burden on believers of smaller religious communities without any objective and justifiable reason.

113. In this connection, the Court adds that wherever the State, in conformity with Articles 9 and 11, legitimately decides to retain a system in which the State is constitutionally mandated to adhere to a particular religion (see *Darby*, cited above), as is the case in some European countries, and it provides State benefits only to some religious entities and not to others in the furtherance of legally prescribed public interests, this must be done on the basis of reasonable criteria related to the pursuance of public interests (see, for example, *Ásatrúarfélagið*, cited above).

114. In view of these considerations, the Court finds it unnecessary to examine possible discrimination with regard to the operation of cemeteries, religious publications and the production and sale of religious objects, which are often related to religious practice. It likewise finds it unnecessary to examine the differences in the possibilities for teaching religion, employment or cooperation with the State on public-interest activities.

(ζ) Conclusion

115. The Court concludes that, in removing the applicants' Church status altogether rather than applying less stringent measures, in establishing a politically tainted re-registration procedure whose justification as such is open to doubt and, finally, in treating the applicants differently from the incorporated Churches not only with regard to the possibilities for cooperation but also with regard to entitlement to benefits for the purposes of faith-related activities, the authorities disregarded their duty of neutrality *vis-à-vis* the applicant communities. These elements, taken in isolation and together, are sufficient for the Court to find that the impugned measure cannot be said to correspond to a "pressing social need".

There has therefore been a violation of Article 11 of the Convention read in the light of Article 9.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION  
READ IN CONJUNCTION WITH ARTICLES 9 AND 11

116. The applicants further complained under Article 14 of the Convention, read in conjunction with Articles 9 and 11, that they had been discriminated against on account of their position as religious minorities.

Article 14 reads as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

117. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and

28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45).

118. In the circumstances of the present case the Court considers that the inequality of treatment of which the applicants claimed to be victims has been sufficiently taken into account in the above assessment leading to the finding of a violation of substantive Convention provisions (see, in particular, paragraph 115 above). It follows that – although this complaint is also admissible – there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see *Metropolitan Church of Bessarabia*, cited above, § 134, and *Church of Scientology Moscow*, cited above, § 101).

#### IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 READ ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

119. In applications nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12 and 41463/12, the applicants further complained under Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 of the Convention, about the loss of State subsidies owing to the loss of their former Church status.

Article 1 of Protocol No. 1 provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” ...

120. The Government contested that argument.

121. The Court considers that the problem of access to State funds paid to Churches is to a large extent identical to the issues examined in the context of Articles 9 and 11 of the Convention. The privileges denied to the applicant associations have been sufficiently taken into account in that context (see paragraphs 106 to 115 above), especially since the pecuniary claims the applicants made under this head are not different from their Article 41 claims submitted in respect of the alleged violations of Articles 9 and 11 of the Convention. It follows that – although these complaints are also admissible – there is no cause for a separate examination of the same facts from the standpoint of Article 1 of Protocol No. 1 read alone or in conjunction with Article 14 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

122. The applicants complained that the procedure with regard to the deregistration and re-registration of their entities as Churches was unfair, in breach of Article 6 § 1 of the Convention.

Article 6 § 1 of the Convention provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

123. The Court considers that, in the light of its findings concerning Articles 11 and 9 of the Convention (see paragraph 115 above), it is not necessary to examine separately either the admissibility or the merits of this complaint.

## VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

124. The applicants also complained that there was no effective remedy available to them by which to complain of the legislation in question, in breach of Article 13 of the Convention.

The Court reiterates that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention (see, among other authorities, *Vallianatos*, cited above, § 94; *Roche v. the United Kingdom* [GC], no. 32555/96, § 137, ECHR 2005-X; and *Paksas v. Lithuania* [GC], no. 34932/04, § 114, ECHR 2011). In the instant case, the applicants' complaint under Article 13 is at odds with this principle. Consequently, this complaint is manifestly ill-founded and as such must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

126. The applicants claimed the following sums in respect of pecuniary damage:

(i) in application no. 23611/12: *Evangéliumi Szolnoki Gyülekezet Egyház* – 33,579,732 Hungarian forints (HUF) (approximately 111,900 euros (EUR)); Mr Soós – a monthly sum of HUF 159,080 (EUR 530) from 29 February 2012 until the decision of the Court;

- (ii) in application no. 26998/12: *Budapesti Autonóm Gyülekezet* – HUF 27,225,032 (EUR 90,750); Mr Görbicz – a monthly sum of HUF 160,000 (EUR 530) from 1 June 2012 until the decision of the Court;
- (iii) in application no. 41150/12: *Szim Salom Egyház* – HUF 96,965,719 (EUR 323,200);
- (iv) in application no. 41155/12: *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* – HUF 50,653,431 (EUR 168,850);
- (v) in application no. 54977/12: *Magyarországi Evangéliumi Testvérközösség* – HUF 1,461,192,932 (EUR 4,710,000);
- (vi) in application no. 41553/12:
  - (a) *ANKH Az Örök Élet Egyháza* – HUF 2,491,432 (EUR 8,300);
  - (b) *Árpád Rendjének Jogalapja Tradicionális Egyház* – HUF 3,415,725 (EUR 11,400);
  - (c) *Dharmaling Magyarország Buddhista Egyház* – HUF 10,261,637 (EUR 34,200);
  - (d) *Fény Gyermekai Magyar Esszénus Egyház* – HUF 8,855,523 (EUR 29,500);
  - (e) *Mantra Magyarországi Buddhista Egyháza* – HUF 18,203,096 (EUR 60,700);
  - (f) *Szangye Menlai Gedün, a Gyógyító Buddha Közössége Egyház* – HUF 2,099,453 (EUR 7,000);
  - (g) *Univerzum Egyháza* – HUF 5,665,877 (EUR 18,900);
  - (h) *Usui Szellemi Iskola Közösség Egyház* – HUF 114,822,096 (EUR 382,750);
  - (i) *Út és Erény Közössége Egyház* – HUF 4,937,194,474 (EUR 16,457,300).

These sums allegedly correspond in essence to the tax donations and the State subsidies lost or expected to be lost in the future, in various ways, on account of the impugned legislation. In respect of Mr Soós and Mr Görbicz, the claims relate to their lost remuneration as ministers.

127. In respect of non-pecuniary damage, the applicants claimed the following sums:

- (i) *Magyar Keresztény Mennonita Egyház* (no. 70945/11), *Evangéliumi Szolnoki Gyülekezet Egyház* (no. 23611/12), *Budapesti Autonóm Gyülekezet* (no. 26998/12), *Szim Salom Egyház* (no. 41150/12), *Magyar Reform Zsidó Hitközségek Szövetsége Egyház* (no. 41155/12) and *Magyarországi Biblia Szól Egyház* (no. 56581/12): EUR 70,000 each;
- (ii) Mr Izsák-Bács (no. 70945/11), Mr Soós (no. 23611/12), Mr Görbicz (no. 26998/12), Mr Guba (no. 41150/12) and Ms Bruck (no. 41155/12): EUR 30,000 each;
- (iii) in application no. 41553/12: EUR 100,000 for each applicant.

128. The applicants claimed the following sums in respect of the costs and expenses incurred before the Court:

(i) in application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12 and 56581/12, the applicants claimed, jointly, EUR 41,910, corresponding to 165 hours' legal work billable by their lawyer at an hourly rate of EUR 200 plus VAT;

(ii) in application no. 54977/12, the applicant claimed EUR 5,250 for 35 hours' legal work billable by its lawyer at an hourly rate of EUR 150 plus VAT;

(iii) in application no. 41553/12, the applicants claimed, jointly, EUR 18,000, corresponding to 120 hours' legal work billable by their lawyer at an hourly rate of EUR 150 plus VAT.

129. The Government contested these claims as excessive.

130. The Court considers that, as regards the claims in respect of non-pecuniary damage made by Mr Izsák-Bács (no. 70945/11), Mr Soós (no. 23611/12), Mr Görbicz (no. 26998/12), Mr Guba (no. 41150/12) and Ms Bruck (no. 41155/12), the finding of a violation constitutes sufficient just satisfaction.

131. The Court further considers that the remaining questions as to the application of Article 41 are not ready for decision, especially in view of the complex array of material advantages which the applicants claimed to have lost. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

132. Accordingly, the Court reserves these questions and invites the Government and the applicants to notify it, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach.

## FOR THESE REASONS, THE COURT,

1. *Joins* the applications;
2. *Declares*, unanimously, application no. 41463/12 inadmissible;
3. *Joins* the Government's objection of failure to exhaust domestic remedies to the merits of the case and *dismisses* it, unanimously;
4. *Declares*, unanimously, admissible the remaining applicants' complaints under Article 11 in the light of Article 9, read alone and in conjunction with Article 14, as well as the complaints under Article 1 of Protocol No. 1, read alone and in conjunction with Article 14;



5. *Declares*, unanimously, inadmissible the remaining applicants' complaints under Article 13 of the Convention;
6. *Holds*, by five votes to two, that there has been a violation of Article 11 read in the light of Article 9 of the Convention;
7. *Holds*, by five votes to two, that there is no need to examine separately the complaints under Article 14 in conjunction with Articles 11 and 9 of the Convention;
8. *Holds*, by six votes to one, that there is no need to examine separately the complaints under Article 1 of Protocol No. 1 read alone or in conjunction with Article 14 of the Convention;
9. *Holds*, by five votes to two, that there is no need to examine separately the admissibility or the merits of the complaints under Article 6 § 1 of the Convention;
10. *Holds*, by five votes to two, that the finding of a violation constitutes sufficient just satisfaction in respect of the non-pecuniary damage sustained by Mr Izsák-Bács (no. 70945/11), Mr Soós (no. 23611/12), Mr Görbicz (no. 26998/12), Mr Guba (no. 41150/12) and Ms Bruck (no. 41155/12);
11. *Holds*, by five votes to two, that the remaining questions as to the application of Article 41 are not ready for decision and accordingly,
  - (a) *reserves* the said questions;
  - (b) *invites* the Government and the applicants to notify the Court, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach;
  - (c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 8 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Guido Raimondi  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Spano joined by Judge Raimondi is annexed to this judgment.

G.R.A.  
S.H.N.

DISSENTING OPINION OF JUDGE SPANO  
JOINED BY JUDGE RAIMONDI

I.

1. Having peeled away the layers of perceived factual complexity in this case, the main elements that remain are, in essence, the following.

2. During the communist era, religious entities in Hungary were deprived of their property in accordance with communist political doctrine regarding the practice of religion. After the fall of communism in 1989, the State decided to provide subsidies in return for previously confiscated Church properties and to enter into extensive collaboration with certain well-established Churches. Also, flexible registration requirements were adopted under the 1990 Hungarian Church Act, applicable to newly established Churches. Churches registered under that Act were provided with material benefits from the State budget in the form of direct revenue from taxation and other indirect budgetary means.

3. The flexible registration framework and State-Church collaboration scheme under the 1990 Church Act had the consequence of creating a vast system of associative religious activity. By 2011, 406 religious entities had been registered in Hungary, the majority of them being partly financed, directly or indirectly, by the State.

4. To respond to this situation, the 2011 Church Act was adopted, which in effect brought the previous system to an end, reclassifying all registered religious entities as either *incorporated Churches* or *organisations performing religious activities*; the former still received material benefits from the State budget, whilst the latter were no longer recipients of such benefits. The religious entities, which were required to apply for enhanced status as incorporated Churches for the purposes of receiving material benefits from the State, did not however lose their legal personality, nor were they under any threat of being dissolved as such unless they showed no interest in continuing their activities under the new legislation.

5. As I will explain more fully below, I am unable to agree with the Court that there has been interference with the applicants' rights for the purposes of Articles 9 and 11 of the Convention, as found by the majority. Today's judgment enlarges the scope of Article 9, taken alone and in conjunction with Article 11, as regards associative religious activity, to an extent that conforms neither to the text or purpose of these provisions nor to their development in the case-law of this Court. I therefore respectfully dissent.

II.

6. Article 9 § 1 of the Convention provides, expressly, that the right to freedom of religion includes "freedom to change [one's] religion or belief and freedom, either alone or in community with others and in public or

private, to manifest [one's] religion or belief, in worship, teaching, practice and observance". As is clear from this text, the freedom to *manifest* one's religion or belief forms the core of the right under Article 9. The concept of *manifestation* is elaborated upon further in the text, which states that it includes the freedom to *worship, teach, practice* or *observe* one's religion or belief. To be considered a *manifestation* in this sense, the act must thus be closely connected to the belief. Any State measure that impedes, directly or indirectly, the ability of an individual, whether alone or in community with others, to manifest his or her religion or belief in the ways espoused in Article 9 § 1 will constitute interference with that freedom and must be justified under paragraph 2 of the same Article. Conversely, if an individual can, without undue hardship or inconvenience, manifest his or her religion or belief in spite of the measure alleged to constitute interference, no Article 9 issue arises in principle.

7. Since religious communities traditionally exist in the form of organised structures, Article 9 of the Convention has been interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. The autonomous existence of religious communities is thus considered indispensable for pluralism in a democratic society and an issue at the very heart of the protection which Article 9 affords (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI, and *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 61, 31 July 2008).

8. The Court has consistently held that a refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to interference with the applicants' exercise of their right to freedom of association (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52 et passim, ECHR 2004-I; *Sidiropoulos and Others v. Greece*, 10 July 1998, § 31 et passim, *Reports of Judgments and Decisions* 1998-IV; and *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 62). Where the organisation of the religious community was in issue, a refusal to recognise it has also been found to constitute interference with the applicants' right to freedom of religion under Article 9 of the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 105, ECHR 2001-XII).

9. In addition to the guarantees of associative religious freedom under Article 9, interpreted in the light of Article 11 of the Convention, the right to freedom of religion excludes, in principle, any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush*, cited above, § 78). The State thus has a duty under Article 14 of the Convention to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs (see *Metropolitan Church of Bessarabia and Others*, cited above,

§ 116; *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 97; and *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 88, 9 December 2010). The obligation under Article 9, incumbent on the State's authorities, to remain neutral in the exercise of their powers in the religious domain, and the requirement under Article 14 not to discriminate on grounds of religion, require that if a State sets up a system for granting material benefits to religious groups, for example through the taxation system, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner on objective and reasonable grounds (see, *mutatis mutandis*, *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 92, and *Ásatrúarfélagið v. Iceland* (dec.), no. 22897/08, § 34, 18 September 2012).

### III.

10. In paragraph 81 of the present judgment, the majority observes that the applicant communities had lawfully existed and operated in Hungary as Churches registered by the competent court in conformity with the 1990 Church Act. The 2011 Church Act "changed the status of all previously registered Churches, except those recognised Churches listed in the Appendix to the 2011 Church Act, into associations. If intending to continue as Churches, religious communities were required to apply to Parliament for individual recognition as such".

11. The majority then refers, in paragraph 82, to two previous cases of the Court (*Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 67, ECHR 2006-XI, and *Church of Scientology Moscow v. Russia*, no. 18147/02, § 78, 5 April 2007) where the "refusal of registration" disclosed interference with a religious organisation's right to freedom of association and also with its right to freedom of religion. On this basis, the Court concludes in paragraph 83 that the "measure in issue ... effectively amounted to the deregistration of the applicants as Churches and constituted interference with their rights enshrined in Articles 9 and 11".

### IV.

12. In the light of the text, the object and purpose of Article 9, interpreted in conjunction with Article 11, and the consistent case-law of this Court, I disagree that the applicants have successfully demonstrated, in the general and abstract way concluded by the majority, that the measure adopted by the Hungarian legislature in the form of the 2011 Church Act interfered, directly or indirectly, with their *freedom to manifest their religion or beliefs* in the sense referred to above (see paragraph 6 above). Neither the 2011 Church Act nor its amendments had, in general, any impact on the *legal personality status* of the applicants. They were eventually not deregistered as such, only reclassified for the purposes of

receiving State benefits or being eligible for cooperative agreements with the State, and they were not under *threat of being dissolved through State action*, with the exception of those Churches not declaring their intent to continue with their activities. Thus, the two previous cases of the Court which the majority cites in paragraph 82 of the judgment (see paragraph 11 above) do not have a bearing on the resolution of whether any interference occurred in this case.

13. In reality, as the Court states unequivocally in paragraph 112, there is in fact “no indication that the applicants [were] prevented from practising their religion as legal entities, that is, as associations, a status which secures their formal autonomy *vis-à-vis* the State” as a result of the adoption of the 2011 Church Act or its amendments. In the light of this Court’s case-law on associative religious freedom under Articles 9 and 11, that should have been the end of the matter. Whether “adherents of a religious community feel like second-class citizens, for religious reasons, on account of the State’s less favourable stance towards their community” (see paragraph 109), is immaterial for the purposes of Articles 9 and 11, if they are unimpeded in manifesting their religious beliefs, in form and substance, within legally recognised associations. It should be pointed out that the Court, citing a prior opinion by the European Commission, has consistently held that a “State Church system cannot in itself be considered to violate Article 9 of the Convention” (see *Darby v. Sweden*, 23 October 1990, opinion of the Commission, § 45, Series A no. 187, and *Ásatrúarfélagið*, cited above, § 27).

14. It is important to highlight that the Court has never held before today that the decision of the State to withhold previously afforded material benefits from religious entities which are duly registered and afforded legal personality status constitutes, as such, interference with the freedom to manifest a religion or a belief under Article 9, interpreted in the light of Article 11. As is clear from the case-law of the Court, cited above in paragraph 9, an arguable issue under the Convention only arises in this regard if an applicant can demonstrate on the facts that in the exercise of its regulatory powers the State has withheld material benefits from a religious entity whilst providing benefits to others, and that this difference in treatment is not justified on objective and reasonable grounds. By its nature, an assessment of this kind under Article 14 of the Convention necessitates an individual examination of whether discrimination occurred. Therefore, the Court should have examined the applicants’ complaint on the basis of Article 14 taken in conjunction with Articles 9 and 11 of the Convention. But the majority declined to examine this part of the complaint separately, a decision from which I dissented. Thus, I do not express my views on the Article 14 issue in this opinion.

15. In conclusion, this Court must be ever mindful that the scope of the rights and freedoms guaranteed by the Convention is not without limits. As

rules of law, their scope must be defined within the text of the relevant provision, as interpreted reasonably in the light of their object and purpose. The unrestrained expansion of the substantive reach of the Convention runs the risk of undermining the legitimacy of this system of European supervision of human rights.