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## **OSCE Human Dimension Implementation Meeting**

**Warsaw, 30 September 2015**

### **Working Session 14: Tolerance and non-discrimination II**

## **Hungary: Amended Church Law Remains at Variance with OSCE Standards and the European Convention on Human Rights**

### **Recommendations**

Forum for Religious Freedom Europe (FOREF) calls upon the Government of Hungary

- to refrain from further changes to the legal status of religious communities except to remedy the violations of the right of religious freedom arising from the deregistration of churches in 2011;
- to extend legal privileges to churches on the basis of objective criteria alone, and not on the basis of indeterminate discretionary prerogatives claimed by the State or Parliament;
- to treat all religious communities equally in matters pertaining to religious practice;
- to rewrite the proposed amendments to Act CCVI of 2011 to harmonize with Helsinki standards, international human rights law, and the ruling of the ECtHR in *Magyar Keresztény Mennonita Egyház and others v. Hungary*.

### **Persistent difficulties with Hungary's church law**

In 2011 Hungary enacted a new law on the legal status of churches (Act CCVI of 2011). The law stripped approximately 200 religious communities of legal personality, and reduced the number of legally recognized churches in Hungary to 14. In February 2012, responding to international pressure, Parliament expanded the number of recognized churches to 31. In February 2013, Hungary's

Constitutional Court ruled the deregistration of recognized churches had been unconstitutional. Responding to the Court's decision, Parliament amended the constitution in March 2013. In June and September 2013, Parliament amended Act CCVI to create a two-tiered classification consisting of "religious communities" and "incorporated churches." In September 2013, Parliament also amended the constitution explicitly to grant Parliament the authority to select religious communities for "cooperation" with the state in the service of "public interest activities." In April 2014 the European Court of Human Rights (ECtHR) ruled in *Magyar Keresztény Mennonita Egyház and others v. Hungary* that Hungary had violated articles 9 and 11 of the European Convention on Human Rights (ECHR), a judgment which became final in September 2014. Just this month (September 2015), in response to the ECtHR decision, the Government of Hungary (GOH) has made public proposed amendments to Act CCVI of 2011. Unfortunately, those amendments fail to address the most serious violations of the right of religious freedom identified by the Court. First, transitional provisions with the proposed amendments would perpetuate, rather than correct the earlier violations of the ECHR. Second, discretionary powers afforded the state would continue the arbitrary recognition procedure criticized by both the ECtHR and the Venice Commission.

### **Proposed transitional provisions codify previous discrimination**

After Hungary's Constitutional Court found the deregistration of churches unconstitutional, the GOH amended the church law to create a two-tiered classification system, offering deregistered churches a chance to apply for status as "religious associations." Despite the second tier, the ECtHR found Hungary's deregistration procedure to have violated the right of religious freedom. Even after registering as religious associations, deregistered churches had far fewer rights than they enjoyed prior to 2011. The currently proposed amendments would replace the two-tiered classification system with a three-tiered system. However, a three-tiered system does nothing to address the underlying violation. Indeed, if two tiers failed to correct the violations caused by deregistration, it is hard to see how three tiers will address that problem more effectively.

In fact, religious communities in the lower tiers will continue to be denied rights they held previously as churches. For example, according to information provided by the Ministry of Justice, "religious associations" (the lowest tier), unlike other churches, will not be permitted to collect the voluntary 1% church income tax. Since this church tax directly supports religious activity, prohibiting some religious communities from collecting such a tax while permitting others, constitutes unjustified discrimination. Indeed, this provision of the law was explicitly criticized by the ECtHR. According to the Court:

only incorporated churches are entitled to the one per cent of the personal income tax earmarked by believers and the corresponding State subsidy. These sums are intended to support faith-related activities. For this reason, the Court finds that such differentiation does not satisfy the requirements of State neutrality and is devoid of objective grounds for the differential treatment. (*Magyar Keresztény Mennonita Egyház v. Hungary*, 112)

Given the explicit judgment of the Court, the GOH's determination to preserve this discriminatory provision is surprising.

Additionally, transitional provisions stipulate that all "incorporated churches" (currently the highest tier) will automatically be recognized as "certified churches" (the new highest tier) once the new version of the law goes into effect. However, the majority of "incorporated churches" do not meet the

criteria set down in the law for “certified churches.” “Certified churches” must either have at least 10,000 members or have received church income tax from at least 4000 people over five years. Based on the most recent census data, only 6 of the 31 “incorporated churches” have a membership of 10,000 or more. Based on publically available tax data, only 11 of the 31 incorporated churches consistently received voluntary church income tax from at least 4000 people between 2011 and 2014.

Furthermore, according to the proposed amendments, unlike “incorporated churches,” “religious associations” will have to apply with the courts for new legal status. The GOH thus proposes to implement the new amendments in a way that both discriminates between “incorporated churches” and “religious communities,” and also blatantly disregards the provisions of its own law. Since the original classification of religious groups into unequal tiers violated the right of religious freedom, perpetuating those distinctions with a new set of amendments cannot be considered a serious attempt to respond to the violations identified by the ECtHR.

### **Discretionary prerogatives claimed by the state allow for arbitrary discrimination**

One of the most severely criticized parts of Act CCVI has been the provision according to which Parliament grants status as an “incorporated church” through a  $\frac{2}{3}$  vote. At first glance, the amendments appear to remove this provision, because registration in each tier will be determined by a court. However, the amendments also allow the state to enter into “cooperative agreements” with “certified churches” on a discretionary basis. This provision for discretionary subsidy of some, but not all religious communities amounts to a fourth category of legal recognition. The manner in which the state will exercise its “discretionary right” to enter into “cooperative agreements” is not specified in the church law. However, a reasonable interpretation of Hungary’s Basic Law suggests that this discretionary power is held by Parliament. Statements by government representatives as reported in the Hungarian press also indicate that Parliament will exercise this discretion.

OSCE standards require that the state remain neutral and impartial in its treatment of religious communities. Certainly, the state enjoys margin of appreciation in determining the legal framework for cooperation with churches; but having established that framework the state is required to treat all churches impartially within it. Any decision to enter into “cooperative agreements” with certain churches must be based on objective, relevant criteria. A procedure by which Parliament selects individual churches for “cooperation” lacks appropriate mechanisms to guarantee the decisions are based on objective, relevant criteria and in an impartial manner. Indeed, insofar as the determination to enter into a “cooperative agreement” is based on objective, relevant criteria, it is difficult to envision the manner in which such determinations are discretionary at all.

The proposed amendments to Act CCVI therefore rewrite the law without changing its essential content. Instead of repairing violations of religious freedom suffered by deregistered churches, the proposed amendments place those violations on new legal footing. Rather than correcting Parliament’s arbitrary power to bestow legal privileges on churches, the amendments relocate that arbitrary power to different parts of the law.

FOREF urges the Government of Hungary to refrain from submitting the currently proposed amendments to Parliament for a vote, to develop substantial, as opposed to cosmetic, changes to the law which are needed to address the identified violations of the European Convention on Human Rights, and to seek the assistance of participating States in harmonizing its church law with Helsinki standards, international human rights law, and the ruling of the ECtHR in *Magyar Keresztény Mennonita Egyház and others v. Hungary*.