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## Religious Freedom Issues in Hungary

*Balázs Schanda\**

### I. INTRODUCTION

This paper discusses fundamental principles of church-state relations in Hungary. Part II of this article discusses freedom of religion in terms of the European Court of Human Rights and the Hungarian Constitution while Part III focuses on nondiscrimination on the grounds of religion in a wide variety of contexts, including the restitution of previously owned real estate to churches, army and penitentiary chaplaincies, media law, government funding, and secular laws. Part IV of this article compares the rights of parents and children with regard to religious issues under both international and Hungarian law. In Part V, this article considers recent proposals to change the law with regard to registered churches in Hungary, and Part VI discusses recent findings of the Hungarian Tax Audit Office and Reports of the Office of National Security. Part VII suggests that neutrality of the state is the underlying doctrine behind the principle of separation of church and state, and, finally Part VIII concludes that although churches are entitled to equal treatment in Hungary, factual and social differences between churches may lead to constitutionally acceptable differences in the treatment churches receive.

### II. FREEDOM OF RELIGION: FREE MANIFESTATION OF RELIGION

Article 1 of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“1981 Declaration”)<sup>1</sup> follows the wording of Article 18 of the International Covenant on Civil and Political Rights

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1. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, G.A. Res. 55, U.N. GAOR, 36th Sess., Supp. No. 51, U.N. Doc. A/36/684 (1981), available at [http://www.unhchr.ch/html/menu3/b/d\\_intole.htm](http://www.unhchr.ch/html/menu3/b/d_intole.htm) [hereinafter *1981 Declaration*].

(“ICCPR”)<sup>2</sup> in acknowledging the right to freedom of thought, conscience, and religion.<sup>3</sup> In Hungary, no cases involving the issue of free manifestation of religion have been argued. The accommodation of religious freedom issues in Hungary is done on a highly individual level; it is not the affiliation of an individual to a specific religious community that matters, but rather the invocation of an individual’s conscientious conviction.

None of the cases brought before the European Court of Human Rights regarding the free manifestation of religion could have happened in a Hungarian jurisdiction. In Hungary, there is no restriction on proselytism as part of the free manifestation of religious beliefs;<sup>4</sup> the opening of places of worship does not require special permission or a license;<sup>5</sup> legal status is easily accessible for religious entities;<sup>6</sup> and religious entities, if registered as such, generally enjoy

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2. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, *available at* [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) [hereinafter ICCPR].

3. Article 1 of the *1981 Declaration* provides:

- (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- (2) No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
- (3) Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

*1981 Declaration*, *supra* note 1, art. 1. Article 18 of the ICCPR similarly provides:

- (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- (3) Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- (4) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

ICCPR, *supra* note 2, art. 18.

4. *Cf. Kokkinakis v. Greece*, 260 Eur. Ct. H.R. (ser. A) 3 (1993); *Larissis and Others v. Greece*, 1998-I Eur. Ct. H.R. 362.

5. *Cf. Manoussakis v. Greece*, 1996-IV Eur. Ct. H.R. 1346.

6. *Cf. Canea Catholic Church v. Greece*, 1997-VIII Eur. Ct. H.R. 2843.

autonomy.<sup>7</sup> The general approach to the freedom of speech in Hungary is very liberal:<sup>8</sup> no religious form of oath is compulsory,<sup>9</sup> accommodation of religious claims is done on the individual level, and the general practice does not show serious problems.<sup>10</sup>

The Hungarian Constitution does not limit fundamental rights on the basis of public safety, order, health, or morals but states that laws must not limit the essential content or meaning of fundamental rights.<sup>11</sup> Rights other than the right to life in dignity<sup>12</sup> can be restricted by laws, but restrictions are only permissible for the safeguarding of another fundamental right or constitutional value, and the restriction must not be disproportionate to the intended purpose.

### III. NONDISCRIMINATION ON THE GROUNDS OF RELIGION

Although the principle of nondiscrimination is fundamental to the Hungarian Constitution and the equality of individuals belonging to different faith communities has not been challenged, the equal rights of religious communities is, to some extent, a disputed issue in Hungary.

#### *A. Historical Aspects Concerning the Legal Equality of Religious Communities*

During the course of the seventeenth century, the Protestant nobility achieved considerable freedom in Hungary. However, due to the re-Catholizing efforts of the Habsburg kings, this freedom

7. Cf. *Serif v. Greece*, 31 E.H.R.R. 20 (2001); *Hasan and Chaush v. Bulgaria* (2000), App. No. 30985/96 (Eur. Ct. H.R. 2000), at <http://www.echr.coe.int>.

8. Cf. *Otto-Preminger-Institut v. Austria*, 295 Eur. Ct. H.R. (ser. A) 3 (1994); *Wingrove v. United Kingdom*, 1996-V Eur. Ct. H.R. 1937. For constitutional jurisdiction concerning rights of communication, see László Sólyom, *Introduction to the Decisions of the Constitutional Court of the Republic of Hungary*, in LÁSZLÓ SÓLYOM & GEORG BRUNNER, CONSTITUTIONAL JUDICIARY IN A NEW DEMOCRACY: THE HUNGARIAN CONSTITUTIONAL COURT 1, 10 (2000).

9. Cf. *Buscarini v. San Marino*, 6 B.H.R.C. 638 (1999), 30 E.H.R.R. 208 (2000).

10. Cf. *Valsamis v. Greece*, 1996-VI Eur. Ct. H.R. 2312; *Efstathiou v. Greece*, 1996-VI Eur. Ct. H.R. 2347.

11. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [Constitution] art. 8(2), translated in SÓLYOM & BRUNNER, *supra* note 8, at 380.

12. The right to life in dignity is the reason why the death penalty is unconstitutional. See *On Capital Punishment*, Decision 23, (X.31) (Alkotmánybíróság [Constitutional Law Court] 1990), translated in SÓLYOM & BRUNNER, *supra* note 8, at 118.

was gradually curtailed. The Reformed and the Lutheran religions regained their freedom at the end of the eighteenth century.<sup>13</sup> At that time, although the free exercise of these religions was permitted, their status remained far from equal to that of the Catholic Church. Even though revolutionary legislation in 1848 declared the equality of all accepted religions,<sup>14</sup> the emancipation of Jews did not occur until 1867.<sup>15</sup> Further, because the Principality of Transylvania was independent from the Kingdom of Hungary from 1526 to 1848, the development of religious freedom followed different courses in these two areas. The free exercise of Reformed (Calvinist), Lutheran, Unitarian, and Catholic denominations was allowed by 1568 in Transylvania, while the exercise of the Orthodox faith was also tolerated.<sup>16</sup> No other European state displayed such tolerance in its church policies at that time.

Even after 1895, when the free exercise of religion was officially recognized,<sup>17</sup> differences in the treatment of various religions still remained. For example, the legislature differentiated between “accepted” and “recognized” religions, allowing representatives from “accepted” denominations to hold seats in the “Upper House” of the Parliament.<sup>18</sup> The Catholic, Reformed, Lutheran, Orthodox, and Unitarian churches as well as the Jewish Communities were considered “accepted” religions. In 1947, “accepted” churches lost their privileges, when all religions were granted equal status that basically amounted to the status previously enjoyed by “recognized” churches.<sup>19</sup>

The present law expressly provides all churches with equal status:

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13. See Leopoldi II, Decree, art. 26 (1790).

14. See On the Issue of Religion, Act XX (1848). Accepted religions were: Latin, Greek, and Armenian Catholic, Reformed, Lutheran, Unitarian, Serbian, and Romanian Orthodox.

15. See On the Equality of Israelites in Regard to Civic and Political Rights, Act XVII (1867). József Schweitzer & Gábor Schweitzer, *A Magyarországi Zsidók és az Izraelita Felekezet Jogállásának Alakulása* [*The Development of the Legal Status of Jews in Hungary and that of the Jewish Denomination*], in FELEKEZETI EGYHÁZJOG MAGYARORSZÁGON [DENOMINATIONAL ECCLESIASTICAL LAW IN HUNGARY] 229 (Lajos Rác ed., 1994).

16. See generally MTI CORPORATION, HUNGARY: ESSENTIAL FACTS, FIGURES & PICTURES (Éva Molnár ed., Pál Herskovits trans., 1997).

17. See On the Free Exercise of Religion, Act XLIII (1895).

18. The “Upper House” of the Parliament is the second chamber of the Legislature, which is similar to the House of Lords in the United Kingdom.

19. See On the Termination of the Differences Between the Accepted and the Recognized Churches, Act XXXIII (1947).

“Churches shall have the same rights and the same obligations.”<sup>20</sup> However, although the state must treat all churches equally and must provide everyone with the possibility of exercising their freedom of conscience,<sup>21</sup> the state is not expected to treat all religious communities equally; differentiation is permissible, when due to factual differences.<sup>22</sup> Thus, “treating the churches equally does not exclude taking the actual social roles of the individual churches into account.”<sup>23</sup>

*B. Challenges to the Equality of Churches: Distinctions  
Between Churches*

*1. Symbolic distinctions*

*a. Catholicism.* The size, the international character, and the role of the Catholic Church in Hungarian history result in a permanent fear in all other denominations of the re-establishment of Catholicism as a dominant force in society. For example, the agreement on funding between the Republic of Hungary and the Holy See signed on June 20, 1997,<sup>24</sup> received both polite and aggressive criticism from almost all other religious groups. While representatives of the Reformed Church understood that the Catholics gave up some important church positions, representatives of smaller churches voiced their general dissent against the fact and content of the agreement.

The Catholic Church has a hierarchical structure with the Pope holding the highest and most universal power in the Church.<sup>25</sup> Many issues may not be decided by local or national leaders but only by the

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20. See Law on Freedom of Conscience and Religions as Well as Churches, Act IV § 15(3) (1990), translated at <http://www.religlaw.org/template.php?id=271> (last visited Jan. 26, 2002) [hereinafter Law on Freedom of Conscience].

21. See On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48, 52 (Alkotmánybíróság [Constitutional Law Court] 1993), translated in SÓLYOM & BRUNNER, *supra* note 8.

22. See *id.* at 53. This Decision uses the same language as the Federal Constitutional Court of Germany in *Entscheidungen des Bundesverfassungsgerichts* [BverfGE] [Federal Constitutional Court] 19, 1 (8) (F.R.G.).

23. On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48, 53 (Alkotmánybíróság [Constitutional Law Court] 1993), translated in SÓLYOM & BRUNNER, *supra* note 8, at 253. See *infra* Parts III.B.2 & III.C.

24. Agreement, Republic of Hungary and the Apostolic Holy See (June 20, 1997), translated at <http://www.religlaw.org/template.php?id=94> (last visited Jan. 26, 2002).

25. See 1983 CODE c.331.

Holy See. A state respecting the religious freedom of Catholics must acknowledge the special structure and international nature of the Catholic Church. The international status of the Holy See and the sovereignty of the Pope are generally accepted in international law. States generally do not regard diplomatic relations as a special privilege; thus, “inequality” in this respect is not a special Hungarian feature. Rather, it is based on international law and the common interests of the parties.

*b. Historical churches.* Hungarian law and practice have developed a parity between the “historical” churches. “Historical” churches include the Catholic, Reformed, and Lutheran churches as well as the Alliance of Jewish Communities.<sup>26</sup> The government decree on the Army Chaplaincy speaks about “historical” churches when referring to the specific agreements that have been reached.<sup>27</sup> According to the Constitutional Court decision on this matter, the term “historical” refers only to the historical character of these churches and is not discriminative in itself.<sup>28</sup> The four “historical” churches are usually invited together to symbolic events as well as to church-state negotiations. For example, at the funeral of Prime Minister Antall in December 1993, representatives of these congregations were invited to take part in the service with public prayers; the service itself was Catholic, following the faith of the Prime Minister. Furthermore, leaders of these religious communities are invited to negotiations on various topics (like funding, for example), with the exception of international negotiations with the Holy See.

*c. Sects.* The term “sect” is considered pejorative in Hungary. Hungary lacks reliable, objective sources of information on unknown religions and religious communities. Most information regarding religions is disseminated by either the churches themselves or by other churches, which does not always result in the most accurate and trustworthy information. A pioneer enterprise in the effort to spread reliable information about little known churches was made by the sociologist István Kamarás (a Catholic himself) who wrote a book on

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26. Various Orthodox Churches and the Unitarian Church are “historical” as well; however, they do not receive special treatment like the other “historical” churches.

27. See On Army Chaplain’s Service, Government Decree No. 61/1994, (IV.20) Korm. (1994), translated at <http://www.religlaw.org/template.php3?id=135> (last visited Jan. 26, 2002).

28. See Decision 970/B/1994, ABH. 739, 743 (Alkotmánybíróság [Constitutional Law Court] 1995).

the Faithful of Krishna Consciousness (“ISKCON”) in Hungary.<sup>29</sup> Representatives of the community say that there has been no comparable publication on ISKCON anywhere in the world. Other institutions have since set the goal of providing objective information on new religious movements in Hungary.<sup>30</sup>

### *2. Accommodation of religious claims*

The phrase “equal rights of Churches” means that all religious communities are to enjoy equal freedom. Different levels of accommodation for different religions are not permissible. However, it is outside the scope of the Constitution and beyond the control of the government that significant differences between religious communities exist and that the more established religions with larger memberships are easier to practice. The equalization of factual differences between religious communities is naturally outside the scope of the state’s mandate.

It is not a constitutional question that historical churches with a large membership in their organizational structure and their cooperation with the State, in many areas, facilitate the exercise of religion for their members where the assistance of other (often state) institutions is required, such as in health-care or penitentiaries. The enforcement of the right of exercise of religion may be harder or easier in practice depending on the nature of legal form a given religious community adopts, or whether it chooses to assume a legal form at all. But the existing practical differences in enforcing the right of the freedom of religion remain within constitutionally permissible boundaries as long as they do not derive from discriminatory legal regulations or do not lead to the prevention of anyone’s exercise of his or her religion.<sup>31</sup>

### *3. Restitution of real estate*

In the early years of communism, almost all church property was

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29. See KAMARÁS, ISTVÁN, KRISNÁNSOK MAGYARORSZÁGON [THE FOLLOWERS OF ISKCON IN HUNGARY] (1998).

30. The Religious Documentation and Information Center at the University of Szeged is an example of such an institution. See VALLÁSTUDOMÁNY PORTÁL, at <http://www.vallastudomany.hu> (last visited Jan. 26, 2002).

31. On the Restitution of Church Property, Decision 4/1993, (II.27) ABH. 99, 100 (Alkotmánybíróság [Constitutional Law Court] 1993), translated in SÓLYOM & BRUNNER, *supra* note 8.

nationalized.<sup>32</sup> Churches could only maintain buildings used for worship and a very limited number of institutions for charity and education. Prior to World War II, the Catholic Church was the greatest landowner in Hungary, and churches maintained over 60% of the country's schools.<sup>33</sup> In 1991, Parliament passed an Act to settle the ownership of real estate that formerly belonged to churches.<sup>34</sup> This Act began a ten-year process (that has since been extended to twenty years<sup>35</sup>) during which churches may reclaim buildings that were previously used and are to be used for purposes of religion. Such buildings include places of worship, conference centers, church administration buildings, apartments providing accommodation for persons employed by churches, training facilities for clergymen, and buildings used for religious orders, education, health care, and culture, including community houses and museums.<sup>36</sup> Profit-oriented enterprises such as land and printing houses are not to be reclaimed under the Act. Although the Act provides for compensation to owners of reclaimed property,<sup>37</sup> restitution of buildings to churches is only a partial remedy for churches;<sup>38</sup> only a small part of properties formerly owned by churches could be reclaimed, and churches must describe the functions for which the buildings concerned will be used.

In the early 1990s, a number of petitioners challenged the constitutionality of this Act. The decision of the Constitutional Court<sup>39</sup>—the most comprehensive court decision concerning religious freedom—clarified the fundamental notions of religious freedom and church-state relations while paying special attention to education, the most sensitive issue in this field. The most important reason the Act was challenged was that the Act only compensated

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32. See On the Settlement of Ownership of Former Real Properties of the Churches, Act XXXII (1991), translated at <http://www.religlaw.org/template.php?id=542> (last visited Jan. 26, 2002) [hereinafter Ownership of Former Real Properties].

33. See ANDOR CSIZMADIA, A MAGYAR ÁLLAM ÉS AZ EGYHÁZAK KAPCSOLATINAK KIALAKULÁSA ÉS GYAKORLATA A HORTHY KORSZAKBAN 426 (1966).

34. See Ownership of Former Real Properties, *supra* note 32.

35. See On the Financial Conditions of the Religious and Public Purpose Activity of Churches, Act CXXIV (1997), translated at <http://www.religlaw.org/template.php?id=136> (last visited Jan. 26, 2002).

36. See Ownership of Former Real Properties, *supra* note 32.

37. See *id.* § 9(2).

38. See *id.* p.mbl.

39. See On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48 (Alkotmánybíróság [Constitutional Law Court] 1993), translated in SÓLYOM & BRUNNER, *supra* note 8, at 246.

certain churches while leaving other churches and nongovernmental organizations (“NGOs”) that suffered similar property loss without compensation.<sup>40</sup> The partial restitution of confiscated church property raised the issue of equal treatment of churches. Petitioners argued that the Act intended to reestablish the religious landscape of the precommunist period.<sup>41</sup> The Constitutional Court did not find the disparate treatment of churches unconstitutional, stating:

Given that the buildings whose ownership is to be transferred had formerly also been used to implement the right to practise one’s religion, and that churches can only reclaim buildings in order to serve the self-same end and not exceeding their actual needs, there is a legitimate reason for not transferring ownership of buildings to those churches that did not exist or were not harmed at the time of the infringements.<sup>42</sup>

According to a repealed provision of the Act,<sup>43</sup> the Government could have entered into an agreement with a church to provide partial compensation to the church for previously church-owned buildings that were nationalized and not returned. However, this provision was abolished by the Constitutional Court as it would have allowed discretionary funding of some churches.<sup>44</sup> After the restitution of church buildings, no additional differentiation between the churches was necessary to promote the freedom of religion. Accordingly, the state could not constitutionally limit state support to those churches that lost their property after 1948.<sup>45</sup>

The law affected twelve churches. A total of 7220 buildings were claimed by various churches, 1600 of which turned out not to fall under the provisions of the law. Almost 1000 cases were settled by direct agreement. Another 1062 cases were settled by compensating present users. In ten years, the government spent a total of 28 billion

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40. *See id.*

41. This allegation reappears even in recent statements. *See, e.g.,* Tibor Ruff, *Egyház-Állam Emberi Jogok [Church-State Human Rights]*, 2 FUNDAMENTUM 59 (1997).

42. On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48, 66 (Alkotmánybíróság [Constitutional Law Court] 1993), *translated in* SÓLYOM & BRUNNER, *supra* note 8, at 261–62.

43. *See* Ownership of Former Real Properties, *supra* note 32.

44. *See* On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48 (Alkotmánybíróság [Constitutional Law Court] 1993), *translated in* SÓLYOM & BRUNNER, *supra* note 8, at 249.

45. *See id.*

*forints* in compensating owners (usually municipalities) for buildings returned to churches; the government also spent 12 billion *forints* in compensating churches that preferred monetary compensation over a return of their formerly owned buildings.<sup>46</sup>

Currently, all church claims are settled in one of two ways: churches may reacquire their previously owned real estate or they may instead accept financial compensation. The government passed a resolution governing the destiny of all buildings that churches opt to reacquire. Regarding reacquired real estate, decisions have already been made regarding over 900 buildings of the Catholic Church,<sup>47</sup> about 700 of the Reformed Church, over 200 of the Lutheran Church, and 18 of the Jewish Communities.<sup>48</sup> Fourteen claims of the Serb Orthodox Church, two of the Methodist Church, nine of the Romanian Orthodox Church, two of the Hungarian Orthodox Church, two of the Baptist Church, two of the Adventist Church, and two of the Unitarian Church were settled. Six churches opted to turn some or all of their claims into financial compensation. The Catholic Church is entitled to 42 billion *forints* for 1150 buildings; the Reformed Church is entitled to 6.6 billion *forints* for 392 buildings; the Lutheran Church is entitled to 4.3 billion *forints* for 74 buildings; the Jewish Communities are entitled to 13.5 billion *forints* for 150 buildings; the Serb Orthodox Church is entitled to 848 million *forints* for two buildings; and the Baptist Church is entitled to 121 million *forints* for two buildings.<sup>49</sup> The claims of the Salvation Army have also been settled (by a direct agreement). The state makes payments each year to churches that seek financial compensation rather than a return of previously-owned property. The two large Protestant churches also receive a supplementary subsidy with respect to their public activities because they did not receive sufficient funding for claims they dropped. The former wealth of churches and their agreements with the state have led to differences in the treatment of churches. It is important to note that while the accord with the Holy See has an international character, the agreements with other churches are merely public law contracts.

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46. See BALÁZS SCHANDA, LEGISLATION ON CHURCH-STATE RELATIONS IN HUNGARY 194–95 (2002).

47. Government Resolution 1046/1999, (V.5) Korm. Hat. (1999).

48. Government Resolution 1116/1999, (XII.6) Korm. Hat. (1999).

49. Balázs Schanda, *Church and State in Hungary in 1999: The Funding of Churches*, 7 EUR. J. FOR CHURCH & ST. RES. 259, 268–89 (2000).

A special fund was also established to help churches that have no significant property to establish their infrastructure. Such distributions are made on a discretionary basis.<sup>50</sup>

#### *4. Army and penitentiary chaplaincy*

Early in 1994, the Hungarian government signed an international treaty with the Holy See to set up an Army Chaplaincy (“Chaplaincy”).<sup>51</sup> This agreement was followed by agreements with three other “historical” religious communities (the Reformed Church, the Lutheran Church, and the Alliance of Jewish Congregations). The Chaplaincy is maintained by the state, and army chaplains are given military ranks.<sup>52</sup>

The Chaplaincy was challenged before the Constitutional Court as an institutional entanglement that violated the separation of church and state by suggesting and manifesting discrimination against smaller, less-established churches in favor of “historical” churches.<sup>53</sup> The Constitutional Court reaffirmed that neither the individual nor the collective practice of religion is institutionalized by the Chaplaincy and that small or nonregistered religious communities have the same right to free exercise of religion in the military as do those for whom chaplains are provided. The state had no obligation to set up the Chaplaincy to help the practice of religion, but it did have the right to do so with the consent of the churches concerned; consent of the churches concerned was necessary in order to avoid a violation of the separation clause. In its decision, the Constitutional Court referred to a statement from the Minister of Defense, which referred to a representative survey of religious affiliations in the army. According to that survey, 62% of the members of the army declared themselves Catholic, 15% Reformed, 3% Lutheran, and 1% Jewish, while 0.2% collectively belonged to fifty-four other registered churches. About 20% of those surveyed did not give an answer or declared themselves non-religious. Half of the registered churches

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50. *Id.* at 269.

51. See Péter Erdő and Balázs Schanda, *Church and State in Hungary: An Overview of Legal Questions*, 6 EUR. J. FOR CHURCH & ST. RES. 219, 223–34 (1999).

52. See On the Army Chaplain’s Service, Government Decree No. 61/1994 (IV.20) Korm. (1994), translated at <http://www.religlaw.org/template.php?id=135> (last visited Jan. 26, 2002).

53. See Decision 970/B/1994, ABH. 739 (Alkotmánybíróság [Constitutional Law Court] 1995).

had no adherents serving in the military. The Constitutional Court stated that “treating the churches equally does not exclude taking the actual social roles of the individual churches into account.”<sup>54</sup> Furthermore, the Court also found that the Chaplaincy does not infringe upon the free exercise of religions that are not included in the scheme and that there is no unconstitutional entanglement as the Chaplaincy has not become an institutional part of the military, but instead works alongside it. For example, chaplains with military ranks and uniforms are not entitled to give commands, and the Chaplaincy is not subordinate to the Ministry of Defense.<sup>55</sup>

In creating the Chaplaincy, the state had the right to single out the four “historical” religions, which all had a minimum number of adherents. Equality does not require the provision of a chaplain from every congregation, especially if there are no congregation members in the military either because of the size of the congregation or because of conscientious objection. However, access to military premises is not restricted to official army chaplains. Smaller communities certainly have the same right to exercise their religion on military premises as do the Catholic Church, the Reformed Church, the Lutheran Church, and the Alliance of Jewish Congregations.

In 2000, a chaplaincy for the penitentiaries was established for the Catholic, the Reformed, and the Lutheran churches, as well as for the Jewish Community. This institution is similar to the Army Chaplaincy. All registered religions have the right to pursue religious activities in the penitentiaries on the request of the inmates; however, the four largest religions are institutionalized, and their pastors can become public servants paid by the penitentiaries as their own staff. To qualify, these chaplains must have permission from their churches, and they must comply with the requirements of civil servants.

### 5. *Media law*

The public media in Hungary is managed by shareholding companies. The governing bodies of these companies are public founda-

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54. On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48, 53 (Alkotmánybíróság [Constitutional Law Court] 1993), *translated in* SÓLYOM & BRUNNER, *supra* note 8, at 253.

55. *See* Decision 970/B/1994, ABH. 739 (Alkotmánybíróság [Constitutional Law Court] 1995).

tions. The boards of the Hungarian Television Foundation and of the Hungarian Radio Foundation are each comprised of twenty-one people delegated by various organs of the civil society. The Hungarian Television Public Foundation, which manages a satellite program, is comprised of twenty-three people. The Catholic Church, the Reformed Church, the Lutheran Church, and the Alliance of Jewish Communities take turns holding one seat on each board. All the other churches delegate one person to a collectively shared seat on each board.<sup>56</sup> Although the special treatment of the four “historical” churches has received criticism, the smaller religious communities that share the other seat represent less than two percent of the population.<sup>57</sup> Thus, both the small and the large churches could argue that the other churches are over represented.

Public media allocates time to broadcast services and other programs of religious communities. This allocation of broadcast time is based on an agreement with eight churches, which takes into account the membership proportions of the churches while trying to avoid great differences in the amount of time allocated to each church.

#### *6. Funding of religious communities*

According to Hungarian law, not only are public activities of churches entitled to state support, but churches themselves may also be granted state subsidies from the state budget passed by Parliament.<sup>58</sup> In recent years, the portion of Parliament’s budget allocated for the support of churches has been determined by specific decisions of Parliament based on proposals by the Committee for Human Rights, Minorities, and Religion of the Parliament. In order to ensure proper distribution of monetary church support, the Ministry for Educational and Cultural Affairs requested an assessment of the denominational status of the population.<sup>59</sup> However, the distribution

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56. On the Media, Act I § 56(1)(b)–(c), (2)(b)–(c) (1996).

57. See 2001 CENSUS, available at [www.ksh.hu/pls/ksh/docs](http://www.ksh.hu/pls/ksh/docs). For representative surveys conducted in the 1990s, see KÖZPONTI STATISZTIKAI HIVATAL [HUNGARIAN CENTRAL STATISTICAL OFFICE], VALLÁSI ÉLET MAGYARORSZÁGON 1992-BEN [RELIGIOUS LIFE IN HUNGARY IN 1992] (1993).

58. Law on Freedom of Conscience, *supra* note 20, Act IV § 19(2).

59. According to this survey, 74.4% declared themselves to be Catholics, 16.7% Reformed, 4.1% Lutheran, and 0.5% Jewish, while all other denominations made up 0.5% together. See Miklós Tomka, *Hit és Társadalmi Elkötelezettség*, in MIKLÓS TOMKA, CSAK

schedules were ultimately not adjusted to these proportions. In 1991 and 1992, support was granted to all registered churches that filed the necessary request with the Ministry for Educational and Cultural Affairs. In 1993, four applicants were denied all funds.<sup>60</sup> During the Commission's dispute regarding these applicants, some members of Parliament allegedly called the excluded churches "subversive sects." These churches filed a motion with the Constitutional Court, claiming that the denial of funds was unconstitutional under Article 70/A of the Constitution,<sup>61</sup> which prohibits discrimination based on religion. The Constitutional Court denied the motion, stating that it lacked jurisdiction over the case.<sup>62</sup> One of the excluded churches filed a lawsuit over the "destructive sects" reference, finding it degrading. However, the label was not actionable since it did not appear in any legal document, but rather it was used in statements made by individual members of Parliament who were free to express their opinions.<sup>63</sup> The Commission subsequently limited the distribution of funds to religious communities that have both been registered for at least five years and that receive public funding for performing public services such as education or social care.<sup>64</sup>

The Act regarding real estate discussed in Part III.B.3 included a provision that promised a separate act on funding so that the reacquired properties would be able to function.<sup>65</sup> In 1994, the government promised to arrange for such financing through the income tax system. After an agreement with the Holy See solemnly signed in the Vatican on June 20, 1997, the Parliament passed a new law on the

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KATOLIKUSOKNAK 35, 53 (1995).

60. The four churches that were denied support were the Unification Church, Jehovah's Witnesses, Community of the Faithful with KRISHNA Consciousness (ISKCON), and the Church of Scientology.

61. Article 70/A(1) of the Hungarian Constitution reads:

The Republic of Hungary shall ensure the human and civil rights for all persons on its territory without any kind of discrimination, such as on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.

A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [Constitution] art. 70/A(1), *translated in SÓLYOM & BRUNNER, supra* note 8, at 403.

62. Constitutional Court Resolution, 439/B/1993, ABH. 908 (Alkotmánybíróság [Constitutional Law Court] 1993).

63. Supreme Court Pfv. IV, 22.499/1995, BH. 276 (1997).

64. See Parliament Res. 128/1995, (XII.28) OGY hat. (1995) for the distribution of subsidies in 1996.

65. On Ownership of Former Real Properties, *supra* note 32.

funding of religious and public activities of churches.<sup>66</sup> The tax assignment system introduced in the law replaced the direct budget funding that led to the controversies described above. The new law reaffirmed the guarantees of equal funding for public activities. It also allowed taxpayers to contribute 1% of their income tax to a church of their choice and 1% of their income tax to an NGO (i.e., association, foundation, or public institution, such as a museum or theatre).<sup>67</sup> Until 2002, the state will subsidize individual income tax contributions so that the total sum of contributions matches the direct state subsidies provided in 1998.<sup>68</sup> Although this new funding scheme treats all registered churches equally, nonregistered religious communities cannot benefit from these income tax contributions since contributions to “foundations with religious aims” do not, at present, enjoy tax deductibility. In 2001, 99 of 137 registered churches received tax assignments.

Under relevant provisions of Hungarian law, churches performing public activities are granted budgetary support in an amount equal to the support granted to public institutions for the same purposes.<sup>69</sup> This provision of support has been a major step toward achieving a “neutrality of sectors.” The aim of the legislature in allowing for such support was to provide total financing of public activities in hopes of avoiding discrimination. The legislature’s reasoning was based on the fact that parents of church-school students pay taxes and that churches contributing to the public should receive more funds.<sup>70</sup>

### 7. *Taxation benefits*

Churches and religious legal entities enjoy a wide range of tax

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66. On the Financial Conditions of the Religious and Public Purpose Activity of Churches, Act CXXIV (1997), *translated at* <http://www.religlaw.org/template.php3?id=136> (last visited Jan. 26, 2002).

67. *See* Schanda, *supra* note 49, at 269–70. Contrary to the funding system introduced in Italy in 1987, taxpayers in Hungary decide the percentage of their own income tax. This has led to considerable difficulties, as 80% of the income tax is paid by 20% of the taxpayers, which is less than 10% of the population. Although the Constitutional Court did not find the scheme unconstitutional, there was strong dissent. *See* Decision 10/1998, (IV.8) ABH. 105, 115 (Alkotmánybíróság [Constitutional Law Court] 1998).

68. *See* Schanda, *supra* note 49, at 270.

69. *See* Law on Freedom of Conscience, *supra* note 20, Act IV § 19(1); Schanda, *supra* note 49, at 272.

70. *See* Schanda, *supra* note 49, at 272.

benefits.<sup>71</sup> Generally, churches have been treated equally with respect to taxation, but recent changes in the law have shown that the legislature is looking for ways to make distinctions between churches. It is to be noted in this respect that the registration procedure to become a “church” in Hungary is absolutely formal; there is no internal scrutiny for granting tax exemptions like there is in the United States by the Internal Revenue Service or in the United Kingdom by the Charity Commission.

The introduction of a new tax benefit for certain churches is perhaps the most sensitive issue concerning the legal equality of churches today. As of January 1, 2001, a new exemption was introduced that allows a partial tax deduction for donations made to certain churches.<sup>72</sup> Only donations to churches that meet one of the following criteria qualify: a church must have existed in the country for at least 100 years, be registered for at least thirty years (excluding the forty-two years of communist regime), or must receive the support of at least 1% of the nation’s taxpayers.<sup>73</sup> At present, twenty-two churches meet one of these criteria.<sup>74</sup> In order for donations to non-qualifying churches to receive the same partial tax deduction, a public benefit foundation must be created; this has been common practice in the case of many local communities. The decision-making sessions of public benefit foundations must be accessible to the public. Thus, the legislature apparently requires less transparency from more established churches than from newer ones, as this is a fundamental difference between the obligations of churches and the obligations of public benefit foundations.

A case challenging the new exemption is pending in the Constitutional Court. Regardless of whether the required criteria may be successfully disputed, an underlying question must first be answered: must all churches be granted the same tax benefits, or should it be left to the discretion of the legislature to make nonarbitrary distinctions? Currently, some tax benefits are granted on a discretionary basis by the taxation authority in Hungary. The most significant discre-

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71. *See id.* at 275–76.

72. On the Financial Conditions of the Religious and Public Purpose Activity of Churches, Act CXXIV § 2(3) (1997), *translated at* <http://www.religlaw.org/template.php?id=136> (last visited Jan. 26, 2002).

73. *Id.* § 2(3)–(4).

74. See 148 OFFICIAL GAZETTE [MAGYAR KÖZLÖNY] (2001) for a list of qualifying churches published by the Minister of Finance and the Minister of Cultural Heritage.

tionary benefits are for value-added tax (VAT) and for customs.<sup>75</sup> Eligibility is strictly regulated, but the authorities decide on a case-by-case basis whether an eligible entity will receive the tax reimbursement.

#### *8. Laws with a secular purpose*

Laws with a secular purpose may affect members of different religious communities in different ways. For example, representatives of the religious Jewry in Hungary challenged provisions of the Labor Code,<sup>76</sup> arguing that the Labor Code discriminates against them in their free exercise of religion because the Labor Code only recognizes Christian holidays (December 25 and 26, Easter Monday, and Pentecost Monday) as days of rest.<sup>77</sup> Furthermore, the Labor Code allows the Minister of Labor to designate Saturdays as official work days in order to provide long weekends (for example, if a public holiday falls on a Thursday, the Minister of Labor can declare Friday a holiday in order to create a long weekend, but a Saturday from a previous or subsequent week will be designated a work day instead) but does not allow Sundays to be official work days.<sup>78</sup>

The Constitutional Court has stated that constitutional obligations of the state prohibit the privileged treatment of one religion. For example, the state cannot declare all the holidays of a particular religion as days of rest. Rather, the state must ensure the free exercise of all religions. Historically, religious motives influenced the state's decision in picking state holidays, but the present holidays are simply the ones that the vast majority of the society (not only practicing Christians) celebrate. Christmas and Easter, for example, are closely connected to family and folkloric traditions. No Jewish holiday has gained such popular acceptance, and therefore, is not recognized as a state holiday. The protection of Sunday as a day of rest was originally based on religious beliefs but now serves the secular purpose of providing people with a uniform day of rest.<sup>79</sup>

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75. See Schanda, *supra* note 49, at 276.

76. Labor Code, Act XXII § 125 (1992).

77. See *id.*

78. See *id.*

79. Decision 10/1993, (II.27) ABH. 105 (Alkotmánybíróság [Constitutional Law Court] 1993). The solution the Constitutional Court reached in this case is similar to what the Supreme Court of the United States of America reached in *McGowan v. Maryland*, 366 U.S. 420 (1961), where it stated, "There is no dispute that the original laws which dealt with Sun-

*C. The Meaning of Equality*

Treating equally situated groups differently is undoubtedly discriminatory. However, a more difficult question arises regarding the extent to which differences between groups of people may be considered when ensuring rights or providing benefits. Can the legislature take into consideration differences between religious communities? What kinds of differences can be taken into consideration? What are the permissible methods of making distinctions?

The neutral legal order must approach religious communities equally. When religion-specific accommodation is made by the Hungarian legal system (i.e., for conscientious objection, ritual slaughter, etc.), it is made based on the needs of individuals rather than by granting an exception to a specific religious community. Generally, the state is not supposed to take religious differences into consideration when making decisions. For example, rights or benefits cannot be provided to groups because they follow certain doctrines. However, the social realities of different religions can be taken into consideration if the social differences are relevant to the distinction being made. In the case of the Army Chaplaincy, the size of the communities proved to have relevance, whereas in the restitution of property cases, the age, former wealth, and amount of suffering of religious communities under communism proved to be relevant. Relevant distinctions are issue specific and cannot be transferred unconditionally from one issue to another. It would have been unconstitutional to require a minimum church size in the restitution procedure because such a requirement would have excluded the Orthodox communities or the Salvation Army from the procedure without a relevant reason. Using the same standard that was used with the Army Chaplaincy would have been senseless. If distinctions between religious groups are made, they must be made on a non-religious (social or external) basis; the actual differences must be relevant to the case at hand, and the distinction must not be arbitrary.

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day labor were motivated by religious forces.” *Id.* at 431. However, “[t]he present purpose and effect . . . is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the State from achieving its secular goals.” *Id.* at 445.

## IV. PARENTAL RIGHTS

In the late 1980s, there was a significant shift of emphasis from the rights of parents to the rights of children with regard to religion. In 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child.<sup>80</sup> This new convention differs from older international documents in that it acknowledges an independent right of children to freedom of thought, conscience, and religion. Under the Convention on the Rights of the Child, parents or legal guardians only have the right “to *provide direction* to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”<sup>81</sup> Previous international documents, such as the 1981 Declaration, placed particular emphasis on the rights of parents or legal guardians to organize life within the family in accordance with their religion or belief and to decide whether their children will receive religious education.<sup>82</sup> Under the 1981 Declaration, the wishes of parents regarding religion or belief are to be respected even if a child is not in the parents’ care, and the requirements of the 1981 Declaration protect the religious integrity of the family, especially against the state. Similarly, the ICCPR states that the “States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>83</sup> It must be decided whose right it is to make decisions concerning the religious life of a minor. Whereas the 1981 Declaration and the ICCPR acknowledge that parents have the right to make such decisions, the Convention on the Rights of the Child only recognizes the right of parents to *provide direction* in the making of such decisions.

In the case of Hungarian law, the Hungarian Constitution acknowledges the parental right to choose the kind of education that their children shall receive.<sup>84</sup> The Law on Freedom of Conscience

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80. *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, Supp. No. 49, U.N. Doc. A/44/49 (1989), available at <http://www.un.org/documents/ga/res/44/a44r025.htm>. For more information on the Convention on the Rights of the Child, see <http://www.unicef.org/crc/crc.htm>.

81. *Id.* art. 14(2) (emphasis added).

82. *1981 Declaration*, *supra* note 1, art. 5.

83. ICCPR, *supra* note 2, art. 18(4).

84. The Hungarian Constitution states:

(1) In the Republic of Hungary, all children have the right to receive the protection

and Religions as Well as Churches (“Law on Freedom of Conscience”) also emphasizes the rights of parents: “Parents and guardians are entitled to decide on the moral religious education of their minor children, and to provide for it appropriately.”<sup>85</sup> However, a 1996 amendment to the Public Education Law seems to move toward acknowledging the child’s right. The amendment states that the right of parents to choose the education of their children according to the parents’ religion is guaranteed but adds the caveat that parents must exercise this right in the best interest of the child, respecting the child’s freedom of conscience and religion and taking the child’s opinion—according to his age and maturity—into consideration.<sup>86</sup> The goal of the social-liberal government in passing this amendment was probably to enhance children’s rights rather than to limit parental authority. The right to decide, however, cannot be a concurring right of parents and children, whereas it may be a concurring right between parents. We must either recognize the right of the parents to send their child to a parochial school or acknowledge the right of the child to object. Some countries have set an age at which the minor’s right to decide on religious issues becomes decisive. For example, in Germany, children over the age of fourteen are free to decide whether they will participate in the compulsory religious education (“Religionsmündigkeit”). Hungary’s legal system does not have such a practice. However, in the unlikely event that family disputes of this kind would go before courts, it is likely that parental rights would prevail. The law requiring respect of children’s individual decisions and opinions is a “soft law” requirement.

#### V. “CHURCH” IN THE HUNGARIAN LAW: ATTEMPTS FOR LEGISLATIVE CHANGES

The Law on Freedom of Conscience<sup>87</sup> was passed a few months before the first democratic elections. The Act was a major step toward the realization of religious freedom; it provided for both indi-

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and care of their family, of the State and of the society which is necessary for their proper physical, mental and moral development.

(2) Parents have the right to choose the education to be given to their children.

A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [Constitution] art. 67, *translated in SÓLYOM & BRUNNER, supra* note 8, at 402.

85. Law on Freedom of Conscience, *supra* note 20, Act IV § 5.

86. On Public Education, Act LXXIX § 4(1) (1993).

87. Law on Freedom of Conscience, *supra* note 20, Act IV.

vidual and collective freedom as well as for a strict, yet benevolent, separation of church and state.

Prior to the new law, religious communities needed recognition granted by the executive, as is the case in many European countries. According to the Law on Freedom of Conscience:

Those following the same religious beliefs may, for the purpose of exercising their religion, set up a religious community, religious denomination or church (hereinafter together referred to as “church”) with self-government. Churches may be founded for the purpose of pursuing all religious activities which are not contrary to the Constitution and do not conflict with the law.<sup>88</sup>

The registration of churches is performed by the county courts<sup>89</sup> in a manner similar to the registration of associations, political parties, and foundations. The requirements are highly formal: the church must be founded by at least one hundred private individuals, must have a charter (containing at least the name, the seat, the organizational structure, and the names of the organizational units of the church that are legal entities), and must have elected organs of administration and representation.<sup>90</sup> The founders are required to submit a declaration attesting to the organization’s religious character and that its activities comply with the Constitution and the law.<sup>91</sup> Churches, unlike associations, are not required to have a democratic structure. The registration requirements set forth by the Law on Freedom of Conscience only apply to churches registered after 1990. Churches registered before 1990 were automatically registered in the new system.

All registered churches have the same rights and the same obligations. As mentioned earlier, however, equality is a matter of legal status, not of social significance. As the Constitutional Court stated, “[T]reating the churches equally does not exclude taking the actual social roles of the individual churches into account.”<sup>92</sup> The fact that it is easier to practice a larger, well-established religion does not raise a constitutional issue. The state can also make distinctions between

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88. *Id.* § 8.

89. *See id.*

90. *See id.*

91. *Id.* §§ 8–9.

92. On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48, 53 (Alkotmánybíróság [Constitutional Law Court] 1993), *translated in* SÓLYOM & BRUNNER, *supra* note 8, at 253.

churches based on social significance without violating the constitution.<sup>93</sup>

The registration system of religious communities has been the target of criticism since the Law on Freedom of Conscience was passed in 1990. Many representatives of traditional churches were offended by being placed in the same legal category as “sects.” Some Protestant ecclesiologists claimed a separate status for the mainstream communities<sup>94</sup> in public law. It is true that an unexpectedly large number of “churches” have been registered<sup>95</sup> and that the religious nature of a number of these organizations is doubtful.<sup>96</sup> Individual members of Parliament drafted proposals to change the law in 1993 and 1998, petitioning to raise the necessary minimum number of founders to 10,000 or to require at least 100 years of presence in the country of the given faith. The proponents of changing the law also proposed to impose the additional requirement of a pledge that the organization would not violate the public order, health, morals, and rights of others. These motions were not taken on the agenda of the Parliament, but they did contribute to the discussion over the status of churches. The ease with which an organization can obtain the legal status of a “church” has led controversial groups and even questionable commercial undertakings to obtain this privileged status. The government that came into power in 1998 intended to change the law and proposed a new draft for the Law on Freedom of Conscience. The reason behind the desired change was not the large number and variety of faith-based communities registered as churches but the abuse of the system and desire to ensure that only genuine religious groups would be registered as such.

Since the support of two-thirds of the members of Parliament<sup>97</sup>

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93. *See supra* Part III.B.

94. *See* 2 LÓRÁND BOLERATZKY, A MAGYAR EVANGÉLIKUS EGYHÁZJOG ALAPJAI ÉS FORRÁSAI [THE FUNDAMENTALS AND THE SOURCES OF THE HUNGARIAN LUTHERAN ECCLESIASTICAL LAW] 381 (1998).

95. Over 100 churches are currently registered. The most recent list provided by the Secretariat for Church Relations lists 136 churches. MAGYARORSZÁGI EGYHÁZAK, FELEKEZETEK, VALLÁSI KÖZÖSSÉGEK 2001–2002.

96. For example, the registration of UFO-Believers and the Association of Witches as churches demonstrates the broad applicability of the registration requirements.

97. The Constitution requires the votes of two-thirds of the members of Parliament to pass acts on fundamental rights. *See* On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48 (Alkotmánybíróság [Constitutional Law Court] 1993), *translated in* SÓLYOM & BRUNNER, *supra* note 8, at 250.

would have been required in order to pass the proposal, a compromise between the Government and the opposition would have been necessary. The proposal included an amendment to the law defining religion in the registration and unregistration procedure as follows:

Concerning the application of the provisions of this Act on the registration of churches, such a world-view can be qualified as religion, that refers to a transcendent entity, has a structured set of beliefs, its doctrines focus on reality as a whole and it encompasses the totality of the personality with its particular behavioral requirements which do not violate the morals and human dignity.<sup>98</sup>

Activities would not qualify as religious activities under the proposal if they are primarily and dominantly “a. political and interest-representing, b. psychic, parapsychology and healing, c. economic-entrepreneurial (for the purpose of material profit), d. educational-teaching, e. culture-mediating, f. social and health care, g. sporting, child- and youth-protection nature . . . .”<sup>99</sup>

Under the proposal, these activities could be legitimate activities of a church but only as secondary activities; a church’s primary activity would have to be of genuine religious character. If the proposal were passed, courts would have considered whether such definitions violated due process. This part of the amendment was unacceptable to the Socialist Party (in opposition, holding over one-third of the votes), as it maintained that the state had no power to define religion at all. However, the definition would have been applicable only in the registration procedure, and being registered is not ultimately required to practice a religion.

The amendments would have affected the availability of public information regarding religious communities. An organization seeking registration would have had to submit an explanation of its basic religious doctrines, not for the purpose of being reviewed, but to be made public. In the event of a lawsuit, the proposed amendments would have given the public prosecutor the right to obtain documents and data concerning the lawful operation of the church as well as information regarding the lawsuit.<sup>100</sup> Since public prosecutors do

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98. Proposed Amendment to Law on Freedom of Conscience and Religions as Well as Churches § 8(3) (2000), *translated at* <http://www.religlaw.org/template.php3?id=187> (last visited Jan. 26, 2002).

99. *Id.* § 8(4).

100. *See id.* § 20(3).

not currently have access to such information, there are hardly any lawsuits against churches. Additionally, under the proposed amendments, registration would have been done in one court in Budapest, instead of in county courts, to ensure the consistency of the practice.<sup>101</sup> Judges ruling on registration would also implicitly decide whether a group was of religious character or not.

At first, the Socialist Party consented to three issues: centralizing the register of churches in Budapest, requiring the submission of a creed, and giving more power to the public prosecutor. A few days after the formal agreement, however, the left-wing opposition party backed out because another law passed by Parliament a few months earlier provided a new tax benefit only to certain churches but not to all of them.<sup>102</sup> The difference in opinion between the left-wing and right-wing parties regarding the equality of churches has become a major issue. Most socialist members of Parliament voted against the amendment while a significant number of members abstained. The amendment failed by a vote of 199 “yes” votes to 98 “no” votes; 31 members of Parliament abstained.<sup>103</sup>

Despite differences in opinion regarding the registration of churches, it is important to remember that the practice of religion, whether in private or in public, alone or with others, is not bound to any kind of legal status or structure. Both registered and unregistered groups enjoy the same legal freedoms; unregistered groups have the same right to manifest their beliefs as groups that have the legal status of a “church.”<sup>104</sup>

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101. *See id.* § 9; Draft Bill T/3621, at <http://www.mkogy.hu>. The concept of the amendment was published in: Balázs Schanda, *Szakmai Konceptió a Lelkiismereti és Vallásszabadságról Valamint az Egyházakról Szóló 1990. Évi IV. Törvény Módosítására* [The Concept for the Amendment of the Act IV/1990 on the Freedom of Conscience and Religion and on Churches], 47 MAGYAR JOG 1, 10–17 (2000).

102. As discussed *supra* in Part III.B.7, donations to a church became tax deductible if the church had at least the support of 1% of income tax payers, had been present in the country for at least one hundred years, or had been registered for at least thirty years. So far twenty-two churches have qualified on at least one of these requirements. Other churches can access the same taxation benefit if they set up a public benefit foundation. The difference in the schemes is that foundations have to be more transparent than churches. A case is pending in which the Constitutional Court must decide whether the distinction between churches was arbitrary or not.

103. The voting took place on the April 17, 2001. Voting data is available at HOUSE OF THE NATION, INFORMATION SYSTEM OF HUNGARIAN NATIONAL ASSEMBLY, at <http://www.mkogy.hu> (last visited Apr. 1, 2002).

104. *See* Decision 8/1993, (II.27) (Alkotmánybíróság [Constitutional Law Court] 1993).

## VI. OTHER WAYS TO COMBAT ILLEGAL ACTIVITIES

Under Hungarian law, based on the country's experience with communist rule, there is no organization that directs and supervises churches even though the activities of churches must comply with the law. "In the case of the violation of the law by a church legal entity, the Public Prosecutor shall institute legal proceeding against such a church legal entity."<sup>105</sup> Unfortunately, since the public prosecutor lacks the means to gather information on church activities, this process hardly functions. Since 1990, there have been only two cases brought to court by the public prosecutor in this manner: one case involved the "Association of Witches" and the other case involved the "Church of Universal Love," a group engaged in faith healing.

In recent years, the Tax Audit Office has carried out wide scale audits of some churches. The Charismatic-Evangelical Faith Church and the Church of Scientology were among the churches subjected to scrutiny. No serious breaches were found; however, the legal provisions seemingly provide many opportunities for abuse due to the fact that registering a church is almost automatic and that registered religious communities are assured almost all tax benefits. Registered churches can abuse benefits provided to churches by declaring their members "ecclesiastical persons" so that they can also enjoy various income tax benefits, be exempt from military service, etc.

The 1999 Report of the Office of National Security ("Report") provides information about "religious movements" that are dangerous to society. According to the Report, a new organization emerged that portrays religious characteristics on the surface but, in fact, abuses the naivety of its members, making them mentally and economically dependent, in order to gain more and more influence in society. Leaders of the organization try to gain positions of political and economic power.<sup>106</sup> According to the Secret Service's observations of the group's operations, it is clear that the "theological doctrines" only act as a cover behind which the group can hide its economic and political goals.

Although the Report did not mention any religious group by name, the Scientologists complained of being observed, and many people recognized the Report's descriptions of the group. For exam-

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105. See Law on Freedom of Conscience, *supra* note 20, Act IV § 16(2).

106. 1999 REPORT OF THE OFFICE OF NATIONAL SECURITY (unofficial translation by author).

ple, one passage stated:

There are other extreme religious groups with a growing membership in Hungary and we can experience the increase of phenomena which constitute a danger to the society. The number of their “believers” is also increasing, the majority of whom do not even know in the first period what group they are actually following. Later—under the influence of the group—due to the fanatic devotion and obedience, these people are less capable of representing their own interests. There were many cases when families were desperate to find the opportunity to “regain” their loved ones. . . . The Office regards it its duty to adequately inform the public, the parents as well as the schools about the activities of the extreme religious groups. For this purpose the office makes use of the official relationships and publicity.<sup>107</sup>

The 2000 version of the Report states the following under the title “Dangerous Groups Threatening Society, Operating Under the Disguise of a Religious Movement”:

In 2000 we could experience the burst of expansion of the “new religious” movement introduced in the 1999 Office of National Security Yearbook. Its national network involved in social and business manipulation and applying psychological methods is full of conspiracy. In order to exclude informants they follow an aggressive, defensive policy. Their influence is increasing while certain missions of the movement target the successful business corporations, first of all appealing to the more efficient exploitation of human resources. By persuading certain entrepreneurial groups, they have established training centres in different regions of the country, aiming at the connection to public education. They wish to win for themselves the future generation, in order to seize and possess economic and political power for a long period. At the recruiting of new members, they are not afraid to apply even violent methods, such as blackmail. Typically, they are eager to separate new members from their earlier environment, families and friends, so that they could devote themselves totally to the movement. They are continuously attacking the media and those criticising them. According to the experience of the Office, the public may gain more and more information on the real objectives of the groups operating under a religious disguise. Straightforward studies, articles telling real stories, interviews and information material help the people

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107. *Id.*

recognize the true mission of these movements and in the light of it they can develop their opinion thereof. The National Security Office fulfills its preventive-defensive duty by informing the government agencies concerned, and by providing valid information. . . . [W]e have to clarify that the Office does not deal with the doctrines or internal affairs of any of the churches, but its obligation is to prevent any activity which is disguised as a religious one but does not comply with the rules of the church or other rules, that is, contradictory to the Hungarian legal order.<sup>108</sup>

With a long history of religious tolerance, on the one hand, and the experience of lack of religious freedom during the decades of communist rule when all believers were persecuted, harassed, or at least discriminated on the other hand, the Hungarian society and the Hungarian legal order supports the widest possible freedom in the field of conscience and religion. However, religious freedom does not exempt anyone from compliance with generally applicable laws. When a law is violated, prosecution and punishment are inevitable. Yet, even groups that act lawfully can endanger society by undermining fundamental values of the family or culture. Balanced information should enable individuals, families, the media, and educators to judge the proposals in the marketplace of ideologies.<sup>109</sup> While the government and society should respect the freedom of all, public support should only be granted to groups that have proven that their services are valuable to society.

#### VII. FUNDAMENTAL PRINCIPLES OF CHURCH-STATE RELATIONS IN HUNGARY

The underlying doctrine behind the principle of separation (explicitly stated in the Constitution) is neutrality of the state. Neutrality can be seen as the most important principle governing state actions toward religious communities and other ideologies. Neutrality requires that the state shall not identify itself with any ideology or re-

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108. 2000 REPORT OF THE OFFICE OF NATIONAL SECURITY (unofficial translation by author).

109. This has also been urged by the Parliamentary Assembly of the Council of Europe. See *Recommendation 1178 (1992) on Sects and New Religious Movements*, EUR. PARL. ASS. DEB. 23d Sess. (Feb. 5, 1992), available at <http://stars.coe.fr/ta/ta92/erec1178.htm> (last visited Apr. 1, 2002); Council of Europe, *Recommendation 1412 (1999) Illegal Activities of Sects*, EUR. PARL. ASS. DEB. 18 Sess. (June 22, 1999), available at <http://stars.coe.fr/ta/ta99/erec1412.htm> (last visited Apr. 1, 2002).

ligion and, consequently, that it must not be institutionally attached to churches or to one single church. But neutrality must be distinguished from indifference, which was not intended by the Constitution. The Constitutional Court stated with regard to neutrality that the state's duty to ensure the possibility of free formation of personal convictions flows from the right to freedom of religion.<sup>110</sup> Thus, neutrality is not like the notion of "laicism" in France, as the Hungarian state may take an active role in providing an institutional legal framework and funds for churches to ensure the free exercise of religion in practice. But separation in Hungary, especially institutional separation, is more strict than the "coordination-model" functioning in Germany.

The meaning of separation can be defined on the one hand as respect for the autonomy of churches ("the State must not interfere with the internal workings of any church . . .")<sup>111</sup> and, on the other hand, as the principle stated in the Law on Freedom of Conscience: "No state pressure may be applied in the interest of enforcing the internal laws and rules of a church."<sup>112</sup>

#### VIII. CONCLUSION

Following the communist rule in Hungary, Hungarian law now strongly supports freedom of conscience and religion. Churches are to be treated equally, but the Constitutional Court recognizes that factual and social differences between churches may lead to constitutionally acceptable differences in the treatment churches receive. While the principle of separation of church and state exists in Hungary, the state can support religious organizations that provide public services. Tax laws also allow citizens to receive deductions for contributions made to certain religious organizations. Hungarian law focuses on protecting the individual right to free expression of religion rather than on protecting such freedom at the institutional level. While recent international documents, such as the Convention on the Rights of the Child, focus on rights of children in the realm of religious decision making, Hungarian law still focuses on the rights

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110. On the Restitution of Church Property, Decision 4/1993, (II.12) ABH. 48 (Alkotmánybíróság [Constitutional Law Court] 1993), *translated in* SÓLYOM & BRUNNER, *supra* note 8, at 252.

111. *Id.* at 252.

112. Law on Freedom of Conscience, *supra* note 20, Act IV § 15(2).

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of parents to make decisions regarding the religious education that their children receive as long as the best interests of the children are considered. Although there have been recent proposals to change the laws regarding registered churches in Hungary, it is important to remember that both registered and unregistered religious groups enjoy the same legal freedoms to manifest their beliefs. Neutrality is and should continue to be a guiding principle in Hungarian church-state relations.

