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Summary report on the proposed religion law in Hungary

Hungarian Civil Liberties Union

June 26, 2011.

According to the Hungarian Civil Liberties Union (HCLU) the adoption of the Parliamentary proposal concerning „the Right to Freedom of Conscience and Religion, and the Status of Churches, Religions, and Religious Communities**" (Proposal) would be a serious setback for the freedom of conscience and religion, for the separation of church and state, and for the equality of religions. The Proposal contravenes both the relevant European standards and the legal provisions in force in Hungary since the political transition of 1989. The HCLU holds that the Proposal could only be adopted after several fundamental amendments therefore it is better advised to withdraw it.**

According to the extremely laconic reasoning of the Proposal, the current provisions of Act IV of 1990 on the Right to Freedom of Conscience and Religion, and on the Status of Churches "*are too generous, making the abuse of fundamental right possible*". However, preventing of the abuse of right and ensuring the proper functioning of churches and the aim to control their financial management do not necessitate to adopt a completely new law, especially when – as the Proposal itself recognizes – the rules of the relevant fundamental right are properly settled in the existing law (and in the related decisions of the Constitutional Court). In the HCLU's view the best option in such a case is to amend certain existing provisions with a view to the experienced deficiencies and shortcomings of the legal practice. The adoption of the Proposal would result in throwing out the baby with the bath water. When adopting legal rules on the relevant provisions, the following governing principles should be kept in mind:

- The freedom of conscience and religion and to establish churches is a right that everyone is entitled to, irrespective of the fact that some might abuse this right – the alleged abuse is never enough reason to generally restrict a fundamental right. In case of misuse or abuse with a right, the task is to prevent these acts, and the State has adequate means to do that. (The prosecutor may initiate proceedings ex officio against any church violating the law under the existing rules as well.)
- The general restriction of the right to freely exercise of one's religion is discriminatory because it constrains not only those who would abuse with the right but also those who would practice it in good faith. In this respect the Proposal is „overbroad" since it restricts the rights of people falling under both categories.
- The abuse of right is not the consequence of the liberal laws but that of the existing privileges churches enjoy compared to the other civil organizations. The Proposal does not diminish this inequality but instead increases it. In this respect its rules are „too narrow" since they do not facilitate the prevention of abuse.

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The unacceptable features of the Proposal include the following:

1. The Proposal shifts from the principle of state neutrality concerning religious or other convictions towards a policy which is committed to religious way of life. It is not disputed that such policy can be pursued by a legitimate Government, however, it can only be done with due respect for equality of people. The Proposal fails to satisfy this requirement.
2. In its Appendix the Proposal lists the churches which enjoy de jure legal status. The list follows the category of „traditional and recognized churches" introduced by an Act of Parliament in 1895. By using this category, the legislator not only steps 116 years back in history but introduces an unacceptable, content-based hierarchy among religions and churches.
3. Beyond those churches enumerated in the Appendix, the Proposal requires every other lawfully functioning church to register again. In the course of the re-registration process churches have to meet discriminatory and more restrictive conditions than the current requirements. The Proposal's new registration requirements differentiate beliefs and religious convictions on a doctrinal (theological) basis.
4. As the Proposal provides for a series of privileges and exemptions to churches, they might become privileged and outstanding actors in public life and citizens' everyday life (see especially chapter IV of the Proposal). It means that religious organizations and churches are preferred by the state to any other civil organizations.
5. The Proposal is in clear contradiction with the principle of the separation of church and state as it makes it possible for the Government to cooperate with religious organizations enjoying "church status" even more closely than at present. This endangers the equal treatment of all those who are either non-religious or who are not members of registered churches.
6. The Proposal contains numerous undefined concepts, at the same time it lacks guarantees, requirements and procedures necessary for the transparent functioning of churches and cooperation of church and state. This not only makes arbitrary and discriminatory application of the Proposal's provisions possible but also results in serious legal uncertainty. Consequently the Proposal does not meet the requirements deriving from the principle of rule of law.

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