



**ADF INTERNATIONAL**

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**HUNGARY**

**Submission by:**

ADF International  
Rue du Pré-de-la-Bichette 1  
1202 Geneva, Switzerland

Web: [www.ADFinternational.org](http://www.ADFinternational.org)  
Email: [UN@ADFinternational.org](mailto:UN@ADFinternational.org)

## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right freedom of religion or belief in Hungary, where laws concerning church registration result in unjustified and discriminatory restrictions on the practices of faith communities. It also highlights the government’s crackdowns on freedom of expression and assembly, as well as concerns over parental rights in the context of children education.

### (a) Freedom of Religion or Belief

3. Article VII of the Hungarian Constitution protects freedom of religion or belief. The first clause states, ‘Every person shall have the right to freedom of thought, conscience and religion.’<sup>1</sup> The article also states that churches shall be autonomous with detailed rules governed by the Cardinal Act.<sup>2</sup>
4. In 2011, the Hungarian Parliament adopted Act CCVI of 2011 (2011 Church Act) that established a new system for churches and religious groups to acquire legal status.<sup>3</sup> This law restricted the ability for new churches and denominations to register with the state and also adversely affected the status of established churches. Due to the new law, churches that were registered under the 1990 Church Act were de-registered with the state and forced to re-register.<sup>4</sup>
5. The process of deregistration entails more than the church being removed from official state registries. Deregistration means churches are stripped of legal personality, rendering them without any rights at all.<sup>5</sup> Without legal status for churches, the human rights of congregants are restricted as this hinders their ability to freely worship according to their own conscience because select denominations are reportedly receiving preferential treatment by the government.<sup>6</sup>
6. Under the 2011 Act, about 250-300 churches lost legal status while the government only preserved the status of 14 churches. The law further stipulated that only Parliament had the authority to grant legal status to churches via a two-thirds vote.<sup>7</sup>

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<sup>1</sup> Constitution of Hungary, art. VII.

<sup>2</sup> *Id.*

<sup>3</sup> Act no. CCVI of 2011.

<sup>4</sup> Act no. IV of 1990.

<sup>5</sup> *Id.*

<sup>6</sup> H. David Baer, Texas Lutheran University. Hungary’s New Church Law is Worse than the first, <https://hdavidbaer.com/2018/12/28/hungarys-new-church-law-is-worse-than-the-first/>

<sup>7</sup> Baer, *supra* note 6

7. According to the Hungarian government and some church communities, the purpose of the law was to maintain the purity of religion within the state and prevent bad-faith organizations from gaining legitimacy and receiving state subsidies with official recognition from the government.<sup>8</sup>
8. This system of categorization and de-registration is what led the European Court of Human Rights to declare in 2014 that the 2011 Church Act violated Article 9 of the European Convention on Human Rights, which provides for freedom of thought, conscience, and religion and Article 11, which provides for freedom of assembly and association.<sup>9</sup>
9. The court held that the Hungarian government did not demonstrate that the 2011 Church Act was the least restrictive means in achieving the law's purpose. Further, the law violated Hungary's obligation to act with neutrality in religious matters and to treat similarly situated entities in the same manner with regard to material benefits. It also held that Parliament should not have the power to grant legal status to churches because of the possibility for political bias to influence the process.<sup>10</sup>
10. Hungary's Constitutional Court ruled in 2017 that preventing religious associations from collecting the church tax was unconstitutional, and directed Parliament to provide redress by the year's end. This ruling and the 2014 ECHR ruling have effectively been ignored as Parliament has failed to act in a meaningful way to remedy the issue.<sup>11</sup>
11. In 2018, Parliament has adopted a new version of the Church Law to provide remedy for the churches that have lost legal status. The new law introduces a four-tiered classification system for religious groups: Religious Associations, Listed Churches, Registered Churches, and Recognized Churches. The rationale for the tiers appears to be based on size. Only ten members are needed to register a Religious Association. Listed Churches need to have received church tax from at least 1000 individuals; Registered Churches need to have received church tax from at least 4000 people. Recognized Churches consists of Registered Churches with which the government has established 'comprehensive agreements' bestowing special privileges and benefits.<sup>12</sup>
12. These tiers grant the government wide latitude in conferring legal status to churches based on arbitrary membership totals. Compared to the old system of categorization, it gives the government even more discretion and is now arguably more discriminatory than

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<sup>8</sup> Jonathan Luxmoore, Hungarian Churches Divided Over New Church Law, <https://www.christiancentury.org/article/2011-07/hungarian-churches-divided-over-new-religion-law>

<sup>9</sup> Benjaim Novak, European Court of Human Rights says Hungary Church law violates human rights, <https://budapestbeacon.com/european-court-says-hungary-church-law-violates-human-rights/>

<sup>10</sup> *Id.*

<sup>11</sup> Benjamin Novak, Constitutional Court ruling is no win for marginalized churches, <https://budapestbeacon.com/constitutional-court-ruling-no-win-marginalized-churches/>

<sup>12</sup> Baer, *supra* note 6.

the 2011 Church Act.<sup>13</sup> As such, the rights of individuals are still harmed by the 2011 Church Act since the government has not provided redress.

#### *Freedom of Religion or Belief in International Law*

13. Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of thought, conscience, and religion for everyone. Hungary ratified the ICCPR in 1974.
14. Article 18(3) of the ICCPR states that, '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.'
15. The limitations the government has placed on church registrations do not conform to the tenets outlined here. Multiple courts have declared the church registration laws to be violative of individual's freedom of religion or belief.
16. The Organization for Security and Cooperation in Europe, to which Hungary is a Member State, also has provided guidelines about the registration and legal personality of religious associations, and has made clear that international human rights law affords protection to religious or belief communities regardless of whether or not they enjoy legal personality. It also stressed that registration must be made available on a voluntary basis as opposed to a mandatory one, and that deregistration is an extreme measure, to be taken in response to 'grave and repeated violations endangering public order.'<sup>14</sup>

#### **(b) Freedom of Expression and Assembly**

17. Article IX of the Hungarian Constitution declares, 'everyone shall have the right to express his or her opinion.'<sup>15</sup>
18. In 2018, Parliament approved Bill T/707 (Law on freedom of assembly), which severely restricts freedom of expression and assembly. The law prohibits any gathering of two or more people in the public sphere for the purpose of 'discussing public affairs.'<sup>16</sup>
19. Protestors who participate in a banned protest would be liable for a petty offense, and would incur fines up to 150.000 HUF (ca. 450 EUR). Multiple time offenders can face up to six months in prison.<sup>17</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Organization for Security and Co-operation in Europe, Guidelines on the Legal Personality of Religious or Belief Communities, Part III Religious or belief organizations, <https://www.osce.org/odihr/139046>.

<sup>15</sup> Hungary's Constitution of 2011, *supra* note 1, Article IX

<sup>16</sup> Hungarian Civil Liberties Union, SUMMARY OF THE HUNGARIAN CIVIL LIBERTIES UNION'S ANALYSIS OF THE NEW BILL ON THE RIGHT TO ASSEMBLY, <https://hclu.hu/en/articles/summary-of-the-hungarian-civil-liberties-unions-analysis-of-the-new-bill-on-the-right-to-assembly>

<sup>17</sup> *Id.*

20. The law was said to prevent demonstrators from harassing government officials in their homes. However, the law is not narrowly tailored enough to only prevent that, and has the potential effect of chilling speech and shutting down dissent against the government.<sup>18</sup>

#### *Freedom of Expression in International Law*

21. The fundamental right to freedom of expression is protected to a high degree in international law. Article 19 of the International Covenant on Civil and Political Rights (1966) holds, 'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'<sup>19</sup>

22. Restrictions on the right to freedom of expression are only valid if they are provided by law, in pursuit of a legitimate aim, and necessary in a democratic society. As UN General Comment No. 34 concludes, 'in every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with Article 19.'<sup>20</sup>

23. Bill T/707 contravenes the guaranteed rights of speech and assembly in international law. Political speech is among the highest forms of protected speech and curbing it is not a legitimate government aim, and in fact suppresses the proper functioning of a democratic society.

#### **(c) Parental Rights**

24. Under Article XVI of the Hungarian Constitution, 'parents shall have the right to choose the type of upbringing they deem fit for their children and parents shall be obliged to look after their children, [which] includes the provision of schooling for their children.'<sup>21</sup>

25. Under Act CXC of 2011 on National Public Education, 'compulsory education may be completed by school attendance or, at the request of parents, as a private student, provided that it would not be of disadvantage for the successful continuation and completion of their studies.'<sup>22</sup>

26. Authorities interpret education provisions narrowly and thus most families enroll their children into the schools provided by the educational system where students learn from the state-approved central curriculum. Local notaries keep regular contact with school

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<sup>18</sup> HUNGARY'S NEW LAW RESTRICTING FREEDOM OF ASSEMBLY

<https://hungarianspectrum.org/2018/10/02/hungarys-new-law-restricting-freedom-of-assembly/>

<sup>19</sup> International Covenant on Civil and Political Rights (ICCPR) art. 17, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3., art. 19.

<sup>20</sup> UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, available at: <https://www.refworld.org/docid/4ed34b562.html>

<sup>21</sup> Constitution of Hungary, *supra* note 1, Article XVI

<sup>22</sup> Act CXC of 2011 on National Public Education, 27. The Rights and Obligations of Children and Students, and Compulsory Education, Section 45(3), [https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106832/131356/F-1702001629/act\\_national\\_education.pdf](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106832/131356/F-1702001629/act_national_education.pdf)

headmasters and bring action against parents who fail to comply with the requirements for compulsory education.<sup>23</sup>

27. Certain 2019 amendments to the Public Education Law have given the state even more discretion to restrict homeschooling. A significant change includes allowing authorities to determine whether a child qualifies as a 'student with an individualised curriculum', which amounts to homeschooling status. Critics of the law suggest it is aimed at dismantling 'learning circles', which refers to local parent groups co-teaching their children together to share costs and burdens together.<sup>24</sup>

### *Parental Rights in International Law*

28. Under Article 18 of the ICCPR, 'the States Parties to the present Covenant undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions.'<sup>25</sup> Under Article 13 of the International Covenant on Economic, Social and Cultural Rights:

"The States parties to the present Covenant undertake to have respect for the parents ... to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions."<sup>26</sup>

29. Article 18(1) of the Convention on the Rights of the Child states, 'Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child.'<sup>27</sup> Article 14(2) requires States to 'respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child.' According to the Convention, while parents have the primary responsibility for the upbringing and development of the child, 'State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.'<sup>28</sup>
30. With respect to home education, former UN Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos, has affirmed that: 'Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children ... The promotion and development of a system of public,

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<sup>23</sup> Home Legal Defense Association, Legal status and resources on homeschooling in Hungary, <https://hslida.org/post/hungary>

<sup>24</sup> Hungary: New public education law takes a swing at alternative schools, <https://kafkadesk.org/2019/07/21/hungary-new-public-education-law-takes-a-swing-at-alternative-schools/>

<sup>25</sup> International Covenant on Civil and Political Rights (ICCPR) art. 17, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3., art. 18.

<sup>26</sup> International Covenant on Economic, Social, and Cultural Rights, art. 13(3), *opened for signature* Dec 19, 1966, U.N.T.S. 3., art. 13.

<sup>27</sup> Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3., art. 18(1)

<sup>28</sup> *Id.*, art. 14(2)

government-funded education should not entail the suppression of forms of education that do not require attendance at a school.<sup>29</sup>

### **Recommendations**

31. In light of the aforementioned, ADF International suggests that the following recommendations be made to Hungary:

- a. Ensure that the right to freedom of religion is duly recognized and respected;
- b. Implement respect for the right to freedom of religion by adhering to the decisions of Hungarian constitutional courts as well as the European Court of Human Rights regarding the church registration laws;
- c. Repeal or review the restrictive church registration laws in order to allow religious groups to operate freely;
- d. Amend the Law on freedom of assembly to ensure the rights to freedom of assembly and expression are duly protected;
- e. Review Act CXC on National Public Education to amend the requirements set out for parents intending to homeschool their children;
- f. Respect the right guaranteed under international law of parents to raise and educate their children in accordance with their moral and religious convictions;
- g. Recognize that the State has no legitimate authority under international law to mandatorily prescribe conventional education for all children, that individuals have the right to seek alternative forms of education, and that the prohibition of home education is a violation of international human rights law.

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<sup>29</sup> UN Human Rights Council: Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany (13-21 February 2006), 9 March 2007, A/HRC/4/29/Add.3, last accessed on 4 July 2019 available at: <https://www.refworld.org/docid/4623826d2.html>



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