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Human Rights Without Frontiers Int'l

Newsletter "Intolerance and Discrimination Based on Religion or Belief"

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HUNGARY

The new draft law on religion criticized by the Hungarian Civil Liberties Union

HRWF

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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.

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.

HUNGARY

Freedom of religion or belief defenders ask the Hungarian authorities not to adopt the draft law on religion on 11 July

Joint Statement

On the Proposed Religion Law before the Parliamentary Assembly of Hungary "The Right to Freedom of Conscience and Religion, and the Status of Churches, Religions, and Religious Communities"

July 8, 2011



We are scholars, religious leaders, human rights advocates and practitioners who are deeply concerned about the proposed religion law that is scheduled to be voted on by the Parliamentary Assembly of Hungary on July 11, 2011.

We have read analyses that provide detailed information as to why enactment of this legislation would represent a serious setback for religious freedom in Hungary as it contravenes standards of the European Union, the Council of Europe, the European Convention on Human Rights, the OSCE and the United Nations by discriminating against minority religious groups.

As we understand it, the legislation would "de-register" targeted minority faiths that have been registered as religions in Hungary since the adoption of the 1990 Religion Law, while allowing favored religious organizations to maintain their registered religious status and enjoy all the rights and privileges that flow to religious organizations under the Bill. Over a hundred religious organizations currently registered as such will be retroactively stripped of their status as religious communities and "de-registered" as religious organizations if these provisions become law.

Some proponents of this legislation in Hungary have attempted to justify these discriminatory provisions by arguing that they meet human rights standards because "deregistered" religious organizations may continue to operate as "civil associations performing religious activities." This argument ignores direct and controlling precedent from the European Court of Human Rights (ECtHR) that a tiered system offering an inferior religious status to minority faiths violates the right to religious freedom and the right to be free from religious discrimination.

In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (July 2008, Application no. 40825/98), the ECtHR found that the status of a "registered religious community" was inferior to that of a "religious society", as "religious communities" were subject to more severe

State control in respect of their religious doctrine, their rules on membership and the administration of their assets pursuant to the 1998 Religious Communities Act.

The ECtHR concluded that that difference in treatment violated the right to be free from religious discrimination, which is protected by the anti-discrimination clause of Article 14 of the European Convention on Human Rights, taken in conjunction with the right to religious freedom protected by Article 9.

There is no question that the proposed Hungarian law relegates "de-registered" religious communities to an inferior status. Religious organizations that have been "de-registered" may not use the name "Church" and will also lose their status as a religious organization if they are not "re-registered" through burdensome Court proceedings. "Re-registration" can only occur if a minority religious community meets onerous duration and population requirements showing that it has been organized in Hungary for at least 20 years and has at least 1,000 members.

These requirements represent a transparent attempt to suppress minority religious freedom in complete contravention of ECtHR decisions and UN and OSCE standards. This exclusionary approach would frustrate the policy of "true religious pluralism" and result in arbitrariness and unfair discrimination to exclude new and minority faiths from registration as religious organizations.

For these reasons, we urge the Parliamentary Assembly of Hungary not to enact this legislation.

Respectfully,

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Rev. Susan Taylor
President
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Some activities in 2011

Histoire et Liberté (France): Publication of Willy Fautré's and others' interventions at the Festival des Libertés in 2010 under the title "La Corée du Nord: Kimjongilia" (June 2011)

One World Human Rights Documentary Film Festival: Granting the Award to the film THE GREEN WAVE at the Czech Permanent Representation (26 May)

Roundtable about human rights in Bahrein at the embassy of Bahrein in Brussels (25 May)

One World Human Rights Documentary Film Festival: Organizing the screening of the film THE PROSECUTOR and a debate with the ICC Chief Prosecutor, Mr Moreno Ocampo, at the European Parliament (24 May)

One World Human Rights Documentary Film Festival: Organizing the screening of the film RAINMAKERS and a debate with Vincent Metten (ICT) and Leah Strauss (HRWF/ Denmark) at the Czech Permanent Representation in Brussels (24 May)

One World Human Rights Documentary Film Festival: Setting up and chairing a jury for the Best Film (May)

Publication of an article entitled "Trafficking in human beings and sexual exploitation: the criminalization of the clients and the reduction of the demand in Sweden" (in English and in Ukrainian) in Mitna Sprava Nr 1 (73) 2011 (Magazine of the Academy of Law, University of Odessa), pp 48-56 (May 2011)

EU Fundamental Rights Agency (Vienna): Organizing a workshop on the topic "Broadening the scope of religious intolerance and discrimination by the EU Fundamental Rights Agency" (14 April)

European Parliament: Presentation of the book "Madame Chiang Kai-shek" by Philippe Paquet, journalist at La Libre Belgique and sinologist (12 April)

See <http://taiwaninfo.nat.gov.tw/ct.asp?xItem=159804&ctNode=467&mp=4>

Publication of an article entitled "Belgium : Political (mis)management of linguistic diversity" in the English and the Russian issues of the Ukrainian daily newspaper DEN (22 March)

Guest-speaker at a conference in Paris: FECRIS, freedom of religion and human rights (22 March)

Article in New Europe: IDPs in Azerbaijan call upon the EU to speed up their return to Nagorno-Karabakh (7 March)

Interview by Turkish Radio and Television (17 February)

Presentation of HRWF report on IDPs in Azerbaijan (9 February)

Fact-finding mission du Azerbaijan (27-31 January)

Major conferences organized by HRWF at the European Parliament

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DEBATE ON THE INTERNATIONAL CRIMINAL COURT (ICC)
after the screening of the film THE PROSECUTOR (24 May)
(Guest-speaker: Mr Moreno-Ocampo, Chief Prosecutor of the International Criminal Court)

LAUNCHING OF THE BOOK "MADAME CHIANG KAI-SHEK" (2011)
(Guest-speaker: Philippe Paquet, journalist at La Libre Belgique and sinologist)

AZERBAIJAN: INTERNALLY DISPLACED PERSONS (2011)

RUSSIA: MISUSE OF THE LAW ON EXTREMISM AGAINST RELIGIOUS MINORITIES (2010)
(Major guest-speaker: Head of the OSCE/ODIHR Advisory Board on Freedom of Religion or Belief)

HUMAN RIGHTS IN NORTH KOREA (2010)
(Major guest-speaker: Pierre Rigoulot, author of the book "The Aquariums of Pyongyang")

NORTH KOREA: SCREENING OF THE FILM KIMJONGILIA (2010)
(With the participation of the film maker, N. Heikin)

HUMAN RIGHTS IN CAMBODIA (2009)
(Major guest-speaker: U.N Special Rapporteur on Cambodia)

HUMAN RIGHTS IN CHINA (2008)
(With the participation of 4 Sakharov Prize Laureates)

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Some recent academic publications

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2010

The Sect Issue in France and in Belgium,

Linguistic diversity and linguistic minority issues in Belgium, by Willy Fautre, pp 51-54, in Mitna Sprava Naukovo-Analytishnii Journal, nr 5/2009 published by the Academy of Law, Odessa, Ukraine (2009)

Religious Freedom Advocacy Opportunities at the European Parliament, by Willy Fautre, pp 391-400, in Religion - Staat - Gesellschaft, Journal for the Study of Beliefs and Worldviews, 10th Year, Issue 2

2009

On Religious liberty in a democratic society - Aspect of law, religion and philosophy in constitutional theory and reality, published by Gerhard Besier and Hubert Seiwert, Technical University Dresden (Germany), 407 p. (2009)

Models of State-Church Relationships in the Modern World, by Willy Fautre, in Russian language, published by Tula State Pedagogical University on 24 February 2009. Contributions pp 106-136

- 106-110, "Political Regulation of the Religious Sphere in EU Member-States: Positive and Negative Experience. A human rights perspective"
- 111-115, "Judicial Status of Religious Communities"
- 115-117, "Sects: Does Democracy Need Laws of Exception?"
- 117-119, "The UN Special Rapporteur on Freedom of Religion and the Sect Issue"
- 120-136, "Non-state Actors and Religious Freedom in Europe"

Legal Regulations of Religious Communities in EU Member States: A Human Rights Perspective, by Willy Fautre, pp 67-74, in *Mitna Sprava Naukovo-Analytishnii Journal, Academy of Law, Odessa, Ukraine (2009)*

European Perspectives on Interfaith Cooperation for Peace and Human Rights, by Willy Fautre, pp 24-27, in *Interreligious Cooperation and the Promotion of Human Rights and Peace*

List of experts

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Electronic Newsletters

Democracy, Rule of Law and Human Rights in China
 Democracy, Rule of Law and Human Rights in Iraq
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 Trafficking in Human Beings
 Religious Discrimination and Intolerance
 EU News

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