

Human Rights Protection and Traditional Churches in the System of National Cooperation in Hungary

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Abstract

Hungary adopted its new Fundamental Law and new legislative framework on the legal status of churches, religious denominations and religious communities in 2011, as part of a number of constitutional changes leading to the dismantlement of democracy, rule of law and human rights protection. In relation to the new legislative framework of state-church relations, much assessment so far focused on how the installment of a “pluralist system of state churches” led to an institutional and partly moral establishment, jeopardizing and curtailing the religious freedom of non-established religious denominations. However, it has been less investigated how the “pluralist system of state churches” and related constitutional changes affected a number of human rights (e.g. the right to private and family life or the right to education) and the position of traditional churches, especially, in view of their autonomy. The paper intends to show that the close entanglement of the state and its traditional churches led to the deterioration of the protection of a number of human rights while it also undermined the autonomy of these churches.

Keywords

Hungary – human rights – freedom of religion – right to private and family life – right to education – church autonomy – pluralist system of state churches

1 Introduction

After the *Federation of Young Democrats—Hungarian Civic Alliance* (FIDESZ), led by Mr Viktor Orbán, won the elections in 2010, Hungary adopted in 2011

its new Fundamental Law,¹ which envisaged the so-called System of National Cooperation (SNC) as the foundation of the new constitutional order. This new order, in view of the 2010–2011 amendments of a number of related fundamental legislative acts, led to the dismantlement of democracy, rule of law and human rights protection and resulted in a regime with accrued authoritarian rule, which PM Orbán labelled as ‘illiberal democracy’. The System of National Cooperation has lately been much criticized and exposed by the Sargentini report of the European Parliament for breaching fundamental principles of the European Union.²

Meanwhile, not disconnected with these developments, the Fundamental Law and its Fourth and Fifth Amendment,³ adopted in 2013, showed a major shift from secular values and from the principle of neutrality of the state. Besides starting with a prayer, the Fundamental Law contains several religious references which clearly position the state in the realm of Christianity. It recognises Christianity’s role ‘in preserving nationhood’ and it places the family and nation in the epicenter of ‘coexistence’.⁴ An important asset of the new constitutional and legal framework was the re-configuration of Hungary’s legislative framework on church registration by passing the much criticised⁵ *Act C of 2011 on the right to freedom of conscience and religion, and on the legal status*

1 The Fundamental Law of Hungary, 25 April 2011 (entry into force: 1 January 2012).

2 European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)). On the SNC, see also e.g. András L. Pap, *Democratic Decline in Hungary: Law and Society in an Illiberal Democracy* (Abingdon, Oxon: Routledge, 2017); Eötvös Károly Institute, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, *Assessing the First Wave of Legislation by Hungary’s New Parliament*, 23 July 2010, <http://helsinki.hu/wp-content/uploads/Hungarian_NGOs_assessing_legislation_July2010.pdf> (29 February 2016); Eötvös Károly Institute, Hungarian Civil Liberties Union, Hungarian Helsinki Committee, *The second wave of legislation by Hungary’s new Parliament—Violating the rule of law*, 13 December 2010.

3 Fourth Amendment of the Fundamental Law of Hungary, Article 4, 25 March 2013; Fifth Amendment of the Fundamental Law of Hungary, Article 1, 26 September 2013.

4 *Ibid.*

5 See e.g. European Commission for Democracy Through Law (Venice Commission), *Opinion on Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities of Hungary*, Opinion 664/2012 CDL-AD(2012)004, Strasbourg, 19 March 2012.; Baer, H. David, ‘Testimony Concerning the Condition of Religious Freedom in Hungary, Submitted to the U.S. Commission on Security and Cooperation in Europe (The Helsinki Commission)’, 33:1 *Occasional Papers on Religion in Eastern Europe* (2013), pp. 1–6.

of churches, religious denominations and religious communities (or its identical successor *Act CCVI of 2011*, hereinafter: Church Law of 2011).⁶

The Fundamental Law, by departing from the principle of neutrality and by its explicit alignment with Christianity or Christian values and by according highly privileged status to traditional churches, along with the Church Law of 2011, led to the formal installment of an institutional establishment. Meanwhile, the Fundamental Law also introduced into the legal system clear signs of a moral establishment. The impact of these amendments even on human rights seemingly unrelated to religious freedom such as the right to family and private life (e.g. the concept of family or reproductive rights), freedom of expression (e.g. blasphemy or obscenity laws), right to marriage, or the right to education, may be considerable but so far remained largely unexplored. Similarly, while the impact of the “pluralist system of state churches”—especially on non-established denominations—has been assessed, much less attention has been accorded to the position of established (traditional) churches, which play a crucial role in the “pluralist system of state churches” and in the SNC, with special regards to their religious autonomy.

2 The Church Law of 2011

As it has been widely treated by the literature,⁷ the Church Law of 2011 befreit more than 300 formerly registered churches of their church status as of 1 January of 2012, and installed a parliamentary re-registration procedure. The new regulation was officially justified by the proliferation of abusive religious

6 After the Constitutional Court quashed *Act C of 2011 on Freedom of Conscience and Religion and on the legal status of churches, religious denominations and religious association* (adopted on 13 July 2011) in its entirety on “formal grounds” in December 2011 (164/2011. (XII.20) AB határozat), its successor, *Act CCVI of 2011 on freedom of conscience and religion and on the legal status of churches, religious denominations and religious association* was adopted on 30 December 2011 with practically identical content.

7 See e.g. David H. Baer, *A vallászabadság védelmében/Essays in Defense of Religious Freedom* (Budapest: Wesley János kiadó, 2014). Júlia Mink, ‘The Hungarian Act CCVI of 2011 on Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Associations in Light of the Jurisprudence of the European Court of Human Rights’, 8:1 *Religion & Human Rights* (2013), pp. 1–22; Gábor Schweitzer, ‘Az egyházakra vonatkozó szabályozás alakulása’, 2014/44 *MTA Law Working Papers* (2014); Renáta Uitz, ‘Lessons on Access to Legal Entity Status for Religious Communities for Europe: Hungary’s New Religion Law Faces Repeated Challenges’, 8:1 *Religion & Human Rights* (2013), pp. 43–63. In contrast, for a non-critical description see e.g.: Balázs Schanda, *Religion and Law in Hungary* (Alphen aan den Rijn: Wolters Kluwer, 2015).

entities (so called “false” or “business churches”) under the former *Act IV of 1990 on the Freedom of Conscience and Religion*.⁸ The government argued that the accessibility of church status needed to be curtailed as it, with all its financial advantages and privileges, begged for abuse. However, many, including the Venice Commission found this reasoning paradoxical: while the new legislative act aimed at fighting “business churches”, it not only left intact the outstandingly privileged financial position of recognised churches, but even strengthened it. Had the Hungarian state intended to curb the business nature of churches, reconsideration of the intricate web of their subsidies would have been a more convincing start.⁹

In fact, beside the unacceptability of the de-registration of existing legal entities, the principal, substantive aspect of the new legislative framework, found unconstitutional in 2013 and in breach of the European Convention of Human Rights (ECHR) in 2014 in the case of *Magyar Keresztény Mennonita Egyház and Others v. Hungary*,¹⁰ was—among others—the empowerment of the Parliament to decide over church status by a two-third majority (formerly this was vested with impartial courts). In particular, the Constitutional Court decision of 2013 quashed, with a retrospective effect as of 1 January 2012, the relevant Article 14(1), (3)–(5) of Act CCVI of 2011 (the Church law of 2011).¹¹

Both the Constitutional Court and the European Court of Human Rights (ECtHR) considered the parliamentary decision-making over church status a violation of the principle of neutrality (an intrinsic part of freedom of religion) as it had the potential to lead to over-politicised and discriminatory decision-making over church statuses. Namely, it implied the possibility of the state favouring certain religious denominations over the other without objectively justifiable grounds. In fact, the procedure *did* result in over-politicised and discriminative decision-making as, for example, the case of the Hungarian Evangelical Fellowship illustrated.¹² In particular, the ECtHR noted that as the ‘decision on recognition of incorporated churches lies with Parliament, an eminently political body ... the granting or refusal of church recognition may be related to political events or situations’, which ‘inherently carries with it the disregard of neutrality and the peril of arbitrariness. A situation in which religious communities are reduced to courting political parties for their favourable

8 Promulgation: 12 February 1990.

9 Venice Commission, *supra* note 5, para. 17.

10 *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, 8 April 2014, European Court of Human Rights, Nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, paras. 102–104, 115.

11 See in particular, Constitutional court decision 6/2013 (III.1), para. 1 and paras. 195–208.

12 Mink, *supra* note 7, pp. 4–5, 7, 13, 19–22.

votes is irreconcilable with the State's neutrality requisite in this field'.¹³ In a similar vein, the ECtHR concluded that, among others, by the establishment of a 'politically tinted re-registration procedure, whose justification is open to doubt ... the authorities neglected their duty of neutrality vis-à-vis the applicant communities'.¹⁴ The ECtHR also found unacceptable that the government did not attempt to achieve the legitimate aim of putting an end to the abuse of church status by less stringent measures.¹⁵ The Constitutional Court furthermore objected to the lack of any effective remedy against the Parliament's decision, found a violation of the right to fair trial and established the regulation's discriminative nature.¹⁶

In response, the Hungarian government in its "appeal" to the Grand Chamber of the ECtHR found problematic the Court's rejection of the 'multi-tier, differentiated regulation' of religious communities, the 'granting of a special public law status by the Parliament' and the creation of a kind of 'pluralist version of a State Church in Hungary' while the ECtHR accepted 'such regulatory techniques' in other cases.¹⁷ The Grand Chamber in its turn refused to re-evaluate the case.

Without entering into a detailed description of the constitutional ups and downs of the Church Law of 2011 preceding and following the ECtHR judgment, which comprise to date a handful of decisions of the Constitutional Court,¹⁸ two amendments of the Fundamental Law¹⁹ and the readoption and later further modification of the Church Law of 2011, it should be noted that despite the interventions of national or international judicial bodies, its essential parts (e.g. parliamentary church registration procedure, discriminative two-tier system of religious communities), which received most criticism, remain still in force and intact. One may ask: how is that possible as the Constitutional Court quashed the relevant provisions? The answer is "simple". In order to "remedy" its unconstitutionality, not the Church Law of 2011 but the relevant Article VII

13 *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, para. 102.

14 *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, para. 115.

15 *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, para. 115.

16 Constitutional Court decision 6/2013. (III.1), paras. 209–202.

17 Ministry of Justice Agent for the Hungarian Government, *Information on the Government's request that the case be referred to the Grand Chamber*, Application no. 70945/11 and 8 other applications, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, 14 July 2014, ECHR-LE20.2cG AT/zna.

18 See e.g. Constitutional Court decision 164/2011. (XII.20), Constitutional Court decision 6/2013. (III.1), Constitutional Court decision 23/2015. (VII.7.), Constitutional Court decision 3257/2015 (XII.22).

19 Fourth Amendment of the Fundamental Law, 25 March 2013; Fifth Amendment of the Fundamental Law, 26 September 2013.

of the Fundamental Law, which entails freedom of religion, was amended by the Fourth Amendment of the Fundamental Law to comprise the requirement of the Parliamentary decision-making over church status.²⁰ Following this, in August 2013, the provisions on parliamentary decision-making were re-introduced into Act CCVI of 2011 (the Church law of 2011).²¹

As the relevant amendment of the Fundamental Law was inserted into the very same Article VII which also guarantees freedom of religion, it created a total “constitutional mess” since the two aspects had already been stated to be in dire contradiction with each other by the Constitutional Court and the ECtHR alike. Article VII also provides for the cooperation of the state and the established churches ‘to achieve community goals’ and obliges the state to provide specific privileges to established churches so that they could fulfill their related tasks.

Article VII of the Fundamental Law now contains a provision which is unconstitutional on multiple grounds not only because it violates freedom of religion along with a number of other human rights but also on account of it violating Hungary’s international obligations as they were pronounced by the ECtHR (whose respect would be also a major constitutional requirement).²² The Constitutional Court in a not too confrontational manner, tried to veil and obscure this absurdity by according rather unprecedented direct applicability to international legal requirements flowing from the judgment rendered by the ECtHR in the *Magyar Keresztény Mennonita Egyház* case. This implied the non-applicability of certain parts of the Church Law of 2011 in individual cases referred by judges to the Constitutional Court. In these cases judges were compelled to ‘put aside’ the provisions concerned and deliberate the case disregarding them (if it was possible at all).²³ Though the doctrine of direct applicability is certainly applied when EU law confronts national law, the Hungarian legal

20 At present the relevant text of Article VII (4) of the Fundamental Law (inserted by the Fifth Amendment of the Fundamental Law, 26 September 2013) reads as follows: ‘The State and religious communities may cooperate to achieve community goals. At the request of a religious community, the National Assembly shall decide on such cooperation. The religious communities participating in such cooperation shall operate as established churches. The State shall provide specific privileges to established churches with regard to their participation in the fulfilment of tasks that serve to achieve community goals’.

21 See Article 14(1), (3)–(5) of Act CCVI of 2011 (Church Law of 2011) inserted by Article 9 of Act CXXXIII of 2013 on the modification of certain acts in view of the Fourth Amendment of the Fundamental Law in relation to the status and operation of religious communities (adopted: 12 July of 2013, entry into force 1 August 2013).

22 Article Q, Fundamental Law of Hungary, 25 April 2011.

23 Constitutional court decision 23/2015 (VII.7). Constitutional court decision 3257/2015 (XII.22).

system in regard to international law is dualistic, it does not admit direct applicability of international treaties but requires their transposition. Note shall be taken that—among others—this whole mockery of basic principles of the rule of law has been referred to in a recent statement of the President of the Hungarian Constitutional Court as “effective protection of fundamental rights” provided by the Constitutional Court.²⁴

3 State Support for Established Churches

The Hungarian legal system, beginning with the Fundamental Law, provides for extensive privileges and support for established churches. While the vast majority of churches abruptly and unjustifiably bereft of their church status as of 2012 was to undergo a re-registration procedure before the Parliament, “traditional” churches were granted church status *ex lege*. Though the ECtHR considered the strikingly different treatment of non-established churches vis-à-vis established ones ‘not only with regard to the possibilities for cooperation but also with regard to entitlement to benefits for the purposes of faith-related activities’ a violation of the principle of neutrality,²⁵ the privileges and subsidies of traditional churches remained intact.

One might say that the present arrangement could necessarily lead to the reinforcement of the public law status of traditional churches. The author of this paper would contend, however, that this is not the case: it only re-introduced enhanced state-tutelage over the churches, who accepted this for apparent economic, financial and positional gains. In the following sections I make an attempt at outlining what the most important consequences, gains and dangers for traditional churches of this arrangement are, how these churches function in the System of National Cooperation and how this compromises their autonomy.

The main advantages of the pluralist system of state churches for established churches are manifold. Here I would focus on three distinct elements: (i) advancement of ideological-political goals; (ii) financial and economic gains; and (iii) conquering the educational sector. However, it is arguable that all these gains also have a backlash effect and contribute to the further loss of

24 Jogiforum.hu, ‘Sulyok: A Sargentini-jelentés az alkotmányos párbeszéd ellenpéldája—Az Ab-elnök nagyköveteknek adott fogadást a Testület székházában’ (Sulyok: the Sargentini-report is the antithesis of constitutional dialogue—the head of the Constitutional Court gave a banquet to ambassadors at the Court Hall), *Jogiforum.hu*, 21 September 2018, <<http://www.jogiforum.hu/hirek/39663>>, 1 October 2018.

25 *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, para. 115.

credentials and support for traditional churches. In particular, their legitimizing function in the SNC and the constraint to keep in line with government policies seem to be highly detrimental to their esteem and curtails their autonomy to a great extent. Similarly, the enforcement of religious ideals in a largely secular society may also lead to the curtailment of a number of human rights on religious ideological grounds.

3.1 *Advancement of Religious Ideological-Political Goals*

In the pluralist system of state churches religious ideals and claims may receive state (legal) sanctioning, the established churches have direct access to politics and to politicians to achieve their religious ideological-political aims. They may promote these aims through various channels or may even participate directly in the political decision-making or legislative processes; persons standing close to state churches may take on active political roles. Even measures which do not enjoy wide public support may be pushed through, and, in general, one may observe the advancement of ideologies or concepts related to churches or religious doctrines in politics or in legislation.

Members of the “Christian Democratic” branch of FIDESZ or persons with strong church affiliation received several prominent roles and positions and had a major influence on the legislative “reform” of a number of religiously or ideologically-sensitive fields (e.g. education or the concept of family). These legislative measures and amendments often met with either constitutional challenges or popular resistance, which were partly successful. Here, I attempt to give an account of the contribution of some key figures in national politics and some of the related legislative amendments implemented in the lower levels of the legal system between 2011–2016.

First and foremost, one may evoke Vice-PM Semjén, the president of the Christian Democratic People’s Party with strong connections to the Catholic Church, or former Minister Balog, a pastor of the Hungarian Reformed Church, PM Orbán’s confidant, who led between 2012–2018 the enormously expanded Ministry of Human Capacities which encompasses education, social issues and health care at the same time. Their influence was particularly strong in developing the concept of the Hungarian Model of church-state relations back in 2002²⁶ but also in regards to education as of 2010. Similarly, it was Mr Lukács, another Christian Democrat MP, who led the highly discriminatory filtering of applications for church status under the new registration procedure in 2012 as

26 Zoltán Balog, Zsolt Semjén, ‘A magyar modell’ (The Hungarian Model), in L.A. Ravasz, G. Galik, T. Fedor (eds.), *Egyházakra vonatkozó hatályos jogszabályok gyűjteménye* (Budapest: Nemzeti Kulturális Örökség Minisztériuma Egyházi Kapcsolatok Főosztálya, 2002).

head of the Parliament's Human Rights Committee. It was also Mr Lukács, who declared during the 2012 registration procedure that 'acquiring church status is not a right but a grace' to justify the refusal of a number of religious communities who otherwise fulfilled all requirements set by the law.²⁷

The widely disputed public educational reform, which led to an over-centralisation of public educational institutions under the state-controlled Klebelsberg Institution Maintenance Centre (*Klebelsberg Intézményfenntartó Központ*),²⁸ was implemented by the Christian Democrat public educational state secretary Rózsa Hoffmann (2010–2014). The educational reforms—besides institutional centralisation—also comprised the introduction of compulsory religious or “neutral” ethics classes for which children are graded.²⁹ In year 2015, Minister Balog became one of the main propagators of “beneficial segregation” in alliance with the Greek Catholic Church, which in Hungary does not form a separate entity, though.

Similarly, the Christian Democrats pushed adamantly forward a highly restrictive definition of the “family” in Article L of the Fundamental Law, which states that family is ‘based on marriage and/or the relationship between parents and children’ and excludes e.g. same-sex marriages.

Similarly, Article 7 of the Family Code stated that ‘the family is the system of relationships of such emotional and economic community, whose basis is the marriage of a man and a woman or direct descendant lineage or guardianship which includes reception into family’.³⁰ This provision excluded from the definition of “family” unmarried partners or same sex couples and was successfully challenged before the Constitutional Court, which annulled it in 2012,³¹ but Article L of the Fundamental Law describing family in similar terms remained intact.

The overall legal and family support system directly and indirectly discriminates against same sex couples (even if they may be “registered”), unmarried partners and against single parent families, who constitute a particularly vulnerable social group (many single parent families live below the poverty line).

27 György Vári, ‘Kaotikus és gonosz egyházügyi törvény. A hit kegyeket mozgat’ (Chaotic and evil church law. Faith moves favours), *Magyar Narancs*, 23. February 2012, available at <magyarnarancs.hu/belpol/a-hit-kegyeket-mozgat-78862>, 1 October 2018.

28 Government Decree 202/2012. (VII.27) on the Klebelsberg Institution Maintenance Centre.

29 Article 32 (1) j), Article 35A of Act CXC of 2011 on National Public Education as amended by Article 8 of Act LV. on the modification of Act CXC of 2011 on National Public Education. On the organisation of religious and ethics classes see also Article 35 of Act CXC of 2011 on National Public Education.

30 Article 7, Act CCXI of 2011 on the Protection of the Family.

31 Constitutional court decision 43/2012 (XII.20.), para. 1.

While “large families” (3 children or more), receive certain social allowances automatically (e.g. free school meals), single parent families have to prove during lengthy, bureaucrat procedures their neediness and have to undergo a social environment-assessment procedure too.³²

The idea of Sunday closure was also pushed through in 2014 mostly by the Christian Democratic wing of FIDESZ³³ but it met with the fierce resentment of the population. Even those, who otherwise support the government’s policy, considered it a mistake. Several initiatives for a popular referendum were submitted but not let through by the FIDESZ-controlled National Election Office and the Curia (Supreme Court) until 6 April 2016 when the Curia validated the initiative.³⁴ Soon after the act was repealed by the government in order to avoid a land-slide victory of the opposition parties on this issue.³⁵

The accrued unpopularity of Sunday closure clearly showed the danger of promoting such religiously-tinted objectives in a largely secular society, which are difficult to justify in a credible way on “neutral grounds” (though efforts have been made to this in the parliamentary debates, e.g. by reference to the protection of ‘the most important cornerstone of the Hungarian society’, the family or the health of the workers).³⁶ Though reference to the Christian religious-national identity is a recurrent element in the government’s rhetoric, most of these above-mentioned measures were “justified” at least partly by seemingly neutral reasons. However, there was no real social demand on the part of the workers or employers to introduce Sunday closure. Besides, in contrast to the allegedly lofty goals of the Sunday closure legislation, in reality, as of 2012 the government considerably weakened the position of workers and their social rights by amending key points of the former labour law legislation.³⁷ Last but not least, religious arguments or positions having strong religious back-up or reflecting interests, doctrines, standpoints of traditional churches, may also appear disguised as “tradition” or “culture” or may be applied together with “neutral” justifications.

32 Article 21(1) ac), Act XXXI of 1997 on Child Protection and the Administration of Guardianship.

33 Act CII of 2014 on the prohibition of Sunday work in the retail sector.

34 Curia decision Knt.IV.37.257/2016, Curia decision Knt.IV.37.258/2016.

35 As of 16 April 2016, Article 4 a) of Act XXIII of 2016 on the amendment of certain acts related to the prohibition of Sunday work in the retail sector.

36 *Országgyűlési Napló* (Records of the Parliamentary Debates), 23 June 2011, pp. 5946–5951.

37 See Act I of 2012 on the Labour Code, which e.g. alleviated the consequences of unlawful dismissal for employers, made rules on working time and remuneration more “flexible” and restrained the rights and entitlements of labour unions (see e.g. Attila Kun, ‘Az új Munka Törvénykönyve’, in András Jakab, György Gajduscheck (eds.), *A magyar jogrendszer állapota* (MTA Társadalomtudományi Kutatóközpont, 2015).

Religiously-tinted arguments were also often articulated, especially during parliamentary debates of the Church Law of 2011, e.g. by Mr Lukács, the former Christian-Democrat head of the Parliament's human rights committee, who considered, among others, that though the church and the state are different 'life organs', their differing 'life lines' should 'melt together' in several aspects.³⁸ Similarly, the leading speaker of FIDESZ, a pastor of the Reformed Church, stated that Hungary deserved its specific "church-state" model: "supportive separation" which needed to fit into the SNC.³⁹ Though the exact contribution of traditional churches to the drafts is unclear, many church leaders (Bishop Szabó, Bishop Székely or Archbishop Márfi) overtly supported the measure as one necessary to fight "business churches" and reflecting real church power constellations,⁴⁰ while none protested.

Most of the measures detailed above have serious repercussions on a number of human rights, including the right to family and private life, the right to freedom of conscience and religion, the prohibition on discrimination on religious, racial grounds or on the basis of family status or sexual orientation. These largely unpopular measures may have contributed to the further deterioration of the esteem of traditional churches especially since these amendments were initiated by prominent figures of the Christian Democratic People's Party, whose church-connections are well-known.

The ups and downs of the new church legislation had another serious unexpected consequence: the general public, which was formerly rather passive and ignorant in this respect, became much more aware of church affairs. The issue of freedom of religion became a recurring theme of mass demonstrations and it also became gradually part of the political agenda of the opposition⁴¹ (recently it has also been incorporated into the so-called Sargentini report). The rising awareness of issues related to church-state relations made it possible e.g. that the Hungarian Evangelical Fellowship received immense public support in September 2013 when the new amendment of the church law required in their re-started re-registration process proof of a church membership

38 *Ibid.*, pp. 17515–17520.

39 *Ibid.*, p. 17520.

40 *Márfi Gyula érsek válaszelevele David Baer teológia- és filozófiaprofesszornak* (Archbishop Gyula Márfi's reply to David Baer, professor of theology and philosophy), 27 February 2012, Archbishopry of Veszprém, <veszpremiersekseg.hu/valaszlevel-david-baer-teologia-es-filozofiaprofesszornak/>, 1 October 2018.

41 See e.g. the statement of the Hungarian Socialist Party (*Magyar Szocialista Párt, MSZP*): Ildikó Lendvai, 'Az egyházi törvényről' (On the Church Law), 26 June 2013, <mszp.hu/hir/az_egyhazi_torvenyrol/>, 1 October 2018).

reaching 0.001% of the population (ca. 10,000 persons).⁴² The HEF, which is a rather small denomination otherwise, collected around twice as many declarations of attachment as required in three weeks.⁴³

3.2 *Financial and Economic Gains*

As it was noted by the ECtHR, the intricate web of available privileges, subsidies, immense financial support, preferential treatment for churches greatly fosters their religious aims and gives them an overwhelming advantage over their competitors,⁴⁴ not only on the religious market in its strict sense but in the educational, social, health care sectors and to a certain extent even in the general economic sector.

The re-regulation of state-church relations enhanced the immense gap between the financial position of established churches and other actors while it also expanded the sphere of those activities which—due to their allegedly religious nature—fall fully out of the scope of state control. The relevant Articles 20–21 of the Church Law of 2011 state that, among others, the following activities are not regarded to be ‘business or entrepreneurial’ in the case of churches: a) operation of religious, educational, healthcare, charity, social, family, child and youth protection or cultural, sports institutions, environmental protection activities; b) recreation facilities providing services to church personnel; c) production or sale of publications or objects of piety; d) partial exploitation of real estate used for church purposes; e) maintenance of cemeteries; f) sale of immaterial goods, objects or stocks serving the purposes of or complementary to activities listed in point a); h) production or sale of products, notes, textbooks, publications or studies undertaken in the course of performing public duties; i) operation of pension institutions or pension funds set up for the church personnel.⁴⁵ Revenues (e.g. fees or reimbursement paid for services; tax refunds, grants, interests, dividend, etc.) generated from the above-mentioned non-entrepreneurial activities are tax-free. Churches are granted tax benefits and other similar benefits as to the remuneration of their priests and pastors, while the use of their revenue ‘serving religious purposes’ (such as income from a specified amount of personal income tax in accor-

42 Act CCVI of 2011 as amended by Act CXXXIII of 2013 on the modification of legislative acts related to the status and operation of religious communities in connection with the Fourth Amendment of the Fundamental Law, Article 14 cb).

43 *A MET Elnökének közleménye* (Statement of the President of the HEF), 2 October 2013, <www.megbekelestemplom.hu/met-egyhazi-statuszanak-meger-sitese.html>, 1 October 2018.

44 *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, paras. 106–114.

45 Article 20–23, Act CCVI of 2011.

dance with the taxpayer's instructions and its budgetary complement or real estate annuity and its complementary sums) may not be controlled by public organs. The State Audit Office may only control the legality of the use of state subsidy granted to churches for non-religious purposes.⁴⁶

The scope of "religious activities" due to amendments introduced in 2011 by now practically encompass all economic activities of churches from selling of sacred objects to the maintenances of recreational wellness centres. Wildmann claims that even ministerial officers of the Ministry of Finance do not know to what kinds of financial contributions and on how many grounds registered churches are entitled from the state, which stretch from gas compensation to "Millennium support".⁴⁷

The above-mentioned activities are effectively exempted from state control in any manner, while in the case of other economic actors they are subject to severe taxation and state supervision. Not only state authorities do not control church revenues collected or received in relation to their "religious" or "non-entrepreneurial activities"—including large public contributions—or fail to install accountability mechanisms in relation to how these are spent, churches themselves are *not* required to install control mechanisms either to monitor or make transparent their activities and spending e.g. for their adherents. Even if resources and revenues are misused or spent on personal gains, it is extremely difficult to make perpetrators accountable as two recent embezzlement scandals in relation to the Catholic Pécs Church County and Győr Church County showed: many crimes expired, investigation was hindered and church leaders tried to cover up the crimes.⁴⁸

3.3 *Advancement in Education*

The formerly existing over-subsidizing of church schools and social/health care institutions have already greatly affected these sectors,⁴⁹ but the "reforms" introduced as of 2011 further enhanced the position of "traditional" churches. Due to its accrued significance here I focus on the question of *education* where

46 *Ibid.*

47 János Wildmann, 'Az állam világnézeti semlegessége feladásának egyházpolitikai megalapozása', 4 *BUKSZ—Budapesti Könyvszemle* (2014), pp. 334–336. On the preceding period: Tibor Fedor, *Egyházfinanszírozás Magyarországon*, <www.mtatk.hu/interreg/kotetz/20_fedor.pdf>, 1 October 2018.

48 On the former, see: János Wildmann, 'Gyümölcsseiről ismeritek fel őket' (Ye shall know them by their fruits), *Egyházforum*, 30 April 2015. On the latter see: 'Börtön vár a győri sikkasztókra' (Prison awaits the embezzlers in Győr), *Origo.hu*, 5 March 2013 <<http://www.origo.hu/itthon/20130503-bortonnel-zarul-a-gyori-egyhazmegyen-kirobbant-sikkasztasos-ugy.html>>, 1 October 2018.

49 Fedor, *supra* note 47, pp. 412–414.

the advance of traditional churches is maybe the most spectacular, but this advancement is present in the social or charity sector as well. By 2017 we may contend that the dismantlement of secular education reached an enhanced phase, and there is such proliferation of church schools which endangers the availability of quality secular education and risks an increase of segregation of Roma or impoverished children.

As church-maintained schools received additional state funding in contrast to the ones maintained by local governments, many local governments, as of the late 1990s, saw it advantageous for financial reasons to pass their schools over to churches while churches were under no obligation to take them over. In general, while great traditional churches most willingly took over “quality institutions”, which were predominantly attended by the middle- or upper-class children, smaller denominations like the Dzsaj Bhím or the Hungarian Evangelical Fellowship took over or established schools only for e.g. impoverished (mostly Roma) children, in disadvantageous areas or for children with serious disabilities and learning problems.⁵⁰

As of 2013 the government centralised state educational institutions: it practically took them over from local governments and placed them under the auspices of one single authority, the Klebelsberg Institution Maintenance Centre (hereinafter: KIMC). While local governments remained responsible for providing for the maintenance of the buildings, all competences in relation to management, education or to the employment of teachers were transferred to KIMC.⁵¹ At the same time, the curriculum also became more uniform and ideologically tinted. The intention to make state schools uniform was apparent. Many directors were removed, the private textbook-market was almost totally abolished, the state prescribed the use of uniform textbooks. The operation of KIMC proved to be an utter failure. The financial support of state schools further deteriorated, even basic conditions of education or operation were not ensured (paper, possibility to print, copy, toilet paper in schools or chalk were not available, sometimes even utility bills were not paid). This was coupled with a drastic increase in the number of compulsory classes for children and teachers, which had already been high before the “reforms”. The government also introduced compulsory religious/ethics classes and all-day long compulsory school as of the first grade.

50 See e.g. the list of schools taken over by the Catholic Church (<www.kpszti.hu/gimnaziiumok>, <www.kpszti.hu/altalanos_iskolak>, 1 October 2018, or the schools taken over by the Hungarian Evangelical Fellowship.

51 Ministry of Human Capacities Order on the Organisational and Operational Rules of the Klebelsberg Institution Maintenance Centre 22/2013 (VII.5).

Meanwhile, compared to the over-centralised state schools, church schools enjoy a large number of exemption from the general requirements and could retain considerable autonomy.⁵² They are allowed to operate in a religiously-determined manner (i.e. exempted from the prohibition of religious discrimination), they are not obliged to enroll children who live within their district, they are not obliged to follow compulsory (high) size of classes or the state curriculum and they may also choose their own textbooks. Furthermore, directors are appointed by the church with the approval of the minister, church schools may receive, under certain conditions, supplementary support. Local governments could hand over their schools only till the end of 2012, which generated a new wave of accelerated take-overs, increasing the number of church schools by 50% between 2011 and 2013. This means that, at present, 800 public educational institutions are maintained by traditional churches.⁵³ This process affected in many cases the only available school or the only available “secular” quality institution of the area. These take-overs, just like before, were selective: the traditional churches picked mainly primary schools frequented by the middle class. Then, since they were not under the obligation to take any, they could make these schools even more “homogenous” by refusing disadvantaged or “difficult” children amongst whom Roma pupils were over-represented. Thus, social segregation became coupled with ethnic segregation.

The practice of ethnic segregation was made legally possible for church schools after the Greek Catholic Church lost a segregation case in relation to the suburban “Huszár-area” school in Nyíregyháza. The case concerned the re-opening of a “ghetto” school, which had formerly been closed due to deplorable conditions, in a totally segregated manner upon the personal instigation of Minister Balog. The church had already maintained a well-equipped school in the centre, newly renovated from EU sources, where, however, it refused to receive Roma pupils from the “Huszár-area”. Former Minister Balog, infamous for his racist statements, intervened personally in the case before the court and emphasised the necessity of having segregated, “loving” “development” classes for Roma children.

52 See e.g. Article 31–32, Article 68, Act CXC of 2011 on public education; Article 28, Decree 20/2012 (VIII.31) of the Ministry of Human Capacities on the operation of instructive-educational institutions and the name usage of public educational institutions.

53 By the 2012/2013 school year 497 institutions were maintained by the Catholic Church, 221 by the Reformed Church and 74 by the Evangelical Church: *Tender Guidelines, Az egyházak köznevelési feladatainak támogatása* (TÁMOP-3.1.17-14), December 2014, <www.palyazat.gov.hu/node/55719>, 1 October 2018.

When the court did not share his views,⁵⁴ at the end of 2014, the relevant legal acts were amended to create a loophole for church schools with the support of the Greek Catholics. Thus, Article 94(4) of *Act CXC on the Law on National Public Education* empowered the government to regulate exemptions from the prohibition on segregation under Article 28(2) of *Act CXXV on Equal Treatment and the Promotion of Equal Chances* (hereinafter: *Act CXXV on Equal Treatment*) in order to promote the organisation of “religiously or ideologically” committed education. On the basis of this amendment the Curia in its final judgment on Huszár-area school ruled that the right to freedom of religion overrules the prohibition on segregation, thus, the wholly segregated Roma school maintained by the Greek Catholic Church does not constitute a violation. This opened up a legal way for segregated education of Roma children in church schools.⁵⁵ Not only the Greek Catholic Church but also the Reformed Church embraced the measure. As Reverend Bölcskei, the pastor president of the Synod of the Reformed Church maintained: it is important to distinguish between “development” and “segregation” as the former may make it possible for Roma children to participate later in an integrated education.⁵⁶ Any “development”, however, may only be successful in integrated circumstances.

Segregation of Roma children in public education is a widespread practice in Hungary and was criticised on many accounts.⁵⁷ According to the Civil Public Education Platform, the proportion of the so called ‘ghetto-schools’ (where the proportion of Roma children is over 50%) have increased from 270 (2007) to ca. 350 (2015).⁵⁸ Segregation often occurs due to housing segregation or due to the decision of parents.⁵⁹ However, it is an important difference

54 *A nyíregyházi reszegregációs ügy* (The Re-segregation Case of Nyíregyháza), *Esélyt a Hátrányos Helyzetű Gyerekeknek Alapítvány* (Chance For Children Foundation) 2014, <www.cfcf.hu/ny%C3%ADregyh%C3%A1zi-reszegreg%C3%A1ci%C3%B3s-%C3%B>, 29 February 2016.

55 Curia decision Pvf.IV.20. 241/2015/4.

56 ‘Tudják a reformátusok, mi legyen a cigányokkal’ (The reformed church knows what to do with the Roma), *MNO.hu*, 25 April 2013 <mno.hu/belfold/tudjak-a-reformatusok-mi-lyegen-a-ciganyokkal-1157042>.

57 See e.g. recently: Tamás Hajdú, Zoltán Hermann, Július Vajda, Dániel Horn, *A közoktatás indikátorrendszere—2017* (The Indicator System of Public Education—2017) (Budapest: MTA Közgazdaság és regionális tudományi Kutatóközpont Közgazdaságtudományi Intézet, 2018), <www.mtaki.hu/wp-content/uploads/2018/02/A_kozoktatasi_indikatorrendszer_2017.pdf>, 1 October 2018.

58 Dániel Juhász, ‘AZ MTA is igazolja: egyre nő az iskolai szegregáció’ (The Academy Confirms: School Segregation Rises) *Nepszava.hu*, 16 February 2018, <nepszava.hu/1153048_az-mta-is-igazolja-egyre-no-az-iskolai-szegregacio>, 1 October 2018.

59 On the detrimental effects of the principle of “free choice of school” which—in theory—gives more well-off parents the opportunity to take their children away from disadvantaged

between the Nyíregyháza case and e.g. the mainly segregated schools maintained by the at present non-recognised *Dzsaj Bhím* Buddhist community or the Hungarian Evangelical Fellowship (e.g. the MÁV-telep school). Notably, these latter schools target the most impoverished, disadvantageous segments of the society but not exclusively the Roma, their aim is *not* to ensure public education in “loving segregation”. It is true that e.g. in the Sajókaza secondary school of the *Dzsaj Bhím* Buddhist community, which is situated in a smaller settlement populated mostly by Roma, the number of non-Roma students are minimal, but non-Roma students are not *denied*. In contrast, in the *Dzsaj Bhím*’s school in Alsószolca, which covers a larger area, closer to the municipality of Miskolc, there are more non-Roma students and more than half of the class in the final grade are non-Roma. Thus, in these cases, segregation may be an (unfortunate) consequence of the environment in which the school operates but by no means is segregation the consequence of conscious, discriminative policy decisions taken by the church maintaining the school or let alone by the state by adopting legal provisions to promote segregation.⁶⁰

The controversial jurisprudence and the relevant legal provisions in e.g. Act CXXV of 2003 on Equal Treatment also triggered the intervention of the European Commission, which initiated an infringement procedure against Hungary in May 2016 on account of practices of ethnic segregation in education.⁶¹ In response to this, Article 28(2) a) was inserted into Act CXXV of 2003 on Equal Treatment in 2017, which states that “the organisation of education on the basis of religious or other ideological conviction may not lead to unlawful segregation on the basis of race, colour, ethnicity or ethnic affiliation”.⁶² However, a parallel amendment of Act CXC of 2011 on public education⁶³ still seems to make possible to provide—possibly segregated—education

district schools, see e.g. Gábor Kertesi, Gábor Kézdi, *Iskolai szegregáció, szabad iskolaválasztás és helyi oktatáspolitikai 100 magyar városban*, (School Segregation, Free School Selection and Local Educational Policy in 100 Hungarian Towns) (Budapest: MTA Közgazdaság és regionális tudományi Kutatóközpont Közgazdaságtudományi Intézet/Budapest Corvinus Egyetem, 2014).

60 Dorka Czenkli, “Kiléptünk a gettóból”—Orsós János, a Dr. Ámbédkar Iskola alapítója (“We Stepped Out of the Ghetto”—János Orsós, the Founder of the Dr. Ámbédkar School), *Magyar Narancs*, 27 October 2016 <magyarnarancs.hu/kismagyarorszag/kileptunk-a-gettobol-101360>, 1 October 2018.

61 European Commission, ‘May infringements’ package: key decisions’, Press release, 26 May 2016, <europa.eu/rapid/press-release_MEMO-16-1823_en.htm>, 1 October 2018.

62 Inserted by Article 1 of Act XCVI of 2017 on the modification of Act CXXV of 2003 on Equal Treatment and on the promotion of Equal Opportunities and on the modification of Act CXC of 2011 on public education (hereinafter: Act XCVI of 2017).

63 Article 34(A), Act on Public education, inserted by Article 3 of Act XCVI of 2017.

when it corresponds to the requirements of both religious *and* ethnic affiliation at the same time.

Meanwhile, over-subsidised church schools became the primary targets of EU or state tenders, which make it possible to gain considerable “supplementary support” and places them in a markedly better financial situation than state institutions.⁶⁴

It seems that state churches may only embark on the education of Roma or disadvantaged children if they can effectively separate them from their non-Roma counterparts. This implies, as Dr Miklós Beer, the Catholic Bishop of Vác has recently acknowledged that churches participate in the educational segregation of Roma children. The Bishop also noted with concern that at the mass demonstrations and strikes of parents and teachers in March and April 2016 against the centralisation of the education and the KIMC, many showed a distinct, anti-clerical stance, especially due to the utterly unsuccessful compulsory religious/ethics classes and the proliferation of church schools.⁶⁵ The government was accused of developing an elite church-school system, where the upper and middle classes may salvage their children from the dumbed-down state institutions.⁶⁶

4 Curtailment of Church Autonomy: The Legitimizing Function and the Constraint to Keep in Line with Government Policies

The main dangers of the pluralist system of state churches for the traditional churches are identical to its main advantages for the government and are direct consequences of the function these churches play in the System of National Cooperation: namely, legitimation and political support. In regard to the “political theology” of the Orbán regime Jakab remarks: the Church Law of 2011 clearly shows that ‘church politics and the strict control of church institutions via financial gains is a field of priority’ for the regime mainly because the SNC attempts to ‘veil’ its ‘ideological emptiness’ and ‘unscrupulous’ endeavors to gain material goods and power by an ‘instrumentalised and

64 *Tender Guidelines, Az egyházak köznevelési feladatainak támogatása* (TÁMOP-3.1.17-14), December 2014, <www.palyazat.gov.hu/node/55719>, 29 February 2016.

65 *Váci püspök: Az egyházi iskolák részt vesznek a szegregációban*, Eduline.hu, 29 March 2016, <eduline.hu/kozoktatas/2016/3/29/Vaci_puspok_Az_egyhazi_iskolak_reszt_veszne_JZ_5PEI>, 1 October 2018.

66 *Titkolták a számokat: elithálózatot épít az állam* (The numbers were hidden: the state builds a network of elites), Népszabadság, 12 January 2015, <nol.hu/belfold/elithalozatot-epit-az-allam-1509167>, 1 October 2018.

nationalised Christianity'.⁶⁷ In this context, established churches provide political-ideological and moral support via church institutions and forums in return for the above-mentioned considerable financial, economical gains and "ideological" advancement. Moreover, as church politics become a part of government politics, the church also becomes an area for government propaganda.

The major disadvantage of the state-church status is vulnerability and a constraint to keep in line with government policies. The presence of this requirement is clearly shown by the fate of those religious denominations which had a strong stance against the government and who, despite the fact that they fulfilled all legislative criteria, still may not receive church status if they are found "unfit" for "cooperation" with the state. Under the present Church Law of 2011⁶⁸ it is the task of the Parliament to decide about the intent and ability of religious communities to "cooperate" with the state. One should not be deluded as to the content of such cooperation. The inability of the Hungarian Evangelical Fellowship to cooperate was pointed out by the Committee of Justice of the Parliament in 2014, in its repeated registration process following the judgment of the Constitutional Court and the ECtHR, and after the HEF successfully collected the necessary amount of membership declarations. The HEF's considerable "historic and cultural value preserving, educational, charitable, social, child and family protection" activities were not sufficient. Instead, it was claimed that its activities, despite the fact that it is providing education for 3000 children in highly disadvantageous situation, had 'little social utility and impact'.⁶⁹ State churches in return for their recognition and privileges are pushed into continuous collaboration, which is already indispensable in the recognition procedure.

However, the conspicuous political alliance of traditional churches with the politics of FIDESZ started well before the 2010 elections. Bányai maintains that even in the 1990s there existed a loose Protestant "church circle" within the party, which already included Mr Balog, later Minister of Human Capacities. The "Christian" branch in FIDESZ strengthened after their 1994 electoral defeat. As of the mid-1990s Mr Orbán attended with Mr Semjén reunions of the Alliance of Christian Intellectuals, which had strong connections to the

67 András Jakab, 'Az Orbán-rezsim politikai teológiája', *Le Monde Diplomatique*, February 2013, <www.magyardiplo.hu/2013-februar/1097-az-orban-rezsim-politikai-teologiaja>, 1 October 2018.

68 Act CCVI of 2011, Article 14(i).

69 Committee of Justice of the Hungarian Parliament *Az Országgyűlés XI4.J4L 11/2014 ... OGY határozata a vallási közösségekkel történő állami együttműködés elutasításáról* (Draft of the XI4 J4L 1 1/2014 ... of the Parliament on the refusal of cooperation with religious denominations), 8 July 2014, p. 3.

Catholic Church, and the party's 1996 programme document already shows a sharp turn from liberal values.⁷⁰ After the break-up of the Christian Democratic People's Party in 1997 many Christian Democrat MPs joined FIDESZ and during the first Orbán government (1998–2002) Pastor Balog and Mr Semjén, as deputy state secretary for church affairs, played a crucial role in securing further financial advancements for traditional churches (e.g. the conclusion of specific pacts or real estate annuity).

The ideological-political support of FIDESZ by traditional churches became even more apparent after the 2002 electoral defeat of FIDESZ, which led to a coalition government of the Hungarian Socialist Party and the Alliance of Free Democrats. Apart from polarisation, these manifestations reveal their deep roots in the Christian-national ideology of the 1930s as it revived in the 1990s. In January 2006, the year of the next elections, the Catholic Conference of Bishops proclaimed a year of prayer for the “renewal of the nation”, which—as they claimed—was in a deep economic and moral crisis. This somewhat echoed the extremely negativistic propaganda messages of the parallel FIDESZ campaign (e.g. the slogan: ‘We’re worse off than four years ago’). The proclamation, furthermore, claimed that: ‘Our nation is in extremely grave trouble, only God’s mercy may help us’; ‘the sin of hopelessness weighs upon us heavily’. The proclamation asked Catholics to pray for those ‘who commit foetal murder’, who attack God and show contempt towards its church, ‘who violate children’, etc.⁷¹ The proclamation has a strong missionary stance. It portrays the community of believers who are true to the nation and destined to save a country in crisis, suffering greatly under the four-year long “socialist” and “liberal” governance, in which abortion and paedophilia, blasphemy and the breaking-up of the traditional family model reigns.

As the year of prayers evidently did not prove successful (the Hungarian Socialist Party won the elections again in 2006), next time, in 2010, the Conference of Catholic Bishops wanted to make sure that the message reached each and every church congregation and ordered that its circular compiled on the eve of elections be read out in every Catholic church of the country. The circular urged adherents to vote on a party which promotes the Christian way of life and attitude and refuses ‘liberal ideology’ as one rejecting the Christian sexual-ethics and disregarding the nation’s interest by worshipping

70 Gyula Bányai, ‘Az egyház és a jobboldal—Ki a kereszténydemokratább?’ (The church and the right wing—Who’s more of a social democrat?), *Magyar Narancs*, 24 August 2006.

71 Magyar Katolikus Püspöki Konferencia, Imaév a nemzet lelki megújulásáért (Prayer year for national spiritual renewal), 1 January 2006, <uj.katolikus.hu/konyvtar.php?h=168>, 1 October 2018.

‘multinational capital’. It states, in particular, that while Christians have shared a ‘common lot’ with the nation, ‘all such liberal ideologies, which attack the fundamental values of Christianity, the sanctity of life, the family based on the marriage of a man and a woman and which, meanwhile, constantly refer to human rights, still place money and the rule of multinational capital in the centre—are contrary to our Christian belief.’⁷² Being a Christian and being concerned about the nation seem to be identical, while those who do not share these views are necessarily “against” the nation, cannot promote its true interests, consequently, they cannot be legitimately regarded part of the nation. If one evokes one of Mr Orbán’s infamous speeches of 2005, which became an important point of reference of the FIDESZ rhetoric in the following years and still is today, this becomes even more apparent. In this speech he simply stated that the left (including liberals), whenever it had the chance, ‘assaulted the nation’.⁷³ This also puts the linking of national identity and Christianity in the Fundamental Law in a different light, strengthening its exclusionary nature.

Wildmann remarks that when PM Orbán attempted to rebut European criticism of his anti-democratic measures during 2011–2012 by stating that these manifestations were fuelled by a unified left-wing and liberal financial lobby group, whose true aim was to attack fundamental Christian values and the national and economic independence of the country, this has received seemingly “unexpected” support of traditional churches. This, however, could be well explained by the Euro-scepticism and the rejection of “Western values” by these churches. Wildmann collects a number of such supportive declarations on the part of various church leaders, such as Catholic Vice-Bishop Székely, who qualified EU criticisms as the manifestation of such ‘hatred’ that Jesus also experienced, whose true explanation is that Hungary stood up for such ‘fundamental human values’ as ‘marriage between man and woman, the family or the protection of the life of the foetus’. Archbishop Márfi—in response to David Baer’s open letter⁷⁴—qualifies critical EU MPs as ultraliberals, paedophiles or Maoists, and identifies “Europe”, among other descriptions, as composed of

72 János Wildmann, ‘A keresztény kurzus és a hívők’, 27:2 *Egyházforum* (2012), pp. 11–12.

73 *A Fidesz elnöke szerint a baloldal többször “rárontott nemzetére”* (President of the Fidesz claims the Left wing has assaulted the nation several times), *Nol.hu*, 09 August 2005, <nol.hu/archivum/archiv-371110-184897>, 29 February 2016.

74 David H. Baer, *Nyílt levél Nyugatról a magyarországi egyházaknak—A vallásszabadságot mi keresztények nem így értelmezzük!* (Open letter from the West to the churches of Hungary—We, Christians do not mean freedom of religion this way!), 12 January 2012, <archiv.evangelikus.hu/aktualis/panorama/nyilt-level-nyugatról-a-magyar-egyházaknak-2013-a-vallásszabadságot-mi-keresztények-nem-igy-értelmezzük>, 1 October 2018.

‘communists turned capitalists, freedom fighters turned dictators and dictators anxious about democracy’ or ‘church persecutors anxious about churches.’⁷⁵

The increasing politicisation of state churches is in itself a serious problem, which has reached alarming levels these years. Sermons given by politicians (coming not only from local FIDESZ circles but also from the Jobbik Movement for a Better Hungary, an extreme right-wing party) in churches—according to Jakab—is becoming ‘everyday practice.’⁷⁶ A striking example of this was the “sermon” given on the occasion of the unveiling a Horthy bust in front of a Reformed church in Budapest by a Jobbik MP.⁷⁷ Jakab maintains that the Reformed Church became the battlefield of a ruthless political struggle between FIDESZ and Jobbik since it was not irrelevant who decided over the public money flowing uncontrolled into the church.⁷⁸ As the collaborator and business quality of traditional churches strengthen and become more and more apparent, religious activities are pushed back. This may result in serious loss of credentials in a situation where the national data census of 2011 had already shown a roughly 30% decline in the number of adherents to traditional churches.⁷⁹

Meanwhile, several conflicts arise between political and religious requirements, since the politics of an “illiberal” regime are essentially elitist and exclusionary, which in Hungary also manifested in strong anti-poor and anti-Roma measures. Recently, in June 2018, the Seventh Amendment of the Fundamental Law inserted into Article R of the Fundamental Law that “The protection of the constitutional identity and Christian culture of Hungary is the duty of all state organs”. At the same time the Seventh Amendment inserted into Article XXII of the Fundamental Law, which contains the right to housing, the prohibition of “habitual residence in public areas”, that is to say, homelessness. This implies that homelessness becomes punishable by state authorities.⁸⁰ The above two objectives are irreconcilable for many conservatives and triggered

75 *Márfi Gyula érsek válaszelevele David Baer teológia- és filozófiaprofesszornak, supra note 40.*

76 Attila Jakab, ‘Egyház és politika egymás fogságában: ifj. Hegedűs Lóránt legújabb esetének tanulságai’ (*Church and politics in mutual captivity: the newest morals of the case of Loránd Hegedűs jr.*), Intézet a Demokratikus Alternatíváért. 2013 November 19, <ideaintezet.blog.hu/2013/11/19/egyhazi_es_politika_egymas_fogsagaban_ifj_hegedus_lorant_legujabb_es_etenek_tanulsagai>, 29 February 2016.

77 *Horthy’s statue was unveiled in Budapest city center*, Jobbik.com, 04 November 2012, <www.jobbik.com/horthys_statue_was_unveiled_budapest_city_center> (01 October 2018).

78 Jakab, *supra* note 67.

79 *A 2011. évi népszámlálás adatai* (Data of the national census in 2011), 2013, Hungarian Central Statistical Office, p. 23, <www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_orisz_2011.pdf>, 1 October 2018.

80 7th Amendment of the Fundamental Law, 28 June 2018.

harsh criticism on humanitarian and Christian grounds too.⁸¹ These anti-poor, anti-homeless etc. sentiments and endeavours are refused by a number of religious denominations, including Christians, on a theological-ethical basis and their promotion may result in disunion amongst believers, even if these elitist, exclusionary attitudes enjoy great support within the population.⁸² Even tacit support of such policies can raise considerable resentment against these churches and may further erode their already shaken “moral” authority, discredit them and make a mockery of Christian values, especially when these exclusionary, anti-poor, elitist measures are introduced or promoted by such politicians with reference to “Christian morality” or “Christian identity”, whom the general public regards hypocrites, “Christians for living”.⁸³

The government’s hard-line policy measures against the poor, persons with disabilities, homeless people,⁸⁴ or more recently against refugees, migrants and asylum seekers,⁸⁵ have been either explicitly supported, tacitly approved or at least not criticised by traditional churches and their prominent representatives.

Accrued church support was detectable in two distinct areas worth mentioning here. One was the introduction of segregation into the Hungarian legal system in violation of the ECtHR or EU norms, discussed above, the other was

81 See e.g.: Márton Gera, ‘Megszólalt Sólyom László, és bírálta a kormány “kereszténydemokráciáját” (László Sólyom Spoke up and Criticised the Government’s “Christian Democracy”)', *Magyar Narancs*, 13 September 2018, <magyarnarancs.hu/belpol/solyom-laszlo-az-nem-megy-hogy-egyszerre-vedjuk-a-keresztenyseget-es-tiltjuk-a-hajlekta-lansagot-113607> (01 October 2018); Dániel Juhász, *A bűn neve: hajléktalanság (The Name of the Crime: Homelessness)*, 01 October 2018, <nepszava.hu/3010030_a-bun-neve-hajlek-talansag>, 1 October 2018.

82 TÁRKI Social Research Institute ‘The Social Aspects of the 2015 Migration Crisis in Hungary’, March 2016, <www.tarki.hu/hu/news/2016/kitekint/20160330_refugees.pdf>, 1 October 2018; Amnesty International, *Annual Report, Hungary 2015/2016*, <www.amnesty.org/en/countries/europe-and-central-asia/hungary/report-hungary/>, 1 October 2018.

83 See e.g. Bányai, *supra* note 70; Áron Kovács, ‘Aki aprópénzre váltja a keresztény hitet—Semjén Zsolt politikai pályája’ (Who has given his faith for small change—the political career of Zsolt Semjén), *Hvg.hu*, 10 December 2012, <hvg.hu/itthon/20121121_Semjen_Zsolt_portre/>, 1 October 2018. János Wildmann, ‘A katolikus egyház lepusztulásának valódi okai’ (The Real Reasons behind the Deterioration of the Catholic Church) *168ora.hu* <168ora.hu/itthon/a-katolikus-egyhaz-lepusztulasanak-valodi-okai-6626>, 1 October 2018.

84 See e.g. Andrea Borbíró, ‘Amikor a kriminálpolitika a probléma A hajléktalanság kriminalizációja és az exkluzivitás veszélyei’, 3 *Fundamentum* (2014), pp. 41–45; Attila Láposy and Katalin Szajbély, ‘Korlátozott terек szociális jogok az érdemesség és a kriminalizáció árnyékában’, 3 *Fundamentum* (2014), pp. 52–57.

85 Boldizsár Nagy, ‘Parallel Realities: Refugees Seeking Asylum in Europe and Hungary’s Reaction’, *EU Immigration Law and Asylum Policy* (November 2015).

the refugee crisis. It is striking, for instance, how adamantly Catholic Church leaders launched themselves to protect the inhumane measures taken by the government and how fervently they echoed the Islamophobic rhetoric of the government propaganda. The examples are numerous, but one notable moment was when Péter Erdő, the Primate for Hungary stated that sheltering refugees would be a breach of the criminal law,⁸⁶ so the Catholic Church cannot engage in this activity, while Bishop Kiss-Rigó held sermons about the threat Muslims constitute to Europe and maintained that the Pope errs in his judgment.⁸⁷ Even though somewhat later Péter Erdő expressed his gratitude to Pope Francis in a letter for providing guidance in view of the refugee crisis, no meaningful actions on the part of the Catholic Church or clergy followed to date.⁸⁸ Meanwhile e.g. the Archbishop of Canterbury took in a Syrian refugee family in 2016.⁸⁹ When e.g. the Hungarian Helsinki Committee revealed that asylum seekers were starved in the transit zone, the only church leader, who tried to take action in vain was Pastor Gábor Iványi, the President of the non-recognised Hungarian Evangelical Fellowship.⁹⁰ However, “dissenting” voices within the traditional churches, like that of the Bishop Miklós Beér (Hungarian Catholic Church) or Tamás Fabiny (Hungarian Evangelical Church), tend to criticize such controversial government policies and remind to Christian values.⁹¹

86 Benjámín Novák, ‘Archbishop claims laws prevent Catholic Church from helping asylum seekers’, *Budapest Beacon* (4 September 2015).

87 Benjámín Novák, ‘Bishop Kiss-Rigó: The Pope has no idea what he’s talking about’, *Budapest Beacon* (9 September 2015).

88 ‘Erdő Péter bíboros és Veres András püspök, valamint az MKPK tagjainak levele Ferenc pápának’ (Letter of Péter Erdő Primate of Hungary, Bishop András Veres and the members of Conference of Hungarian Catholic Bishops), 7 September 2015, *Magyarkurir.hu* <www.magyarkurir.hu/hirek/erdo-peter-biboros-es-veres-andras-puspok-valamint-az-mkpk-tagjainak-levele-ferenc-papanak>, 1 October 2018.

89 Harriet Sherwood, ‘Archbishop of Canterbury takes in Syrian refugee family’, 19 July 2016, *The Guardian* <www.theguardian.com/world/2016/jul/19/archbishop-of-canterbury-syrian-family-refugee-sponsorship-scheme>, 1 October 2018.

90 Camila Domonoske, ‘Hungary Intentionally Denying Food To Asylum-Seekers, Watchdog Groups Say’, 22 August 2018, <www.npr.org/2018/08/22/640849555/hungary-intentionally-denying-food-to-asylum-seekers-watchdog-groups-say>, 1 October 2018.

91 Tamás Fabiny: ‘A határzárát el kell fogadni, de az egyház ajtóként működhet a kerítésen’ (The Border Lockdown must be Accepted, but the Church can work as a Door in the Fence), 26 March 2018, <www.evangelikus.hu/node/16260>, 1 October 2018.

5 Concluding Remarks

The “pluralist system of state churches” has many advantages for religious communities enjoying the privileges of the system: it facilitates them to promote their religious aims, to gain economic strength or to infiltrate politics, while putting those excluded from it in a highly disadvantageous position. In return to the above-mentioned privileges, “state churches” support and promote—or at least may not oppose—the state’s political, social and cultural agenda. However, the deconstruction of the secular state has serious implications. It results in an unhealthy symbiosis of the state and its “churches”, which is—in the long run—detrimental to both and it also erodes the protection of a number of fundamental rights.

The generous state allowances made it possible for these churches to expand their institutional structures—beyond their actual capacity—by taking over educational or social institutions, whose operation is at present utterly dependent on the state. Also the state contributes largely to the salary of their priests, providing tax exemptions or even paying part of it. Meanwhile, as we have seen, the traditional churches have achieved dramatically shrinking public support. There is no chance of them being able to continue their operation or maintaining their existing structural-institutional network without accrued state support. This utter economic dependence makes them vulnerable to the government and greatly compromises their autonomy.