Decision 6/2013 (III. 1.) AB

On a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of certain provisions of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities

In the matter of a petition seeking an *ex post* review of conformity of a legal act with the Fundamental Law and constitutional complaints, with concurring reasonings by Justices *dr. Elemér Balogh, dr. András Bragyova, dr. András Holló* and *dr. Miklós Lévay,* as well the with the dissenting opinions by Justices d*r. István Balsai, dr. Egon Dienes-Oehm, dr. Barnabás Lenkovics, dr. Péter Szalay* and *dr. Mária Szívós*, the Constitutional Court, sitting as the full court, has adopted the following

decision:

1. The Constitutional Court finds that the wording "and recognised by the National Assembly" in Section 7 (1), Section 14 (1) and (3) to (5) as well as Section 37 (1) of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities are contrary to the Fundamental Law and therefore annuls said provisions with retroactive effect as of their entry into force on 1 January 2012.

2. The Constitutional Court further finds that Section 34 (1) as established by Section 52 of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities is contrary to the Fundamental Law and therefore annuls said provision with retroactive effect as of their entry into force on 1 January 2012.

3. The Constitutional Court holds that the provisions of Section 34 (2) and (4) as effective between 1 January 2012 and 31 August 2012 of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities were contrary to the Fundamental Law shall not apply as of the date of their entry into force.

4. The Constitutional Court further holds that the provisions of Section 34 (1) as effective between 1 January 2012 and 31 August 2012 of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities were contrary to the Fundamental Law shall not apply as of the date of their entry into force concerning the petitioners submitting the constitutional complaints Nos IV/2785/2012, IV/2786/2012, IV/2787/2012, IV/2788/2012, IV/2790/2012 and IV/2801/2012.

5. The Constitutional Court finds that it is a constitutional requirement under Article VII and Article XV of the Fundamental Law that the State must secure the acquisition of the specific

church status enabling religious groups to operate independently and the additional entitlements and privileges available to churches, on the basis of objective and reasonable conditions commensurate with the right to freedom of religion and the entitlement in question, in accordance with Article XXIV and Article XXVIII of the Fundamental Law, in a fair procedure and with the possibility of legal remedy.

6. The Constitutional Court hereby dismisses the petitions seeking a finding of unconstitutionality by conflict with the Fundamental Law of Section 7 (4), Sections 15 to 16 and the entire Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities.

7. The Constitutional Court hereby rejects the constitutional complaint seeking a finding of unconstitutionality by non-conformity with the Fundamental Law of Section 34/A of Act CLI of 2011 on the Constitutional Court..

8. The Constitutional Court further rejects the constitutional complaints seeking a finding of unconstitutionality by conflict with the Fundamental Law of the provisions of Section 6 (1); Section 14 (2), Section 17, Section 18, Section 26 (c), Section 28, Section 34 (3) of, and the Annex to, Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities.

9. The Constitutional Court hereby rejects the constitutional complaint No IV/2794/2012.

10. The Constitutional Court finally rejects the petitions seeking a finding of conflict with an international treaty.

The Constitutional Court shall publish this Decision in the Hungarian Official Gazette.

Reasoning

I

[1] Seventeen churches filed a constitutional complaint with the Constitutional Court under Section 26 (2) of Act CLI of 2011 on the Constitutional Court (hereinafter referred to as the "Constitutional Court Act") and the Commissioner for Fundamental Rights filed a petition seeking an ex post review of conformity with the Fundamental Law under Section 24 (2) of the Constitutional Court Act, seeking a finding of unconstitutionality by non-conformity with the Fundamental Law and annulment of certain provisions as well as even the entirety of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities (hereinafter referred to as the "Act on Churches"), and in certain cases, disapplication thereof.

[2] 1. In his petition, the Commissioner for Fundamental Rights sought the annulment of Section 7 (1) and (4) of the Act on Churches relating to the procedure for recognition as a church, Section 14 (5) and Section 14 (1), (3) and (4) thereof, which are not applicable *per se* because of the close material connection.

[3] 1.1 As argued by the Commissioner for Fundamental Rights, although the Fundamental Law does not confer a fundamental right on any person to practise his religion within the framework of a church, the close link with religious freedom requires that the decision to recognise a church and to grant it church status must meet the guarantee requirements applicable to fundamental rights. These guarantee requirements are, in the view of the Commissioner for Fundamental Rights, the following: Firstly, if the decision to grant church status is a matter of discretion, the law must regulate the criteria for such discretion, and it must therefore be ensured that the interpretation of the law does not become a means of arbitrary or subjective decision by the body administering the law. Secondly, the decision taken must be reasoned. Finally, there must be a right of appeal against a decision on church status.

[4] Having reviewed the relevant provisions of the Act on Churches, the petitioner submits that these guarantee requirements do not apply to the decision of the National Assembly as to whether to classify a religious community as a church. The Act on Churches does indeed specify the conditions under which church status may be applied for, but it does not grant a subjective right to organisations meeting the conditions to obtain such status; under the Act on Churches, this is a discretionary decision of the National Assembly, the criteria for which are not specified in the Act on Churches. What is more, the requirement of a two-thirds majority in the decision-making process may make recognition subject to political bargaining. The National Assembly is not obliged to state the reasons for its decision; therefore, in the event of a negative decision, it is not possible to know the basis for the refusal and no means of redress is provided. This is contrary to Article XXIV (1) (right to a fair trial) and Article XXVIII (7) (right to legal remedy) of the Fundamental Law.

[5] 1.2 In the view of the Commissioner for Fundamental Rights, the disputed provisions are also contrary to Article C (1) of the Fundamental Law (the principle of separation of powers). The principle of the separation of powers is not merely a declaratory provision; it follows from that Article that the National Assembly may not, by law, perform any function which does not essentially correspond to its political character. In his view, the decision to grant church status is not political in character, given its close connection with fundamental rights. Although the procedure in this respect is similar to the procedure for the recognition of nationalities (which falls within the competence of the National Assembly), the parity is nevertheless unjustified, since the status of churches and nationalities is fundamentally different: the latter are, under the provisions of the Fundamental Law, State-forming factors, part of the power of the people, and part of the Hungarian political community, that is, the political nation. In contrast, the factors mentioned above do not apply at all to churches and religious communities. Article VII (2) of the Fundamental Law expressly states that the State and the churches are separate and that the churches are autonomous.

[6] 2. On 31 December 2011, *Magyarországi Evangéliumi Testvérközösség* (the Evangelical Brotherhood of Hungary) filed a petition seeking an ex post review of conformity with the Fundamental Law with the Constitutional Court contesting certain provisions of the Act on Churches and a provision of the Transitional Provisions of the Fundamental Law of Hungary. Once the Constitutional Court concluded that the proceedings in the case had been terminated, the petitioner filed a constitutional complaint on 13 March 2012, also referring to

the request as contained in the order of the Constitutional Court, but with partially changed content, challenging fewer provisions [complaint No IV/2572/2012], in which it sought the annulment of the wording "and recognised by the National Assembly" in Section 7 (1), Section 7 (4), Sections 14 to 16, Section 28 of the Act on Churches and the Annex thereto, and, in order to remedy the impairment of rights, the annulment of Section 34 (2) to (4) of the Act with retroactive effect to the date of entry into force.

[7] The grounds for bringing the complaint concerned the fact that the petitioner had been functioning as a church until 29 February 2012, but had lost this status on 1 March 2012 as a result of Parliamentary Resolution 8/2012 (II. 29.) OGY (hereinafter referred to as the "Parliamentary Resolution") and the underlying Section 34 (2), Section 7 (1) and (4) and Sections 14 to 16 of the Act on Churches. On the basis of the contested provisions, churches, whether new or already having such a legal status at the time of the entry into force of the Act on Churches, do not acquire that status by being registered by a court, but by the declaration of the legislative will of the National Assembly that enacted and/ or amended the Act on Churches, which however is not an act of legislation, but an individual decision taken in the context of political discretion. The petitioner submits that this legislation, by failing to provide for the recognition of legal persons meeting the statutory requirements, such as the recognition of the petitioner as a church, infringes the right to freedom of religion [Article VII of the Fundamental Law], the related right to association (to form and join an organisation) [Article VIII] and the right to legal remedy [Article XXVIII]. In the light of these considerations, the inclusion (or non-inclusion) of certain organisations in the Annex to the Act on Churches containing recognised churches is based on an arbitrary distinction, which also violates the prohibition of discrimination [Article XV of the Fundamental Law].

[8] Prior to the entry into force of the Act on Churches, the legal status of churches registered under Act IV of 1990 on Freedom of Conscience and Religion and on Churches (hereinafter referred to as the "Religious Freedom Act") was extinguished *ex lege* by Section 34 of the Act on Churches without providing organisations which met the statutory conditions with the opportunity to maintain their church status. The loss of church status also affects the right to freedom of religion, the right of association and the civil rights and obligations of legal persons, and therefore, in the view of the petitioner, the right to a fair trial [Article XXVIII (7) of the Fundamental Law] is infringed by the fact that the termination of church status is not carried out in a transparent procedure before an independent court. In the petitioner's view, the aforementioned regulation is a discriminatory solution contrary to the Fundamental Law, since the legislature, in order to weed out "business churches", by distinguishing between churches registered on 31 December 2011 as entities in a comparable situation, has used a method which also affects a wide range of legally functioning, genuine churches, which makes the restriction of rights disproportionate.

[9] In support of its request, the petitioner relied on the case law of the Constitutional Court and the European Court of Human Rights (hereinafter referred to as the "Strasbourg Court" or the "ECtHR") in several instances.

[10] 3. On 15 February 2012, *Evangéliumi Szolnoki Gyülekezet Egyház* (the Evangelical Szolnok Congregation Church) [Complaint No IV/2352/2012]; on 28 June 2012, *Szim Salom Progresszív*

Zsidó Hitközségi Egyház (the Sim Shalom Progressive Jewish Community Church) [Complaint No IV/3168/2012]; on 29 June 2012, *Magyar Reform Zsidó Hitközségek Szövetsége Egyház*, (the Association of Hungarian Reform Jewish Communities Church) [Complaint No IV/3185/2012] and on 22 February 2012, [Complaint No IV/2390/2012] another church requesting the confidentiality of its data filed constitutional complaints with the Constitutional Court. The four constitutional complaints are identical in substance.

[11] 3.1 The petitioners sought retroactive annulment of the entire Act on Churches on the grounds of invalidity under public law and lack of sufficient preparation time, primarily on the grounds of violation of Article B and Article 4 of the Fundamental Law.

[12] In the view of the petitioners, the drafting of the Act on Churches was carried out in serious breach of the rules governing legislation [namely, Section 23 (t), Section 47 (1), Section 98 (3), Section 99 (3) and Section 101 (2) of Parliamentary Resolution 46/1994 (IX. 30.) OGY on the Standing Orders of the National Assembly of the Republic of Hungary (hereinafter referred to as the "Standing Orders")]: the tabling of the general debate on the draft Act was unlawful, and the recommendations of the committees were absent or formal. The Members of the National Assembly were given only a few hours to familiarise themselves with the text of the law, to study it and to form an informed opinion on both the concept of the law and some of its specific provisions. In their opinion, citing Constitutional Court decisions, this is a serious breach of the requirements of democratic law-making.

[13] The Act on Churches was adopted by the National Assembly on 30 December 2011, promulgated the next day and entered into force on 1 January 2012; therefore, the persons concerned had one day to familiarise themselves with the text of the legislation, which brought about fundamental changes in their respect, to prepare for its application and to take any necessary administrative steps. The petitioners contend that it is of no relevance that the Act on Churches is identical in several respects to Act C of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities (hereinafter referred to as the "First Act on Churches"); the preparation period begins on the day of the promulgation of the legislation, in accordance with the principle of the rule of law.

[14] 3.2 In the alternative, the petitioners sought the annulment of the wording "morality" in Section 7, Section 14 and Section 15 of the Act on Churches on the grounds that they are contrary to Article VII and Article XXVIII of the Fundamental Law, since the linking of the definition of religious activity to the concept of "morality" and the political decision to recognise churches result in an unpredictable and disproportionate restriction of religious freedom, and the negative decision of the National Assembly also lacks the principles of fair trial and legal remedy. Also on the grounds of violation of the right to legal remedy, the petitioners sought the annulment of Section 26 (c) of the Act on Churches and Section 34/A of the Constitutional Court Act because, on the basis of the Constitutional Court's principled opinion, no legal remedy is available in the event of termination. In the complaints, the petitioners also sought the annulment of Section 14 (1) to (2) of the Acts on Churches and of the Act as a whole with regard to the requirement of equality before the law in Article XV of the Fundamental Law, claiming that the requirement of 1,000 members and 20 years of

operation unjustifiably discriminated against smaller or younger religious communities. No substantive reasoning was given in the petitions in relation to the request for annulment of Sections 17 and 18 of the Act on Churches.

[15] 3.3 On 29 June 2012, in the cases with Complaint Nos IV/2352/2012 and IV/2390/2012, the petitioners sent an addendum to the constitutional complaints, in which they referred to the fact that the Parliamentary Resolution adopted in the meantime had decided to refuse their application for registration as churches by explicitly mentioning the petitioner churches. Constitutional complaints Nos IV/3168/2012 and IV/3185/2012 had already initially referred to the Parliamentary Resolution.

[16] The Constitutional Court called upon the petitioners to provide rectification of deficiencies on how the natural person petitioners had suffered a violation of rights in relation to the provisions at issue as well as how the legal person petitioners had suffered a violation of rights in relation to the specific provisions at issue.

[17] In remedying the deficiencies, the petitioners submitted that the terms "application" and "being directly given effect", as interpreted in Section 26 (2) of the Constitutional Court Act, require a specific direct effect on a person, on the basis of which the petitioner can be anyone who becomes subject to the challenged norm, that is, anyone whose circumstances in life are actually affected by the legislation in question. According to the petitioners, the concept of being directly given effect is related to the case law of the Strasbourg Court on the "victim status", which, in accordance with Article Q of the Fundamental Law and the logic of Decision 1718/B/2010 AB, the Constitutional Court must also take into account in relation to the admissibility of the complaint, because of the requirement to follow the level of protection of fundamental rights laid down in the Strasbourg case law. In this context, the petitioners informed the Constitutional Court that they had referred their legal prejudice resulting from the Act on Churches to the Strasbourg Court, which registered their complaint, thus effectively recognising the existence of victim status.

[18] In the light of all the above, the petitioners also claimed that they were concerned (that their rights had been infringed) in the following respects: The definition of religion contained in Section 6 (1) of the Act on Churches is the point of departure for the functioning and existence of the petitioner religious communities, and therefore it must be directly applied to them and is being directly given effect against them. Section 14 (1) and (2) of the Act on Churches were applied to them by the Parliamentary Resolution, but if they wish to regain their church status, these sections would have to be applied to them again; therefore, the specific application and direct effect (as in being directly given effect) can be established.

[19] Although Section 26(c) of the Act on Churches and Section 34/A of the Constitutional Court Act, namely the rules on the dissolution of a church that operates in violation of the Fundamental Law, are "dormant norms" for the petitioners, in relation to which the complainant referred to the case law established by the ECtHR. Accordingly, a "constructive victim" status may also arise where a "reasonable likelihood" exists that a particular provision of law will be applied to the applicant and thus prejudice the applicant's rights under the Convention rights (*see* Judgements in Klass v Germany, 6 September 1978, Application No

5029/71; Halford v United Kingdom, 25 June 1997, Application No 20605/92; and Open Door and Dublin Well Woman v Ireland, 29 October 1992, Application Nos 14234-14235/88); where a provision of law directly affects the complainant by reason of its personal scope, he or she is a constructive victim (*cf*. Judgements in Marckx v Belgium, 13 June 1979, Application No 6833/74; Dudgeon v United Kingdom, 22 October 1981, Application No 7525/76); and, further, it is sufficient and appropriate to prove that the legislation at issue is in force and that there is a real and present risk that it will be applied (*see* Judgement in Ekin v France, 17 July 2001, Application No 39288/98). The petitioner also relied on the fact that in the case law of the Strasbourg Court the concept of "future victim" has been developed for cases where the legislation in question has not yet been applied but it is certain that it will be applied to the person concerned in the near future (Judgement in Kjeldsen v Denmark, 7 December 1976, Application Nos 5095/71, 5920/72 and 5926/72). It follows from the requirement of effective legal protection under the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter referred to as the "Convention"), that victim status must be granted in such cases, otherwise the rights of the person concerned will be irreparably prejudiced (Judgement in Segi and Others v. 15 Member States of the European Union, 23 May 2002, Application Nos 6422/02 and 9916/02).

[20] In the statements in which they submitted the rectification of deficiencies, the complainants further explained that the natural person petitioners in the constitutional complaints at issue are the pastors leading the respective churches, the representatives of the churches, and therefore, where the application or direct effect of the Act on Churches can be established in relation to the church, it can also be established in relation to the petitioners without further ado.

[21] 4. On 22 June 2012, *Ősmagyar Egyház* (the Proto-Hungarian Church) (headquarters at H-2146 Mogyoród, Somlói út 36/1.) filed a constitutional complaint with the Constitutional Court [Complaint No IV/3123/2012].

[22] The petitioner sought the annulment of the Act on Churches in its entirety and of the Parliamentary Resolution, as well as the "protection" of the Church and its members, from the Constitutional Court, on the grounds of a conflict with the National Avowal and Article VII of the Fundamental Law, since, in the petitioner's opinion, the National Assembly had deprived the former churches of their rights by an arbitrary political decision, which was discriminatory and against which there was no legal remedy.

[23] The Constitutional Court called on the petitioner to rectify the deficiencies of the petition as to how the Act on Churches had been applied or had become effective and how the petitioner had suffered a violation of its rights. In rectifying the deficiencies, submitted within the prescribed time limit, the petitioner argued that it had suffered a violation of its rights specifically through the application of Section 34 (1) and (2) of the Act on Churches and its Annex; that it had suffered a violation on account of a violation of Article B, Article Q, Article XV and Article XXVIII of the Fundamental Law; since, in addition to the grounds set out in the complaint, there was insufficient preparation time to prepare for the new legislation, the continued functioning of the religious community within the framework of an association was not guaranteed, the legal conditions for obtaining the status were also discriminatory, and the

legislation infringed the rights enshrined in the Convention and the Universal Declaration of Human Rights.

[24] 5. On 10 April 2012, *Szangye Menlai Gedün, A Gyógyító Buddha Közössége Egyház* (Sangye Menlai Gedün, The Healing Buddha Community Church) [Complaint No IV/2785/2012], *Út és Erény Közössége Egyház* (Church of the Way and Virtue Community) [Complaint No IV/2786/2012], *Dharmaling Magyarország Buddhista Egyház* (Dharmaling Hungary Buddhist Church) [Complain No IV/2787/2012], *Árpád Rendjének Jogalapja Tradicionális Egyház* (Traditional Church of the Legal Basis of the Order of Árpád) [Complaint No IV/2788/2012], *Univerzum Egyház* (Universe Church) [Complaint No IV/2790/2012] *ANKH Az Örök Élet Egyháza* (ANKH Church of Eternal Life) [Complaint No IV/2801/2012], *Mantra Magyarországi Buddhista Egyház* (Mantra Buddhist Church of Hungary) [Complaint No IV/2789/2012], while on 13 April 2012, *Usui Szellemi Iskola Közösség Egyház* (Usui Spiritual School Community Church) [Complaint No IV/2799/2012] and *Fény Gyermekei Magyar Esszénus Egyház* (Hungarian Essene Church of the Children of Light) [Complaint No IV/2884/2012] filed a constitutional complaint with the Constitutional Court. The nine constitutional complaints are identical in substance.

[25] The petitioners sought retroactive annulment of Section 6 (1), Section 7 (1) and Sections 14 to 15 of the Act on Churches on the grounds of a conflict with Article B (1), Article VII, Article XV and Article XXVIII of the Fundamental Law, for reasons similar to those of the constitutional complaints described above. In relation to Section 14 (2) (g) and (h) of the Act on Churches, the petitioners also claimed that the criteria for recognition laid down therein are unclear and therefore violate legal certainty. The petitioners also sought the annulment of Section 34 (1) of the Act on Churches and the Annex thereto on the grounds that it deprived them of their church status, that is, deprived them of the acquired rights protected by Article B (1) and Article VII, which are vested with religious communities.

[26] In addition to the foregoing, the petitioners also sought annulment of Section 6 (1), Section 34 (1) and the Annex to the Act on Churches on the grounds of the absence of a fair procedure and of a legal remedy in the decision taken by the National Assembly on the recognition of churches, and that the conditions for obtaining church status and the arbitrary decision violated the right to freedom of religion. This, in their view, is contrary to Article 6, Article 9 and Article 13 of the Convention, through which Article Q (2) of the Fundamental Law is also violated.

[27] The Constitutional Court called on the petitioners to rectify the deficiencies of the petition as to how the Act on Churches had been applied or had become effective and how the petitioner had suffered a violation of its rights. The petitioners replied to the notice of deficiency.

[28] 6. On 5 March 2012, *Fény és Szeretet Szabadkeresztény Egyház* (Free Christian Church of Light and Love) filed a constitutional complaint with the Constitutional Court [Complaint No IV/2506/2012].

[29] The petitioner requested the Constitutional Court to annul the wording "and recognised by the National Assembly" in Section 7 (1) of the Act on Churches on the grounds of its conflict with Article VII and Article B of the Fundamental Law, as it considers that the "listing" of

churches by the National Assembly infringes the autonomy of churches and freedom of religion.

[30] The Constitutional Court called on the petitioner to rectify the deficiencies of the petition as to how the Act on Churches had been applied or had become effective and how the petitioner had suffered a violation of its rights. In rectifying the deficiencies, submitted within the prescribed time limit, the petitioner argued that it had suffered a violation of its rights specifically through the application of Sections 34 to 36 of the Act on Churches and its Annex; that it had suffered a violation on account of a violation of Article B, Article Q, Article XV and Article XXVIII of the Fundamental Law; since, in addition to the grounds set out in the complaint, his church status and acquired rights were withdrawn without any legal remedy, the granting of church status is a political decision, which resulted in the reduction of civil and other rights.

[31] 7. On 11 April 2012, *Keresztény Testvéri Közösség* (Christian Brotherhood) filed a constitutional complaint with the Constitutional Court [Complaint No IV/2794/2012].

[32] The petitioner requested the Constitutional Court to annul the Annex to the Act on Churches and to "supplement" the list in the Annex with the petitioner, on the grounds of conflict with Article VII and Article XV of the Fundamental Law, as the petitioner claimed that despite the fact that it was not included in the list of recognised churches, it fulfilled the substantive conditions of the Act on Churches, and that there was no reasonable justification for this discrimination.

[33] The Constitutional Court called on the petitioner to rectify the deficiencies of the petition as to how the Act on Churches had been applied or had become effective and how the petitioner had suffered a violation of its rights. In remedying deficiencies, the complainant further detailed its the reasons for the failure to comply and enclosed, as evidence of its concern, the applications for recognition as a church which he had submitted to the Minister of Public Administration and Justice and to the National Assembly.

[34] 8. The Constitutional Court, on the basis of Section 58 (2) of the Constitutional Court Act, consolidated the petition for an ex post review of conformity of a legal act with the Fundamental Law, and the constitutional complaints for the purpose of joint consideration and decision, in view of the interconnected nature of their subject matter, and has assessed them in this Decision.

[35] 9. The Constitutional Court contacted the Speaker of the National Assembly, the Prosecutor General and the Minister for Human Capacities.

II

[36] 1. The provisions of the Constitution relevant in respect of the petition are as follows:

"Article B (1) Hungary shall be an independent, democratic State governed by the rule of law."

“Article VII (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change one’s religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practice or teach his or her religion or other belief through religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life.

(2) The State and the Churches shall operate separately. Churches shall be autonomous. In the interest of community objectives, the State shall cooperate with the churches.”

"Article VIII

[...]

(2) Everyone shall have the right to establish and join organisations.

“Article XV (1) Everyone shall be equal before the law. Every human being shall have legal capacity.

(2) Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.”

“Article XXIV (1) Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act.”

“Article XXVIII (1) Everyone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.”

[...]

(7) Everyone shall have the right to seek legal remedy against decisions of the courts, the public administration or other authorities, which infringe their rights or legitimate interests.”

“Article 4 (1) Members of the National Assembly shall have equal rights and obligations; they shall perform their activities in the public interest, and they shall not be given instructions in that respect.”

[37] 2. The relevant provisions of the Act on Churches in force at the time of submitting the petitions read as follows:

“Section 6 (1) Religious activities are activities linked to a world view which is directed towards the transcendental, has a system of faith-based principles, the teachings of which are directed towards existence as a whole, and which embraces the entire human personality through specific codes of conduct that do not offend morality and human dignity.”

“Section 7 (1) A church, denomination or religious community (hereinafter referred to as ‘church’) shall be an autonomous organisation and recognised by the National Assembly, consisting of natural persons sharing the same principles of faith; it shall be self-governed; it shall be established and shall operate primarily for the purpose of practising religious activities.

[...]

(4) The Churches recognised by the National Assembly shall be listed in the Annex to this Act."

"Section 14 (1) The representative of an association which primarily performs religious activities (hereinafter referred to as the "association") shall be authorised to initiate the recognition of represented association as a church by submitting a document signed by a minimum of 1,000 individuals applying the rules governing popular initiatives.

(2) An association may be recognised as a church if

(a) the association primarily performs religious activities;

(b) it has a confession of faith and rites containing the essence of its teachings;

(c) it has been operating internationally for at least 100 years or in an organised manner as an association in Hungary for at least 20 years, which extends to include operating as a church registered pursuant to Act IV of 1990 on the Freedom of Conscience and Religion and on Churches prior to the entry into force of this Act;

(d) it has adopted its statutes, instrument of incorporation and internal ecclesiastical rules;

(e) it has elected or appointed its administrative and representative bodies;

(f) its representatives declare that the activities of the organisation established by them are not contrary to the Fundamental Law, do not conflict with any rule of law and do not violate the rights and freedoms of others;

(g) the association has not been considered a threat to national security during its course of operation;

(h) its teaching and activities do not violate the right to physical and psychological well-being, the protection of life and human dignity.

(3) Based on the popular initiative, the parliamentary committee dealing with religious affairs (hereinafter referred to as the "committee") submits a proposal regarding the recognition of the association as a church to the National Assembly. If the conditions defined in Subsection (2) are not fulfilled, the committee shall indicate this in connection with the proposal.

(4) At the request of the committee, the association shall certify the fulfilment of the conditions defined in points (a) to (f) of Subsection (2). The committee shall request the position of the President of the Hungarian Academy of Sciences regarding the fulfilment of the conditions defined in points (a) to (c) of Subsection (2).

(5) If the National Assembly does not support the recognition of an association as a church in accordance with the proposal set out in Subsection (3), the decision made in this regard shall be published in the form of a parliamentary resolution. A popular initiative aimed at recognising the association as a church cannot be initiated once again within a period of one year following the publication of this resolution.

Section 15 The association shall qualify as a church as of the day of the entry into force of the amendment of this Act concerning the registration of the given association."

"Section 16 The Minister shall register the church within a period of 30 days following the entry into force of the amendment of this Act concerning the registration of the given church.

The register shall contain the following:

(a) the name, abbreviated name of the church, as well as the commonly used name;

(b) the seat of the church;

(c) the name and domicile of the representative of the church and the mode of representation;

(d) a description of the coat of arms and emblem of the church, if any.

(2) If amendments have been made to the instrument of incorporation of the church, the date of amendment, as well as the number and date of effect of the decision on the registration of this amendment shall also be registered.

(3) The Minster shall undertake registration.

(4) The following rules shall apply to the registration of internal ecclesiastical legal persons defined in Subsection (3) of Section 11, as well as to changes in the data registered:

(a) the representative of the church as a whole, of its supreme body or of the direct superior church body of the internal ecclesiastical legal person may request the registration of the internal ecclesiastical legal person; the application shall contain data concerning the internal ecclesiastical legal person defined in points (a) to (c) of Subsection (1);

(b) the church shall be registered under a church registration number;

(c) the Minister shall exclusively assess the request for registration of the internal ecclesiastical legal person in terms of whether it fulfils the conditions set out in point (a).

Section 18 (1) The representative of the church as a whole, of its supreme body or of the direct superior church body of the internal ecclesiastical legal person shall report changes made to the data registered, as well as data required for registration in accordance with Subsection (4) of Section 17 to the Minister within a period of 15 days following changes or the amendment of the instrument of incorporation.

(2) The data of churches and internal ecclesiastical legal persons entered into the register shall be made available to the public."

The church shall be dissolved without legal successor if

[...]

(c) its activities are in conflict with the provisions of the Fundamental Law based on the principled opinion of the Constitutional Court."

"Section 28 (1) If the grounds for dissolution set out in Sections 26 and 27 apply, the Government shall, upon the proposal of the Minister, initiate in the National Assembly the

striking of the church concerned from the Annex, or initiate the amendment of the Annex in the event of incorporation or division.

(2) The church shall be dissolved on the date of entry into force of the amendment of the Annex relating to its striking."

"Section 34 (1) With the exception of the churches specified in the Annex and the churches referred to in Subsection (2) and their autonomous organisations established for religious purposes, all organisations registered under Act IV of 1990 on Freedom of Conscience and Religion and on Churches and their autonomous organisations established for religious purposes (hereinafter together referred to as "organisations") shall be deemed to be associations as of 1 January 2012.

(2) Until the expiry of Act C of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities, with the exception of rules governing popular initiative, the National Assembly shall, in view of provisions governing the recognition of churches set out under Act C of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities, make decisions in respect of the recognition of churches submitting applications for recognition to the Minister in accordance with this Act, with the exception of the rules on popular initiative, within the framework of the procedure set out under Subsections (3) to (5) of Section 14 by 29 February 2012.

(3) The Minister shall publish a bulletin listing churches specified above in Subsection (2) on the Ministry's official website.

(4) If the National Assembly refuses to recognise a church in accordance with Subsection (2), for the purposes of this Act and other relevant legislation that church shall qualify as an organisation pursuant to Subsection (1) as of 1 March 2012, and Sections 35 to 37 shall apply to it, with the proviso that :

(a) recognition as a church may proceed on the grounds of a popular initiative launched one year after the publication of the parliamentary resolution referred to in Subsection (5) of Section 14;

(b) procedural action defined in Subsection (1) of Section 35 may be launched up to 30 April 2012 and conditions set out in Subsection (2) of Section 37 may be fulfilled up to 31 August 2012;

(c) the date of 30 April 2012 shall be taken into account during the course of the application of point (b), Subsection (3) of Section 35;

(d) the date of legal succession in accordance with Subsection (1) of Section 36 shall be 1 March 2012; and

(e) budgetary funding for ecclesiastical purpose may be granted to churches specified in Subsection (2) up to 29 February 2012."

"Section 37 (1) (1) With the exception of cases defined in Subsection (3), after the entry into force of this Act only churches listed in the Annex may be granted budgetary subsidy for ecclesiastical purposes."

"Annex to Act CCVI of 2011

Churches, Denominations and Religious Communities in Hungary Recognised by the National Assembly

A

1 Catholic Church in Hungary 2 Reformed Church in Hungary 3 Evangelical-Lutheran Church in Hungary 4 Federation of Jewish Communities in Hungary 5 United Hungarian Israelite Community (Status Quo Ante) 6 Autonomous Orthodox Israelite Religious Community in Hungary 7 Buda Diocese of the Serbian Orthodox Church 8 Ecumenical Patriarchate of Constantinople the Orthodox Exarchate in Hungary 9 The Bulgarian Orthodox Church in Hungary 10 Romanian Orthodox Diocese in Hungary 11 Hungarian Diocese of the Russian Orthodox Church – Moscow Patriarchate 12 Hungarian Diocese of the Unitarian Church in Hungary (Unitarian Church in Hungary) 13 Baptist Union of Hungary 14 Faith Church, Hungary 15 United Methodist Church of Hungary 16 Hungarian Pentecostal Church 17 St. Margaret's Anglican/Episcopal Church 18 Transylvanian Congregation 19 Seventh-Day Adventist Church 20 Coptic Orthodox Church of Hungary 21 Hungarian Islam Community 22 Apostolic Christian Church (Nazarene) 23 Hungarian Society for Krishna Consciousness 24 Free Church of the Salvation Army – Hungary 25 Church of Jesus Christ of Latter-day Saints 26 Hungarian Church of Jehovah's Witnesses 27 Buddhist religious communities"

[38] 3. The relevant provisions of the Act on Churches as amended until the decision taken concerning the petitions read as follows:

"Section 34 (1) With the exception of the churches specified in the Annex and their autonomous organisations established for religious purposes, all organisations registered under Act IV of 1990 on Freedom of Conscience and Religion and on Churches and their autonomous organisations established for religious purposes (hereinafter together referred to as "organisations") shall be deemed to be associations as from 1 January 2012.

(2) The organisation

(a) may initiate registration as an association in accordance with Section 35; and

(b) if the organisation meets the conditions as set forth in this Act, it may initiate recognition of the association as a church as provided for in Chapter III."

[39] 4. The contested provision of the Constitutional Court Act reads as follows:

"Section 34/A In case of a recognised church, on the Government's petition, in case of an organisation performing religious activity, the Constitutional Court shall express an principled opinion on whether the operation of a religious community is contrary to the Fundamental Law.

[40] 5. The provision of the Standing Orders referenced as the time of the adoption of the Act on Churches read as follows:

"Section 23 The House Committee shall

[...]

(t) publish the planned orders of the day of the sitting of the National Assembly forty-eight hours in advance, and - depending on room available - provide seats for the citizens in the gallery;"

"The Extraordinary Session and the Extraordinary Sitting

"Section 39 (1) At the written request of the President of the Republic, of the Government or of one fifth of the Members, the National Assembly shall be convened for an extraordinary session or extraordinary sitting. In the request the reason for the convening as well as the proposed date and orders of the day shall be indicated. The Speaker of the National Assembly shall convene the National Assembly at the proposed date, if possible, but at the latest within eight days following the proposed date.

(2) The Speaker of the National Assembly shall convene an extraordinary session or extraordinary sitting in the cases defined in the Constitution or the Standing Orders.

(3) If the convening of the extraordinary session or extraordinary sitting is requested in order to proceed with an independent motion, the latter, to be put on the orders of the day, shall be introduced simultaneously with the request. The independent motion so submitted will be included in the book of order of the National Assembly without any special decision.

(4) The National Assembly shall decide on the orders of the day of the extraordinary session or extraordinary sitting. Only independent motions shall be put on the orders of the day of an extraordinary session or extraordinary sitting the scheduling of which is requested by the persons defined in Subsection (1).

(5) The provisions of Subsections (3) and (4) shall not be applied to interpellations and questions introduced during the extraordinary session or extraordinary sitting.

(6) If the National Assembly requested urgency procedure in respect of the independent motion pursuant to Subsections (3) to (4), such procedure may be started on the sitting day when the urgency was requested."

"Section 47 (1) The orders of the day shall be proposed by the Speaker upon the advice of the House Committee. This proposal shall be sent two days in advance to the Members and the persons listed in Section 45 (1).

[...]

(3) Until one hour before the beginning of the sitting, the Government or at least ten Members may introduce a reasoned proposal to amend the proposal for the orders of the day.

(4) At the sitting the Speaker shall present the House Committee's proposal for the orders of the day, any other proposals in derogation from the orders of the day, as well as the House

Committee's proposal for the duration of the proceedings, the time limits on speeches and the proposals regarding contributions by lead speakers.

[...]

(6) On the proposals defined in Subsection (4), first on the proposal to amend the orders of the day, the National Assembly shall decide without debate."

"Section 98 (1) (1) Draft Acts shall be introduced to the Speaker of the National Assembly.

(2) The Speaker shall announce the introduction of a draft Act at the next sitting of the National Assembly, naming simultaneously the designated committee.

(3) A draft Act introduced by a Member shall be put on the order book of the National Assembly only if the designated committee supports it."

"Section 99 (3) If the National Assembly has ordered urgent proceedings with the draft Act, the draft Act may be put on the orders of the day, taking also into account the preparation in committee, at the earliest at the following sitting, and at the latest it shall be put on the orders of the day within thirty days of the ordering of urgent proceedings."

"Section 101 (2) The starting day of the general debate shall be determined in such manner that the recommendation of the designated committee, if it is not presented orally, be delivered to the Members at least three days before the sitting. In the event of an urgent procedure, an exception may be made to this rule."

III

[41] First of all, the Constitutional Court considered whether the constitutional complaints on which the procedure rests meet the requirements of the Fundamental Law and the Constitutional Court Act. The petitioners filed their complaint on the basis of Section 26 (2) of the Constitutional Court Act.

[42] 1. In Complaint No IV/2572/2012, the petitioner justified its concern by reference to the Parliamentary Resolution in which the National Assembly, by expressly mentioning the petitioner, applied Section 14 (3) to (5) of the Act on Churches through Section 34 (2) of the Act on Churches in deciding on the petitioner's application for recognition as a church. The petitioner had lost its ecclesiastical status (or was reclassified as an association) by virtue of the decision to refuse recognition as a church in the Parliamentary Resolution pursuant to Section 34 (4) of the Act on Churches. The above rules governing the procedure of the National Assembly and determining the recognised churches were of personal and direct concern to the petitioner and are related to the right to freedom of religion, the right to establish organisations, the right to legal remedy and equality before the law guaranteed by the Fundamental Law [thus, the petition in these parts clearly meets the conditions of Section 26 (2) (a) of the Constitutional Court Act].

[43] No judicial or other legal remedy to redress the violation of rights was available to the complainant either against the decision of the National Assembly or against the provisions of the Act on Churches applied or directly in force [Section 26 (2) (b) of the Constitutional Court Act].

[44] The petition was filed on 13 March 2012, that is, within one hundred and eighty days, that is, within the statutory time-limit [Section 30 (1) of the Constitutional Court Act], of the entry into force of the provisions of the legislation contrary to the Fundamental Law [1 January 2012], of its application to the petitioner or its being given effect [in the case of the Parliamentary Resolution: 29 February 2012; as for Section 34 (4) of the Act on Churches:1 March 2012].

[45] The crux of the constitutional issue raised in the petition is whether an organisation that meets the substantive statutory requirements for recognition as a church has a subjective right to acquire the status of a church; whether the legislator is under an obligation to secure a procedure in which this right can be exercised, and if so, whether the procedure under the Act on Churches is adequate for this purpose. The issue is closely linked to the collective exercise of the right to freedom of religion and the State's obligation of institutional protection in this regard, and as such must be regarded as being a constitutional law issue of fundamental importance [Section 29 of the Constitutional Court Act].

[46] The legal representative of the petitioner is an attorney-at-law (law office), the power of attorney in the form of a private deed with full probative value was enclosed by the petitioner [Section 51 of the Constitutional Court Act]. On the basis of the foregoing, the Constitutional Court found that the constitutional complaint complied with the formal and substantive requirements of the Constitutional Court Act and therefore admitted it for substantive review on 26 June 2012.

[47] 2. The petitioners, legal persons, who filed Constitutional Complaints Nos IV/2352/2012, IV/2390/2012, IV/3123/2012, IV/3168/2012 and IV/3185/2012, are specifically mentioned in the Parliamentary Resolution and the petitioners therefore rely on this fact in the complaints as justification for their concernment; the regulatory context is identical, no judicial or other remedy was available to the complainants to redress the violation of rights; and the complaints contain the same request on the basis of which the Constitutional Court admitted Complaint No IV/2572/2012. The complaints were lodged within one hundred and eighty days of the entry into force of the provisions of the legislation which, as alleged in the petition, are contrary to the Fundamental Law, or of their application to the petitioners, that is, within the statutory time limit. The legal representative of the petitioners is an attorney-at-law (law office), the power of attorney in the form of a private deed with full probative value was enclosed by the petitioners.

[48] The Constitutional Court found that the statutory conditions for the admissibility of the above constitutional complaints were observed and, pursuant to Section 30 (7) of the Rules of Procedure, considered the complaints on their merits.

[49] 3. The Constitutional Complaints Nos IV/2789/2012, IV/2799/2012 and IV/2884/2012 comprise the same request on the basis of which the Constitutional Court admitted Complaint No IV/2572/2012; in their respect, the regulatory context is identical and no judicial or other

remedy to redress the violation of rights was available to the complainants. The complaints were filed within the statutory time limit. The legal representative of the petitioners is an attorney-at-law (law office), the power of attorney in the form of a private deed with full probative value was enclosed by the petitioners.

[50] However, the petitioners did not demonstrate in their petition how and when (in which procedure) the challenged provisions of the Act on Churches, apart from its Section 34 (1), which was directly given effect by operation of law for churches registered under the Religious Freedom Act, were applied in relation to the petitioners, and how their rights were impaired in connection with such provisions. Pursuant to Section 52 (4) of the Constitutional Court Act, the petitioner must prove that the conditions for a constitutional court procedure are fulfilled. However, in the course of its inquiry, the Constitutional Court found that the National Assembly had refused to recognise the complainants as churches in the Parliamentary Resolution. In the case of these petitioners, the Constitutional Court "learned" of the petitioners' involvement from the same source from which it "obtained knowledge" of the applicable law. In the Constitutional Court's considered view, in such a case, there is no need for the petitioners to prove their involvement, since the authentic source, the Hungarian Official Gazette, can be used as a basis for such proof. Having regard to the fact that the application of these provisions can be demonstrated without separate proof on the basis of the Hungarian Official Gazette, the Constitutional Court, of its own motion has, therefore, duly considered the petitioners' concern in relation to Section 34 (2) and Section 14 (3) to (5) of the Act on Churches.

[51] The Constitutional Court found that the statutory conditions for the admissibility of the above constitutional complaints were observed and, pursuant to Section 30 (7) of the Rules of Procedure, considered the complaints on their merits.

[52] 4. The Constitutional Complaints Nos IV/2785/2012, IV/2786/2012, IV/2787/2012, IV/2788/2012, IV/2790/2012, and IV/2801/2012 all contain the same request on the basis of which the Constitutional Court admitted Complaint No IV/2572/2012. The complaints were filed within the statutory time limit. The legal representative of the petitioners is an attorney-at-law (law office), the power of attorney in the form of a private deed with full probative value was enclosed by the petitioners.

[53] However, in their petitions, the petitioners failed to provide evidence as to when and how (in which proceedings) the challenged provisions of the Act on Churches were applied in their respect and how they suffered a legal prejudice in connection with such provisions. In the course of its scrutiny, the Constitutional Court found that the National Assembly had not rejected the petitioners' application for church recognition in the Parliamentary Resolution, it is not clear from the petitions whether they had submitted such an application, failing which their concernment was only justified in relation to Section 34 (1) of the Act on Churches (which was directly given effect by operation of law for churches registered under the Religious Freedom Act). The Constitutional Court therefore considered the admissibility of these complaints in the light of Section 34 (1) of the Act on Churches.

[54] The petitioners sought annulment of Section 34 (1) of the Act on Churches on the ground that it had stripped them of their church status, that is to say, of acquired rights protected by

Article B (1) and Article VII of the Fundamental Law, and that they no judicial or other remedy was available to them to redress the violation of their rights. The constitutional issue raised in this part of the petitions is therefore whether recognition as a church may be withdrawn by a general legislative act of direct effect without proof of any abuse of a fundamental right or breach of law by organisations which have already acquired church status in individual proceedings. The issue is closely linked to the collective exercise of the right to freedom of religion and the State's obligation of institutional protection in this regard, and as such must be regarded as being a constitutional law issue of fundamental importance [Section 29 of the Constitutional Court Act].

[55] in the light of the foregoing, the Constitutional Court found that the statutory conditions for the admissibility of the above constitutional complaints were observed and, pursuant to Section 30 (7) of the Rules of Procedure, considered the complaints on their merits.

[56] 5. In terms of its essence, Constitutional Complaint No IV/2506/2012 comprises the same request on the basis of which the Constitutional Court admitted Complaint No IV/2572/2012; in its respect, the regulatory context is identical and no judicial or other remedy to redress the violation of rights was available to the complainant. The complaint was filed within the statutory time limit. The legal representative of the petitioner is an attorney-at-law (law office), the power of attorney in the form of a private deed with full probative value was enclosed by the petitioner.

[57] However, the petitioner did not demonstrate in its petition how and when (in which procedure) the challenged provisions of the Act on Churches, apart from its Section 34 (1), which was directly given effect by operation of law for churches registered under the Religious Freedom Act, were applied in relation to the petitioner, and how its rights were impaired in connection with such provisions. However, in the course of its inquiry, the Constitutional Court found that the National Assembly had refused to recognise the complainant as a church in the Parliamentary Resolution, which, in view of the fact that the application of Section 34 (2) of the Act on Churches could be verified in relation to the complainant without any special proof, on the basis of the Hungarian Official Gazette, it took into account *ex officio*.

[58] in the light of the foregoing, the Constitutional Court found that the statutory conditions for the admissibility of the above constitutional complaint were observed and, pursuant to Section 30 (7) of the Rules of Procedure, considered the complaint on its merits.

[59] 6. Constitutional Complaint No IV/2794/2012 was filed within the statutory time limit. The legal representative of the petitioner is an attorney-at-law (law office), the power of attorney in the form of a private deed with full probative value was enclosed by the petitioner. The Constitutional Court then assessed the substantive conditions for the admissibility of the constitutional complaint provided for by law, in particular the requirement of concernment pursuant to Section 26 (2) of the Constitutional Court Act (Section 56 of the Constitutional Court Act).

[60] In its Decision rendered in connection with the review of certain provisions of Act CLXII of 2011 on the Legal Status and Remuneration of Judges, the Constitutional Court interpreted the concept of concernment as follows: “The admissibility of the complaint is

conditional upon concernment, namely, the fact that the piece of legislation which the complainant considers to be contrary to the Fundamental Law establishes a provision which directly and actually affects the person and his specific legal relationship and, as a result, the complainant's fundamental rights are violated." {Decision 33/2012 (VII. 17.) AB, Reasoning [61] and [62]; *See also* Order 3367/2012 (VII. 15.) AB; Reasoning and [15]}.

[61] However, the complainant did not demonstrate in his application or in his reply to the notice of deficiency how the application or the entry into force of the contested Annex to the Act on Churches had directly caused him any legal prejudice. The request to "supplement" the list in the Annex with the petitioner's name requires an individual decision (recognition as a church) in substance and legislation in form. The latter can also be interpreted as a request for a declaration that the legislator has failed to act in violation of the Fundamental Law, but the complainant cannot submit such a petition independently, as it is the Constitutional Court that has the competence to determine this issue of its own motion in the exercise of its competences pursuant to Section 46 (1) of the Constitutional Court Act; whereas it has no competence to decide on the former (recognition as a church in an individual case).

[62] On the basis of the preceding considerations, the Constitutional Court held that the substantive conditions for the admissibility of the above constitutional complaint provided for by law, namely the requirement of Section 26 (2) on concernment, are not met, and therefore the Constitutional Court rejected the complaint under Section 56 of the Constitutional Court Act.

IV

[63] The Constitutional Court first reviewed the elements of the petition concerning the invalidity of the Act on Churches under public law, in which the petitioners alleged a violation of Article B and Article 4 of the Fundamental Law on the grounds of a violation of the Standing Orders of the National Assembly, with the reasoning set out in the Constitutional Court decisions based on the Constitution.

[64] 1. Hungary's form of government is a parliamentary democracy.

[65] The Fundamental Law states that the source of public power is the people and that the people exercise their power primarily through their elected representatives [Article B (3) and (4)]. The National Assembly is the national representative body of the people of Hungary, in which the Members of the National Assembly carry out their activities (in accordance with the principle of free mandate) in the public interest [Article 4(1)], in other words, they cannot be instructed or withdrawn prematurely, and they decide on public affairs to the best of their knowledge and belief. Every four years, the electorate shall decide, by direct and secret ballot and on the basis of universal and equal suffrage, in elections which shall be free expression of the will of the electors (Article 2), who shall be the representatives of the people in the exercise of public authority in national affairs The representatives thus elected are given the mandate to take the best possible decisions for the country as a whole, taking into account the opinions

of their fellow representatives and feedback from the public. Therefore, the parliamentary legislative process must allow for the proposals under discussion to be thoroughly known and debated, as a rule in public [Article 5 (1)]. The National Assembly lays down the rules of its operation and the order of its debates in the Standing Orders [Article 5 (7)]. The rule of the Fundamental Law which refers to the adoption of the Standing Orders, that is, the order of debates, would be rendered meaningless if the Standing Orders were to be regarded as generally violable or disregarded; such a permissive interpretation would also be contrary to the principle of the rule of law [Article B (1)].

[66] The basis for the functioning of parliamentary democracy, that is, for the legitimacy of the exercise of public power by the parliamentary majority in power, is therefore, first, the existence of electoral rules in accordance with the Fundamental Law, second, the existence of rules of the legislative process which provide a guarantee framework for the ability of Members of the National Assembly to carry out their activities in a prudent manner in the public interest, and third, the actual observance of such rules.

[67] It is not the task of the Constitutional Court to review either the content of the parliamentary debate on which the decisions of the National Assembly are based, or the adequacy of the time allocated to it (that is, the prudence of the actual decision-making), or the content of the political decisions of the National Assembly which do not violate the Fundamental Law. However, pursuant to Article 24 of the Fundamental Law, the Constitutional Court is the supreme body for the protection of the Fundamental Law. In this context, the explanatory memorandum of the draft for the adoption of the Fundamental Law stated that "[i]n a constitutional State governed by the rule of law, the values of the Fundamental Law must permeate the entire legal system. The Constitutional Court is the body that is ultimately responsible for ensuring that legislation is enacted in accordance with the Fundamental Law, both in terms of procedure and outcome." The Constitutional Court therefore has both the right and the duty to ensure that the legislative activity of the National Assembly, and thus the content of its laws, is in conformity with the Fundamental Law, which means that the regulatory power of the National Assembly is not unlimited in substance. On the other hand, if the National Assembly itself does not ensure this sufficiently, the Constitutional Court must ultimately also ensure that the parliamentary decision-making process is carried out in accordance with the relevant rules.

[68] A legislative process that disregards and violates the guarantee provisions of the Standing Orders is susceptible to undermine the legitimacy of the decision of the otherwise legally established parliamentary majority; moreover, its regular occurrence devalues the institution of parliamentarianism itself. Therefore, an Act enacted in contravention of an essential provision of the Standing Orders violates Article B (1), Article 4 (1) and Article 5 (7) of the Fundamental Law and is invalid under public law, which is a ground for annulment of the Act, even with retroactive effect to the date of its promulgation, if this does not cause serious prejudice to legal certainty.

[69] However, this also implies that the democratic legitimacy of Members of the National Assembly elected on the basis of electoral rules in conformity with the Fundamental Law and

the validity of the laws duly enacted by them cannot be called into question on formal grounds, and that they are binding on all [Article R (2)].

[70] 2. Because of the entry into force of the Fundamental Law, the Constitutional Court was required to consider the extent to which the findings of invalidity under public law, in the light of the rules of the Constitution, were constitutionally in conformity with the provisions of the Fundamental Law. If a fundamental principle or fundamental right regulated by the Constitution is regulated by the Fundamental Law in the same wording or with the same content, and there has been no fundamental change in other circumstances that would justify an interpretation of the content of the provision in question that differs from the previous one, the Constitutional Court continues to uphold its practice regarding the content of the provision in question {*cf*. Decision 34/2012 (VII. 17.) AB, Reasoning [33]; Decision 35/2012 (VII. 17.) AB, Reasoning [25]; Decision 3301/2012 (XI. 12.) AB, Reasoning [20]}.

[71] The fundamental principles referred to in the petitions (rule of law; public interest activities of Members of the National Assembly), similarly to the Fundamental Law, were also recognised and protected by the Constitution [Article 2 (1), Article 20 (2)]; therefore, the Constitutional Court, on the one hand, accepts the findings made in its earlier relevant decisions as the basis for this Decision with regard to the infringement of the Fundamental Law, and, on the other hand, could apply the provisions of the Fundamental Law which are in line with the Constitution in its review of the Act on Churches, which was enacted under the Constitution and therefore has to be judged under the Constitution with regard to its validity under public law {*see:* Decision 44/2012 (XII. 20.) AB, Reasoning [16]}.

[72] 3. It is the practice of the Constitutional Court to determine the constitutionality of the legislative process itself and to rule on the constitutionality of a "formally defective legislative process". As the Constitutional Court had explained in Decision 11/1992 (III. 5.) AB, "[p]rocedural guarantees follow from the principles of the rule of law and legal certainty. (...) Only by following the rules of a formalised legal process can a valid law be adopted (...)" (ABH 1992, 77, 85). The Constitutional Court has addressed in detail the cases of invalidity under public law in several of its decisions. In its Decision 29/1997 (IV. 29.) AB, the Constitutional Court explained that "a formally defective legislative process, on the basis of a corresponding petition, will in the future provide grounds for the retroactive annulment of a law to the day of its promulgation" (ABH 1997, 122). The reasoning of the decision states that "[the] basis for annulment is invalidity under public law, which is a variant of the formal unconstitutionality of a norm" (ABH 1997, 122, 128). In the operative part of Decision 52/1997 (X. 14.) AB, the Constitutional Court reiterated the principle set out in its earlier decision that a procedural violation of the constitution committed in the course of the legislative process is in itself a ground for annulling a law (ABH 1997, 331, 332). The reasoning reiterated that a serious procedural irregularity gives rise to invalidity under public law. The Constitutional Court stated in its Decision 39/1999 (XII. 21.) AB, referring to the cited decisions, that "compliance with certain procedural rules of the legislative process is a requirement of the rule of law for the validity of a law, which can be derived from Article 2 (1) of the Constitution" (ABH 1999, 325, 349).

[73] In Decision 10/2001 (IV. 12.) AB, which also looked into the process of drafting the Act on Agricultural Cooperative Business Shares, the Constitutional Court considered the objection of constitutionality whereby "the National Assembly, in violation of the rule of law, adopted an Act that differed in all respects from the draft Act submitted by the Government following the submission of a related proposal for amendment". In the case, the Constitutional Court held that "under the Standing Orders, it is possible for Members of the National Assembly to table amendments or related amendments to all or part of a draft Act, the adoption or rejection of which is ultimately decided by the National Assembly. Therefore, from a constitutional point of view, it is not objectionable that the National Assembly adopted the Cooperative Shares Act [Act CXLIV of 2000 on the Agricultural Cooperative Business Shares] with the same content as that contained in the [...] related proposal for amendment. Consequently, on the basis of the objection raised in the petition, it cannot be established that, in the course of its procedure, the National Assembly infringed the provisions of the Standing Orders, resulting in the invalidity of the Cooperative Shares Act under public law." The Constitutional Court therefore considered compliance with the provisions of the Standing Orders to be an essential aspect of its review of the constitutionality, but, having found no breach of the Standing Orders, it did not find this part of the petition to be well-founded.

[74] The Constitutional Court in its Decision 8/2003 (III. 14.) AB also determined as a constitutional requirement that "legislation may only be adopted in accordance with the constitutional principle of legal certainty. The principle of legal certainty requires that legislation [...] be adopted in a reasonable order [...]" (ABH 2003, 74.).

[75] However, in Decision 109/2008 (IX. 26.) AB, the Constitutional Court held that a violation of any provision of the Standing Orders does not automatically result in a violation of Article 2 (1) of the Constitution and thus in the unconstitutionality of the defectively enacted Act. In the case on which the decision was based, one of the petitioners also argued that the person who proposed the Act had submitted an emergency motion to the National Assembly under Section 92 (1) of the Standing Orders, but had failed to state reasons for his motion, contrary to the requirement of Section 92 (2) of the Standing Orders, which in turn necessarily violated the rule of law. The Constitutional Court, however, held that only the provisions of the Standing Orders which are directly derived from the provisions of the Constitution are contrary to the rule of law, and held that "the obligation to state reasons for an urgency proposal cannot be regarded as such, particularly in view of the fact that the National Assembly ultimately decides on the question of urgency without debate [Section 45 (2) of the Standing Orders] Failure to state reasons therefore leads to irregularity, but not to unconstitutionality."

[76] In the light of the provisions of the Fundamental Law and the case law cited above, the Constitutional Court was called upon in the present case to consider, first, whether the infringement of the rules of the legislative process as referred to in the Standing Orders could be regarded as a serious procedural irregularity which, in addition to the rule of law, also contravened another provision of the Fundamental Law and thus also affected the public validity of the law and, second, whether, as the petition alleged, the Act on Churches was in fact enacted in breach of the rule in question.

[77] 4. In its Decision 63/2003 (XII. 15.) AB, the Constitutional Court annulled the Act subject to the review of its constitutionality on the ground that the convocation of the sitting of the National Assembly had been made in violation of the applicable procedural rules (not all Members of the National Assembly had been notified of the convocation of the sitting and of the proposed orders of the day of the sitting), and the proposed orders of the day was not sent to the deputies in due time), as a result of which the Act, which was sent back to the National Assembly by the President of the Republic for reconsideration, could not be debated anew by the deputies on its merits (ABH 2003, 676, 685-689). In the case, the Constitutional Court pronounced the unconstitutionality of the Act, first of all, in relation to the violation of the powers of the President of the Republic to influence legislation (return of the Act to the National Assembly for reconsideration, right of participation and right to speak), as laid down in the Constitution, but also took a firm position on the exercise of the rights of the Members of the National Assembly:

"It is an essential condition for the predictability and reasonable order of the conduct of the legislative process that all Members of the National Assembly are informed of the convening of the sitting of the National Assembly and its proposed orders of the day in due time and in accordance with the provisions of the Standing Orders. This purpose is served by Section 47 (1) of the Standing Orders, which provides that Members and the persons specified shall be notified of the sitting of the National Assembly and its orders of the day by the dispatch of the proposed orders of the day two days prior to the sitting. This is also the guarantee rule determining the starting date for the resumption of the debate on the Act. [...]

Pursuant to Section 47 (1) of the Standing Orders, the proposal for the orders of the day of the sitting shall be sent to Members and the persons listed in Section 45 (1) of the Standing Orders no later than two days prior to the sitting. If Members of the National Assembly or other persons concerned are not notified of the sitting or its orders of the day in due time or at all, they shall not be able to exercise their rights or fulfil their obligations in the course of the functioning of the National Assembly. The lack of two days' notice of the sitting renders the operation of the National Assembly and the legislative process unpredictable, which is contrary to the constitutional requirement of predictability and rational order in the legislative process.

The proper convening of the sitting and the timely circulation of the proposed orders of the day is also an essential condition for the exercise of representative power under Article 2 (2) of the Constitution. The exercise of representative power cannot be effective if the Members of the National Assembly are not notified of the sitting of the National Assembly and its orders of the day, or if not all Members are notified or are not notified in due time, and as a result the exercise of their rights and the fulfilment of their obligations are rendered impossible. Prior notification of the convening of a sitting guarantees that no Member is neglected in the activities of the National Assembly.

The reopening of the debate on the [Act] was not carried out in accordance with the procedural rules governing the convocation of sittings of the National Assembly: Not all Members of the National Assembly were notified of the convocation of the sitting and the proposed orders of the day, and the proposed orders of the day were not sent to them in due time. The failure to observe the rule on the advance circulation of the proposed orders of the day for the sitting of

the National Assembly was not only a violation of the provisions of the Standing Orders, but also of Article 2 (2) of the Constitution, since it rendered the legislative procedure unpredictable."

"Pursuant to Section 23 (t) of the Standing Orders, the House Committee shall publish the planned orders of the day for the sitting of the National Assembly 48 hours in advance of the sitting. This provision is primarily intended to inform the public about the sittings of the National Assembly, but the publication of the draft agenda also serves to notify Members of the National Assembly. Failure to publish, or to notify by publication, makes it impossible for Members to exercise their rights and for plenary and committee debates to be conducted in a reasonable order, and thus for the legislative process to be conducted."

[78] In other decisions, the Constitutional Court has confirmed that the provisions enabling Members of the National Assembly to participate in the parliamentary decision-making process in a considered and professionally reasoned manner are a guarantee of the exercise of their parliamentary activity in the public interest, which, in the light of the practice of the Constitutional Court, are also closely linked to Article 2 (1) and (2) and Article 20 (2) of the Constitution as constitutional requirements for the democratic exercise of power [the provisions of which are contained in Article B (1), (3) to (4) and Article 4 of the Fundamental Law]:

"Pursuant to Article 2 (1) of the Constitution, the Republic of Hungary is an independent democratic State under the rule of law, while Article 2 (2) of the Constitution enshrines the principle of popular sovereignty: The people exercise power through elected representatives and directly. The Constitutional Court's interpretation of Article 2 (1) and (2) of the Constitution in relation to one another has given substance to the adjective 'democratic', which is part of the rule of law. As held by the Constitutional Court, it is only the exercise of power declared in Article 2 (2) of the Constitution can be regarded as a democratic source or manifestation of public power [Decision 16/1998 (V. 8.) AB, ABH 1998, 140, 146]. The Constitutional Court has explained that the constitutional requirements of a democratic State governed by the rule of law determine the framework and limits of the activities of the National Assembly and the Government, and of the exercise of public power in general [Decision 30/1998 (VI. 25.) AB, ABH 1998, 220, 233]. A component of the constitutional requirements for the democratic exercise of power is also laid down in Article 20 (2) of the Constitution, which states that Members of the National Assembly shall carry out their duties in the public interest. Among the requirements of a democratic State governed by the rule of law, it is the duty of Members of the National Assembly to discuss public affairs [Decision 50/2003 (XI. 5.) AB, ABH 2003, 566, 576]. This task is also a precondition for the exercise of a number of fundamental rights. [...] In the view of the Constitutional Court, the activity of Members of the National Assembly in the public interest is manifested, on the one hand, in the free parliamentary debate of public affairs, as an indispensable precondition for democratic law-making, and, on the other hand, in the provision of adequate information to the electorate, so that they can participate in political discourse with sufficient information [*see* Decision 50/2003 (XI. 5.) AB, ABH 2003, 566, 576].

The most important institutional framework for this is the National Assembly, whose effective functioning must be governed by the requirements of the democratic rule of law, just as the

freedom of speech of Members of the National Assembly in the debate on public affairs. In its Decision 62/2003 (XII. 15.) AB, the Constitutional Court imposed a set of requirements on the legislature that derive from the democratic rule of law. The Constitutional Court clarified that the democratic rule of law presupposes the existence of democratically accepted procedural rules and the corresponding decision-making process. (ABH 2003, 637, 647) This decision refers to the existence and observance of procedural rules which can be traced back to the Constitution as a condition for the realisation of the democratic rule of law (ABH 2003, 637). [...] As can be seen from the preceding discussion, the requirements arising from the democratic rule of law convey a complex set of considerations for the protection of effective parliamentary functioning. The constitutional requirements of the democratic exercise of power include the effective functioning of the rule of law institutions (including the National Assembly) and, at the same time, the constitutional protection of the activity of representatives based on popular sovereignty and carried out in the public interest The essence of parliamentary work is to scrutinise all sides of the issues under debate and to listen to a wide range of opinions of the most diverse kinds. As a consequence, the exercise of power through representation at the central (national) level, as declared in Article 2 (2) of the Constitution, is exercised through the functioning of the National Assembly in the process of decision-making, typically in the process of law-making. In this process, the preparation of decisions and the discussion of proposed legislation (the right of Members to speak) are of decisive importance." [Decision 12/2006 (IV. 24.) AB, ABH 2006, 234, 246]

[79] On the basis of the above considerations, the Constitutional Court concludes that the rules of the Standing Orders concerning the orders of the day of the sitting of the National Assembly, including the preliminary circulation of the proposal on the orders of the day, constitute guarantees of the democratic exercise of power and of the activity of representatives in the public interest, and that their non-observance must therefore be regarded as a serious procedural irregularity which renders the law invalid under public law.

[80] 5. The Constitutional Court subsequently considered whether the Act on Churches was enacted in accordance with Article 23 (t), Article 47 (1), Article 98 (3), Article 99 (3) and Article 101 (2) of the Standing Orders.

[81] 5.1 Pursuant to Article 22 (3) of the Constitution, upon the written request of the President of the Republic, the Government or one-fifth of the Members of the National Assembly, the National Assembly shall be convened in extraordinary session or in an extraordinary sitting; the request shall state the reason for the convening as well as the proposed date and orders of the day shall be indicated. Section 39 (3) of the Standing Orders stipulates that if the convening of the extraordinary session or extraordinary sitting is requested in order to proceed with an independent motion, the latter, to be put on the orders of the day, shall be introduced simultaneously with the request.

[82] In a letter dated 14 December 2011, the Minister of Public Administration and Justice, on behalf of the Government, moved for the convening of an extraordinary session of the National Assembly for the period from 16 December 2011 to 23 December 2011. The motion stated that the extraordinary session was necessary primarily for the adoption of the draft Act T/4365 on the Budget of Hungary for 2012. The enclosure to the letter also identified 20 other draft Acts

for which, according to the Minister, if the votes or the detailed debate were postponed until February, the proposed legislation could only enter into force at a later date, which, especially in view of the entry into force of the Fundamental Law on 1 January 2012, could lead to a number of problems in the application of the law and would also result in the delayed achievement of important government objectives. Finally, the Minister indicated that, if it was absolutely necessary, the Government could later initiate the discussion of other proposals during the extraordinary session, adding them to the orders of the day indicated in the motion [*see* file XVI-Á/KIM/31/1/2011].

[83] 5.2 In its Decision of 19 December 2011, the Constitutional Court established that, during the drafting of the First Act on Churches, the proposed amendment T/3507/98, which was a conceptual change to the single proposal T/3507/90, was submitted and adopted before the final vote on the Standing Orders, the substantive discussion of public affairs, the activity of Members in the public interest, which is a guarantee of the democratic exercise of power and a guarantee of the rational order of lawmaking, was adopted in contravention of Section 107 of the Standing Orders, which also resulted in a violation of Article 2 (1) and (2) and Article 20 (2) of the Constitution. In view of this, the Constitutional Court established that the First Act on Churches was unconstitutional on account of invalidity under public law; therefore, the Constitutional Court annulled the Act.

[84] In its Decision, the Constitutional Court laid great emphasis on the following: "Pursuant to the Constitution, Members of the National Assembly shall carry out their duties in the public interest. The public interest orientation of the activity of the Members of the National Assembly, namely that they act in the public interest, in other words that in the course of their activities they have the interests of the people as a whole, the nation, in mind, are represented, is fundamental to the legitimacy of the democratic exercise of power. In addition to their independence in the legal sense, the political and moral responsibility of Members of the National Assembly in the exercise of their mandate, and in the context of the decisions they take in the public interest, also presupposes that they are able to take decisions at their own discretion and in the light of the opinions and arguments expressed in the National Assembly and by the public. In this context, and in order to safeguard the legitimacy of the democratic exercise of power, it is ultimately the task of the Constitutional Court to enforce compliance with the fundamental rules which provide a framework for the substantive discussion of public affairs and for the reasoned deliberation of Members, without having to scrutinise the specific content of the debate on the adoption of individual Acts and the considerations of Members, and which ensure a reasonable order of legislation."

[85] Finally, the Constitutional Court pointed out in its Decision that since the First Act on Churches would not have provided for the repeal of the Religious Freedom Act, the annulment of the First Act on Churches does not in itself affect the continued validity of the Religious Freedom Act; therefore, it is the responsibility of the National Assembly to ensure that, until the adoption of a new Act in accordance with Article VII of the Fundamental Law, the proper regulation of freedom of conscience and religion and of the life situation in relation to churches is maintained by eliminating the repeal of the Religious Freedom Act.

[86] On 19 December 2011, the day on which the decision of the Constitutional Court to annul the First Act on Churches was taken and the corresponding communication was published, the Committee on Constitutional Affairs submitted a proposed amendment to draft Act T/4997 on the Rights of Nationalities before the final vote, in which it also added a new Section 241 to the draft Act repealing the First Act on Churches. The draft Act was adopted by the National Assembly on the same day, published in the Hungarian Official Gazette and the provision repealing the First Act on Churches entered into force on 20 December 2011.

[87] The Constitutional Court's Decision 164/2011 (XII. 20.) AB, which annulled the First Act on Churches was published in the Hungarian Official Gazette on the same day.

[88] 5.3 According to the parliamentary information system, draft Act T/5315 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Denominations and Religious Communities (hereinafter referred to as the "Draft Act") was submitted by Members of the National Assembly on 21 December 2011 (the chairperson of the Committee on Human Rights, Minorities, Civil and Religious Affairs of the National Assembly [hereinafter referred to as the "Human Rights Committee"] explained at the meeting of the committee that he himself had access to the Draft Act "only in the late hours", and the other Members of the National Assembly even later [*See* the Minutes EMBCB-38/2011, p. 5]).

[89] Pursuant to Section 98 of the Standing Orders, a draft Act must be submitted to the Speaker of the National Assembly, who announces the submission of the draft Act at the next sitting of the National Assembly, at the same time naming the committee appointed. The draft Act submitted by the deputy shall be handed over by the Speaker of the National Assembly to the designated committee, which shall decide within thirty days, or within eight days if the deputy has requested an urgency procedure, whether to take the motion up for consideration in the book of order. A draft Act introduced by a Member shall be put on the order book of the National Assembly only if the designated committee supports it. Section 39 (3) of the Standing Orders provides that if the convening of the extraordinary session or extraordinary sitting is requested in order to proceed with an independent motion, the latter, to be put on the orders of the day, shall be introduced simultaneously with the request; the independent motion so submitted will be included in the book of order of the National Assembly without any special decision. Pursuant to Section 142, point 2, of the Standing Orders, the book of order comprises the matters which may be put automatically or on the basis of a separate decision on the orders of the day of a plenary and / or committee sitting. [Section 39 (4) of the Standing Orders of the National Assembly, which relates to independent motions proposed to be added to the orders of the day of an extraordinary sitting after the convening of an extraordinary sitting, does not, by derogation from Subsection (3), exempt the motion from the committee support required as a general rule for its inclusion in the book of order.] The Standing Orders do not expressly specify the minimum period of time required for the consideration of a draft Act in committee, but the provisions referred to allow for committee consideration and plenary consideration to take place in both ordinary and extraordinary sessions at the sitting immediately following the tabling of the draft Act, thereby ensuring in both cases a minimum period of time for Members of the National Assembly to consider the draft Act as tabled.

[90] In the context of parliamentary committees, the Constitutional Court has already pointed out that "an increasingly large part of the substantive work of the National Assembly is carried out in committees, where the professional and political positions on which the plenary decides are formed. It is in committees that Members have access to most of the information they need to do their job. [...] What happens in the committees cannot be separated from the essential functions of the National Assembly [...]" [Decision 27/1998 (VI. 16.) AB of the Constitutional Court].

[91] The Committee on Human Rights, the Committee on Constitutional Affairs, Justice and Rules of Procedure (hereinafter referred to as the "Committee on Constitutional Affairs") and the Committee on Education, Science and Research were appointed as the competent committees on 22 December 2011. The committees began discussing the suitability of the Draft Act for general debate at around 9 a.m. on the day of their appointment, and the majority of each committee, with the dissenting votes, deemed the Draft Act suitable for general debate (only the Committee on Constitutional Affairs made a written recommendation [*see* Document T/5315/2]. The meeting of the Committee on Human Rights, which was the first committee to be appointed for the Draft Act, began at 9.9 a.m. on 22 December 2012 and ended at 9.53 a.m. (the plenary sitting began at 10 a.m.). Opposition Members protested that the procedure for the Draft Act was irregular in contravention of the Standing Orders and that they had not had the opportunity to study the text of the legislation; the debate in committee was therefore mainly on this point and not on substance [*see* Minutes EMBCB-38/2011].

[92] Section 47 (1) of the Standing Orders provides that the orders of the day shall be proposed by the Speaker upon the advice of the House Committee. This proposal shall be sent two days in advance to the Members and the persons listed in Section 45 (1). Until one hour before the beginning of the sitting, the Government or at least ten Members may introduce a reasoned proposal to amend the proposal for the orders of the day; on the House Committee's proposal for the orders of the day as well as the proposals to amend the orders of the day, the National Assembly shall decide without debate [Section 47 (3), (4) and (6) of the Standing Orders]. The National Assembly shall decide on the orders of the day of the extraordinary session or extraordinary sitting; only such independent motions shall be put on the orders of the day of an extraordinary session or extraordinary sitting the putting of which is requested by the President of the Republic, the Government or one fifth of the Members of the National Assembly [Section 39 (1) and (4) of the Standing Orders].

[93] Pursuant to Section 99 of the Standing Orders, the proposer may request an urgency procedure concerning the draft Act; and if the Nation has ordered such procedure, the draft Act may be put on the orders of the day, taking also into account the preparation in committee, at the earliest at the following sitting. Under Section 39 (6) of the Standing Orders, if the National Assembly requested an urgency procedure in respect of the independent motion [a motion proposed to be placed on the order of the day of an extraordinary sitting at the same time as or after the convening of an extraordinary sitting] pursuant to Subsections (3) to (4), such procedure may be started on the sitting requesting the urgency.

[94] Logically, two consequences flow from this provision for the setting of the orders of the day for the extraordinary session. On the one hand, the provisions relating to the debate of

motions in ordinary session, from which the rule relating to the amendment to the orders of the day of the extraordinary session does not derogate either expressly or logically, continue to apply. Correspondingly, Section 23 (t) and Section 47 (1) of the Standing Orders (two days' notice) do not apply to the amendment to the orders of the day, since the proposed and circulated orders of the day may be amended one hour before the start of the sitting pursuant to Section 47 (3) of the Standing Orders; however, the possibility of amending the orders of the day does not exempt the amendment from the provisions of Section 98 and Section 101 of the Standing Orders (meaning that the committee and plenary debates may take place at the next sitting after the draft Act has been tabled). On the other hand, if the minimum time allowed to Members of the National Assembly to consider the draft Act has already been provided, but the National Assembly does not order an urgent debate on the draft Act, the debate on the draft Act cannot begin on the same sitting day (which is the earliest the National Assembly could have decided on such a debate).

[95] On 22 December 2011, eighty-one Members of the National Assembly initiated that the National Assembly discuss the Draft Act during its extraordinary session from 16 to 23 December 2011; and they also explicitly requested that the motion be included on the orders of the day of the sittings of the extraordinary session The justification for the initiative stated that, under the Fundamental Law, which will enter into force on 1 January 2012, the detailed rules governing churches are laid down in a cardinal Act; accordingly, it is necessary and justified to adopt the Draft Act during the 2011 extraordinary session of the National Assembly in winter 2011, until 31 December 2011.

[96] The other decisions taken by the National Assembly during its extraordinary winter session reflect the fact that, for the reasons given, there was no absolute and urgent need to adopt the Act on Churches by 31 December 2012. Article 28 (4) of the Transitional Provisions of the Fundamental Law (which was subsequently adopted by the National Assembly on 30 December 2011) also provided for a delay in the case of the enactment of other cardinal Acts: "Article 22 (1) and (3) to (5) of Act XX of 1949 on the Constitution of the Republic of Hungary, in force on 31 December 2011, shall apply until the entry into force of the cardinal Act pursuant to Article 5 (8) of the Fundamental Law. The National Assembly shall adopt the cardinal Act pursuant to Article 5 (8) and Article 7 (3) of the Fundamental Law by 30 June 2012."

[97] The general debate on the Draft Act took place on the very same day, 22 December 2011. The tabling of the Draft Act by including it on the orders of the day therefore did not comply with the guarantees provided for in Section 39 (6) and Section 98 of the Standing Orders.

[98] In the case under consideration, not a single day (only a few hours) elapsed between the submission of the Draft Act, its discussion and recommendation in committee and its discussion in the plenary of the National Assembly. This in itself was likely to deprive Members of the National Assembly of the opportunity to familiarise themselves with the legislation to the extent necessary for the responsible exercise of their rights as Members of the National Assembly.

[99] Proposals for amendment could be submitted until 7 p.m. on 22 December 2011, that is, within half a day of the written or oral presentation of the committee's recommendations or

less than a day after the Draft Act was tabled. The submission of proposed amendments is also a crucial instrument in the hands of Members of the National Assembly to influence legislation, because during the detailed debate, only the provisions affected by the proposed amendment can be the subject of a related amendment. In the present case, Members of the National Assembly have had a few hours to familiarise themselves with the Draft Act to study it and to form an informed opinion on both the concept of the Draft Act and some of its specific provisions.

[100] The schedule for the submission of the Draft Act, its preparation by the Committee and its placement on the orders of the day thus failed to ensure the conditions for a substantive hearing; however, there is no specific rule directly relating to the facts, and the lack of conformity with the Standing Orders can only be shown by means of a multi-stage systematic and logical interpretation; therefore, the Constitutional Court did not find any invalidity under public law, and dismissed the petitions in this regard.

[101] Nevertheless, it is a constitutional requirement arising from Article B, Article 4 (1) and Article 5(7) of the Fundamental Law that the legislative process must be conducted in accordance with the Standing Orders, and that, even in the event of uncertainty as to the interpretation of the provisions of the Standing Orders, including the exceptional rules on extraordinary sittings, sufficient time must be allowed for the draft Acts to be thoroughly consulted and debated in committee and plenary, as a condition for the exercise of the rights of the Members.

[102] After the formal assessment of constitutionality, the Constitutional Court went on to review the specific provisions of the Act on Churches challenged on substantive grounds in the constitutional complaints, in order to remedy the violations of rights alleged by the complainants.

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[103] In its inquiry into the conformity of the Act on Churches with the Fundamental Law, the Constitutional Court took into account that several of the constitutional complaints subject to the present procedure referred to the Convention promulgated by Act XXXI of 1993 and the case law of the Strasbourg Court, and in connection with the Act on Churches there were several references to foreign examples of the regulation of the procedure for obtaining church status. In this connection, the Constitutional Court considered it important to record the following before proceeding to the substantive assessment:

[104] 1. Article 24 (1) of the Fundamental Law states the Constitutional Court shall be the principal body for the protection of the Fundamental Law; it shall, in the majority of its competences granted by the Fundamental Law, review the conformity with the Fundamental Law [Article 24 (2) (a) to (e) of the Fundamental Law].

[105] 1.1 Article Q (3) of the Fundamental Law provides that Hungary shall accept the generally recognised rules of international law. The first clause of Article 7 (1) of the former Constitution contained a rule which was essentially identical to this, and to which the Constitutional Court attributed significance which could also have an impact on the interpretation of the law:

"The first clause of Article 7(1), which provides that the legal system of the Republic of Hungary accepts the generally recognised rules of international law, states that these generally recognised rules are part of the law of Hungary without any (further) transformation. The transformation in this general sense, that is to say, without listing or defining the rules, was carried out by the Constitution itself. Accordingly, the generally recognised rules of international law are not part of the Constitution, but merely obligations assumed. The fact that such assumption and the transformation are contained in the Constitution does not affect the hierarchy of the Constitution, international law and domestic law. [...] Article 7 (1) of the Constitution also implies that the Republic of Hungary participates in the community of nations by virtue of the provisions of the Constitution; this participation is therefore a constitutional command for domestic law. It follows from the foregoing that the Constitution and domestic law must be interpreted in such a manner that the generally accepted rules of international law are actually applied". [Decision 53/1993 (X. 13.) AB, ABH 1993, 323, 327]

[106] 1.2 Pursuant also to Article Q (2) of the Fundamental Law, in order to comply with her obligations under international law, provides that Hungary shall ensure that Hungarian law be in conformity with international law. This provision of the Fundamental Law guarantees the consistency of international law and Hungarian law, in comparison with a similar provision of the previous Constitution, specifically reading "in order to comply with Hungary's obligations under international law".

[107] On the basis of the previous Constitution, the Constitutional Court has already ruled that "[t]he second clause of Article 7 (1), that is to ensure the consistency of the international legal obligations assumed and domestic law, applies to all "assumed" international obligations, including those generally recognised. On the other hand, consistency must be ensured with the entire domestic law, including the Constitution. Article 7 (1) of the Constitution thus requires consistency between the Constitution, the obligations assumed by a treaty deriving from international law or directly from the Constitution, and domestic law; in ensuring consistency, account must be taken of the specific features of each." [Decision 53/1993 (X. 13.) AB, ABH 1993, 323, 327]

[108] This provision is validated by the Constitutional Court's competence under Article 24 (2) (f) of the Fundamental Law, which provides that the Constitutional Court investigates the conflict of laws with international treaties (and the Court may annul a law or legislative provision which is in conflict with an international treaty)."

[109] 2. In its case law, the Constitutional Court has made a number of comparisons with international law, in other words, it has looked at the legislation of other European and other foreign countries on the same subject [*cf*. in the case of state symbols, Decision 13/2000 (V. 12.) AB, in the case of the right of reply, Decision 57/2001 (XII. 5.) AB; in relation to euthanasia, Decision 22/2003 (IV. 28.) AB, in relation to the functioning of committees of inquiry, Decision 50/2003 (XI. 5.) AB, in relation to questions concerning the prohibition of publication of the results of opinion polls, Decision 6/2007 (II. 27.) AB, in relation to radio and television broadcasting of parliamentary debates, Decision 20/2007 (III. 29.) AB, in relation to domestic violence and restraining orders, Decision 53/2009 (V. 6.) AB]. In its inquiries, the Constitutional Court has typically sought to review the reasons for and purpose of the

introduction of the legislation at issue, looking for common elements and contrasts, often concluding that the legislation under consideration varies considerably, not only between overseas and European States, but also between European States.

[110] The assessment of the constitutionality of a legal institution in another country may vary depending on the constitution of that State, the way in which the legislation fits into the legal system, and the historical and political context. Therefore, while recognising that it may be helpful to take into account foreign experience in assessing a regulatory solution, the Constitutional Court cannot consider the example of a foreign country as a per se determinative factor in assessing conformity with the Constitution (Fundamental Law).

[111] In an early decision, the Constitutional Court pointed out that "the view expressed in the petitions that the approach employed is unprecedented in international practice does not refer to international (inter-State) practice, but to foreign practice, and as such is irrelevant for the purposes of Article 7 (1) of the Constitution[,] and therefore there is no unconstitutionality on this ground either". [Decision 32/1991 (VI. 6 AB, ABH 1991, 146, 159] In the light of these aspects, it may be stated that the mere fact that a legal institution or regulatory solution exists in one or more foreign (or even European democratic) countries is not decisive for the assessment of conformity with the Fundamental Law, and thus cannot be a sufficient reason for restricting a right guaranteed in the Fundamental Law of Hungary.

[112] 3. Article 9 of the Convention provides for the protection of the right to freedom of thought, conscience and religion: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

[113] 3.1 The advisory body on constitutional law of the Council of Europe, the Venice Commission (known as the European Commission for Democracy through Law), has explicitly assessed the rules of the Act on Churches following the adoption of the Act and adopted an opinion on the matter [Opinion no. 664/2012, Strasbourg, 19 March 2012, CDL-AD(2012)004]. In that document, the Venice Commission concluded, *inter alia*, that the Act on Churches lays down, in a number of cases, excessive or arbitrary conditions for church recognition; that the Act on Churches has led to the withdrawal of recognition from hundreds of previously legally recognised churches, which can hardly be considered in line with international standards; and that the law discriminates to some extent between religions and religious communities depending on whether or not they have been granted recognition as churches.

[114] In making its findings, the document referred to the case law of the Strasbourg Court in a number of cases.

[115] 3.2 The Constitutional Court has studied the judgements of the Strasbourg Court in the case pending before it (namely, Canea Catholic Church v Greece, judgement of 16 December 1997, paragraphs 33 and 40 to 41; Serif v Greece, judgement of 14 December 1999, paragraphs 49, 52 and 53; Hasan and Chaush v Bulgaria, judgement of 26 October 2000, paragraphs 62 and 78; Metropolitan Church of Bessarabia and Others v Moldova, judgement of 27 March 2002, paragraphs 117, 123, 129; Supreme Holy Council of

the Muslim Community v Bulgaria judgement of 16 December 2004, paragraph 96; Holy Synod of the Orthodox Church in Bulgaria v Bulgaria, judgement of 22 January 2009, paragraph 120; Boychev and Others v Bulgaria, judgement of 27 January 2011, paragraphs 67, 69 and 70; Fusu Arcadie and Others v Moldova, judgement of 17 July 2012, paragraphs 35-36 and 38-39).

[116] The Constitutional Court has taken account of the tendency in the case law of the Strasbourg Court to interpret freedom of religion in cases relating to the recognition of churches and associations with religious implications, in accordance with the principle of the close connection between the issues raised by the cases in question and other rights and freedoms, in particular freedom of association and the principle of access to justice, that is, the right to apply to the courts in the event of a legal dispute.

[117] The Strasbourg Court found the institution of recognition as a church, which existed in the domestic law of several Member States, compatible with the requirements of the Convention if it did not involve a judgement on the legitimacy of religious belief; if the State was neutral in the exercise of its power of recognition (and this neutrality was institutionally guaranteed); and if there was a judicial remedy against a negative decision on the question of recognition (if it was not taken in a judicial forum).

[118] The Strasbourg Court has not ruled out taking account of national particularities where they correspond to the requirements of Article 9 (2) of the Convention, which is essentially close to the test of necessity and proportionality applied by the Constitutional Court [cf. Article I (3) of the Fundamental Law].

[119] 4. In several of the constitutional complaints, reference was made not only to the decisions of the Strasbourg Court as a factor to be taken into account in the interpretation of the Constitutional Court, but also to the violation of their rights under the Convention through Article Q of the Fundamental Law. These elements of the petition were assessed by the Constitutional Court, on the basis of their content, as a petition for a judgement on the infringement of an international treaty Pursuant to Section 32 (2) of the Constitutional Court Act, one quarter of the Members of the National Assembly, the Government, the President of the Curia, the Prosecutor General, the Commissioner for Fundamental Rights and the judge in the individual case pending before him or her are entitled to initiate such procedure, but since the complainants are not included amongst such persons, the Constitutional Court rejected the petitions seeking an assessment of the violation of an international treaty {*cf.* Decision 3353/2012 (XII. 5.) AB, Reasoning [16]}.

[120] 5. In view of the above, the Constitutional Court in the present case assessed the compatibility of the contested legislation with the Fundamental Law on the basis of the relevant provisions of the Fundamental Law and the Constitutional Court's previous case law in this context, also taking into account Hungary's international legal obligations and the decisions of the Strasbourg Court relevant to the examination of the present case.

[121] The emergence and development of freedom of religion has played a crucial role in the recognition of fundamental rights. Religion has been elevated above other forms of expression by the historical tradition, including the significant role played by religious freedom, that is, the "historical father" of freedoms, and by churches in societies. These developments have led to religion being singled out from other forms of thought and its protection guaranteed by specific rules in international human rights documents and constitutions.

[122] 1. The importance of religion and the churches in the history and social life of Hungary is also acknowledged in the National Avowal (Preamble) of the Fundamental Law: "We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago"; moreover, "We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country."

[123] The right to freedom of thought, conscience and religion is recognised in Article VII (1) of the Fundamental Law:

"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to choose or change one's religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practice or teach his or her religion or other belief through religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life."

[124] Article VII (1) of the Fundamental Law defines the right to freedom of thought, conscience and religion in essence in the same manner as Article 60 (1) to (2) of the Constitution. In accordance with the case law established by the Constitutional Court, if a fundamental principle or fundamental right regulated by the Constitution is regulated by the Fundamental Law in the same wording or with the same content, and there has been no fundamental change in other circumstances that would justify an interpretation of the content of the provision in question that differs from the previous one, the Constitutional Court continues to uphold its practice regarding the content of the provision in question {*cf*. Decision 34/2012 (VII. 17.) AB, Reasoning [33]; Decision 35/2012 (VII. 17.) AB, Reasoning [25]; Decision 3301/2012 (XI. 12.) AB, Reasoning [20]}. Correspondingly, the Constitutional Court continues to consider its case law on the exercise of the right to freedom of conscience and religion in individual and collective form, as established under the Constitution, as authoritative, and considers it essential to highlight and confirm the following fundamental premise in this Decision:

"On the other hand, the standing practice of the Constitutional Court, from Decision 8/1990 (IV. 25.) AB onwards, conceives the right to human dignity as a "universal personality right" which includes the right to free personal development. The Constitutional Court interpreted the freedom of conscience in Decision 64/1991 (XII. 17.) AB as a right to the integrity of personality. (The State cannot force anyone into a situation that would develop divisions in one's self, in other words, that which is incompatible with any of the essential beliefs that define one's personality.) The right to freedom of conscience and freedom of religion, which is also specifically mentioned, recognises that conscience and, within it, religion, where appropriate, are part of the human person and that their freedom is a condition for the exercise of the right to the free development of the personality. Human personality itself is inviolable

in the eyes of the law (this is expressed by the inalienable nature of the right to human life and dignity), and the law can only help to secure autonomy by providing external conditions. Therefore, it follows from the right to freedom of thought, conscience and religious belief (conviction) per se, that is, if the right to practise religion is not taken into account, that the State is under an obligation not to judge the truthfulness of religious belief or conviction." [Decision 4/1993 (II. 12 AB, ABH 1991, 48, 51]

[125] In the case of the individual and collective exercise of the right to freedom of religion, the State is, as in the case of classical freedoms in general, above all obliged to adopt a negative attitude, to abstain, that is, not to restrict the rights of individuals. Religion can also be exercised individually. The rules of conduct deriving from the teachings of a religion are not necessarily linked to an institutionalised religious community or church.

[126] The freedom of collective (communal) religious practice is not bound to any form of organisation. The right to practise religion in community with others, as guaranteed by Article VII of the Fundamental Law, is granted to everyone, regardless of whether or not such community practice takes place within, or without, a legally regulated organisational framework or of the form of organisation. Neither individual nor communal freedom of practising a religion can be made constitutionally dependent on membership of a religious organisation or on the form of organisation of the religious community {Decision 8/1993 (II. 27.) AB, ABH 1993, 99, 100] However, the socially established typical institution of the practice of faith, of the expression of faith in general, is the institutionalised church (religious community). Therefore, freedom of religion and its exercise in an institutionalised form in the community constitutes a special area of the right to freedom of religion.

[127] Article 60 (3) of the former Constitution had specified that in the Republic of Hungary the church operates separately from the State; in comparison, the original text of Article VII (2) of the Fundamental Law is more detailed and clearer on the relationship between the State and the churches:

"The State and religious communities shall operate separately. Churches shall be autonomous. In the interest of community objectives, the State shall cooperate with the churches."

[128] The Constitutional Court points out that, in several cases, in framing the Fundamental Law, the Constitutional Court made explicit in the text of the Fundamental Law the practice of the Constitutional Court based on the text of the previous Constitution, in such a sense that the Constitutional Court, having selected and applied one of several possible constitutional interpretations, adjusted the text of the Fundamental Law thereto, reaffirming that the interpretation applied was an appropriate and timeless interpretation of the constitutional normative content. [This was the case, for example, with the rule on the restriction of fundamental rights: the Constitutional Court developed what is known as the necessity and proportionality test by explaining the meaning of the succinctly worded rule contained in Article 8 (2) of the Constitution, which was already expressly laid down in Article I (3) of the Fundamental Law. The wording of the constitutional provision and the provision of the Fundamental Law are thus different, but the substance of the norm is the same.]

[129] The Constitutional Court, in reviewing its previous case law on the collective and institutionalised exercise of religious freedom under the Constitution and the State's conduct in this regard, has held that it is even closer to the wording of Article VII (2) of the Fundamental Law than the wording of Article 60 (3) of the Constitution (the provision of the Fundamental Law reflects the essence of the earlier interpretation of the Constitutional Court more precisely and in greater detail), and therefore assessed in the light of this which parts of the case law, being closely connected with the decision of the present case and which are otherwise of fundamental importance, can be maintained or possibly justified to be reinterpreted.

[130] 2. "The State and religious communities shall operate separately. Churches shall be autonomous."

[131] The principle of the separate functioning ("separate existence") of the State and churches is formulated in the Fundamental Law in connection with freedom of religion, which, in addition to being a fundamental principle of the functioning of the secularised State, is also a guarantee of religious freedom [*cf.* the detailed explanatory memorandum to this provision of draft Act T/2627 on the Fundamental Law of Hungary].

[132] "The State must be neutral in matters of religion and in other matters of conscience. It follows from the right to freedom of religion that the state has a duty to ensure the possibility of free formation of personal convictions" [Decision 4/1993 (II. 12.) AB, ABH 1991, 48]. Under Article XV (1) and (2) of the Fundamental Law, everyone is equal before the law; Hungary guarantees fundamental rights without discrimination on the grounds of religion. Article VII and Article XV of the Fundamental Law also require and guarantee the religious neutrality of the State.

[133] 2.1 The Constitutional Court has interpreted the concept of church in the Fundamental Law with regard to the religious neutrality of the State in accordance with its previous case law:

[134] "The church is not the same for a given religion and State law. A neutral State cannot follow the church conceptions of different religions." However, the State may be mindful of all the respects in which religious communities and churches in general differ from social organisations, associations and interest groups which may be established under the Fundamental Law (Article VIII), in terms of their history and their social role. The Fundamental Law ensures that "religious communities, in addition to the organizational forms that can be established on the basis of the right of association, may also use the legal form defined by State law as a »church«. It is through this legal instrument that the State takes account of the specific nature of churches and allows them to be integrated into the legal order in their specific capacity. A religious community acquires a legal status appropriate to the legal organisational form it chooses; the specificities of being a religious community." [Decision 4/1993 (II. 12 AB, ABH 1991, 48, 53] The Fundamental Law thus uses the term "church" in the sense of a religious community recognised in a specific legal form as compared with the form of organisation normally available under the freedom of association.

[135] 2.2 The Constitutional Court, having clarified the constitutional concept of "church", went on to determine whether religious communities have a substantive right to operate in the form of a church.

[136] 2.2.1 In line with the Constitutional Court's practice, the possibility for religious communities to operate under a specific legal form, as an autonomous entity distinct from the State, is not a condition for the exercise of the right to freedom of religion, but is closely related to it: "Churches are not organised for limited participation or to represent specific interests, such as companies or associations, parties, trade unions, but for the practice of religion. Religion, on the other hand, affects and defines the whole personality and all areas of life for the believer. The ability of churches to function is inseparable from the guarantee of freedom of religion." [Decision 4/1993 (II. 12 AB, ABH 1991, 48, 65]

[137] The former Constitution provided for the "separation" of church and State. On this provision, the Constitutional Court has stated that "it does not mean that the State should not have regard to the specific characteristics of churches and should regulate the legal status of the »church« in an identical manner to any other social organisation" and has also stated that "the State is not obliged to create a specific form of organisation for religious organisations, but is not bound by the specific form or forms it may create" [Decision 8/1993 (II. 27.) AB, ABH 1993, 99, 103]. In contrast to the latter conclusion drawn by the Constitutional Court on the basis of the Constitution, the Fundamental Law expressly states that "churches shall be autonomous", and the Constitutional Court therefore finds that the National Assembly must lay down rules for the operation of religious communities which provide them with a specific legal form and greater freedom secure internal organisation and regulation than other democratically structured social organisations. This interpretation is supported by the changes in Hungarian State ecclesiastical law over the past one hundred and twenty years.

[138] 2.2.2 Act XXXIII of 1947 on the Elimination of Differences between Established and Recognised Denominations to the Detriment of Recognised Denominations maintained in force Sections 7 and 8 and Section 18 of Act XLIII of 1895, which required that in order to become a legally recognised denomination, the religious group had to have its organisational rules approved by the competent minister, and the denomination was also obliged to notify any subsequent changes to its approved organisational rules for approval on a case-by-case basis. The Act laid down that if the change did not meet the conditions laid down in the Act (e.g. the religious denomination was considered to be functioning along the lines of anti-State or anti-national operation; or its beliefs, doctrines, worship or other religious observances, or the organisation is contrary to existing law or public morality), or "if the church resolutions, prayer or textbooks contain a provision or doctrine which would prohibit the members of a religious denomination from performing their civic duty or would order an act prohibited by law: The declaration of a legally recognised religious denomination shall be withdrawn without delay by the Minister of Religion and Public Education". The Communist constitution adopted in 1949 formally separated church and State, but the unfolding dictatorship abolished the autonomy of churches, exercised State control over them and further restricted their functioning to a large extent.

[139] With the entry into force of Law Decree 34 of 1950, the operating licence of monastic orders was abolished ex lege as a general rule, with limited exceptions, in the case of teaching orders, the maintenance of a sufficient number of male and female members to provide teaching in religious schools, which could be established by the Minister of the Interior in

agreement with the Minister of Religion and Education; members of monastic orders whose operating licences were abolished were obliged to leave the former monasteries within three months. Law Decree 20 of 1951 on the Manner of Filling Certain Ecclesiastical Positions made appointments to specified posts of Catholic ecclesiastical leadership, including retroactively for appointments made since 1 January 1946, subject to the prior consent of the Presidential Council of the People's Republic. Law Decree 22 of 1957 on the State's Consent to the Filling of Certain Ecclesiastical Positions declared that it was necessary "to safeguard the interests of the State in the appointment of churches in order to assert State sovereignty", and therefore granted the right of prior consent to the Presidential Council of the People's Republic and the Minister of Education for the appointment, transfer and removal of church leaders at various levels, including other churches. The State Ecclesiastical Office was designated by Law Decree 25 of 1959 to "handle matters between the State and religious denominations", and was given broad responsibilities in the operation of churches by Government Decree 33/1959 (VI. 2.) Korm. The guarantee conditions for the individual and communal practice of religion, including the autonomy of churches, were severely curtailed.

[140] The Religious Freedom Act adopted in 1990 repealed the previous legislation restricting religious freedom and granted greater autonomy to churches and religious communities. The Act provided that the State shall not establish a body for the management and supervision of churches, and a church shall be registered by the competent court without reviewing the content of its constitution if it contained the minimum necessary elements (name of the church, its seat, organisational structure, designation of any organisational units with separate legal personality). On the basis of a notification and a statement by the competent ecclesiastical body, the court also registered without discretion (authorisation) an autonomous organisation of the church (such as a monastic organisation) established for religious purposes. The Act specified that no State coercion could be used to enforce the internal laws and rules of the Church (Section 9, Section 13, Sections 15 and 16 of the Religious Freedom Act). The Act on Churches adopted in 2011 already explicitly defined the church as an "autonomous organisation" and, with the exception of the body deciding on church recognition and keeping a register of recognised churches, maintained all the guarantee rules introduced in this respect by the Religious Freedom Act (Section 7 and Sections 10 to 11 of the Act on Churches).

[141] The Constitutional Court considers that the rules referred to, which have been in force since the beginning of the new democracy and constitutional order of our country (since 1990, *cf*. the National Avowal) and which guarantee the churches a special autonomy, and which are laid down in our cardinal Acts (the Religious Freedom Act and the Act on Churches), form a close unity with the achievements of our historical Constitution in the field of freedom of religion and are protected by Article VII (1) to (2) of the Fundamental Law. The National Assembly could therefore no longer decide, in accordance with the Fundamental Law, not to establish a special "ecclesiastical" status for the operation of religious communities in legal form at all. It would be contrary to the Fundamental Law if religious communities could only operate in Hungary in the form of associations or other legal forms generally available, regardless of religious freedom, and no specific legal form existed which would provide additional autonomy with regard to religious freedom.

[142] 2.2.3 It follows from the principle of the separate functioning and autonomy of churches that the State may not establish institutional links with churches or with any church; that the State does not identify itself with the doctrine of any church; and that the State may not interfere with the internal affairs of churches and, in particular, may not take a position on matters of religious truth. It follows from all this, and which also follows from Article XV of the Fundamental Law, that the State must treat churches as equals. "Since the State cannot take a position on the very content of what constitutes a religion, it can only establish abstract rules on religion and churches, applicable to all religions or churches, which would enable them to be integrated into a neutral legal order, and must rely on the self-interpretation of religions and churches on matters of substance. Freedom of religion can therefore only be subject to non-religious limits, and may have limits which are not specific to any one person or any other motivation, but which also apply to similar actions." It is through a neutral and general legal framework that the separation of State and church ensures the fullest possible freedom of religion." [Decision 4/1993 (II. 12 AB, ABH 1991, 48, 52]

[143] 2.3 The State leaves matters of substance to the self-determination of religions and religious communities, while at the same time, in accordance with freedom of religion, including the right to practise religion collectively, it may lay down objective and reasonable conditions for recognition as a 'church' in a specific legal form. Such conditions may include, in particular, minimum size requirements for the initiation of recognition as a church, and conditions relating to the duration of the religious community's existence.

[144] In an early decision, the Constitutional Court did not find unconstitutional the condition imposed by the previous Act on churches, the Religious Freedom Act, for the status of "church" to be granted, that, unlike the ten members required for the establishment of a social organisation, the church had to be founded by at least one hundred natural persons. The requirement of a minimum number of founders was linked by the Constitutional Court, in its assessment of the right to teach religion in public schools, to the development of religious doctrines and the requirement of minimum social acceptance as a guarantee of this [Decision 8/1993 (II. 27.) AB, ABH 1993, 99, 103]. In its opinion, the Venice Commission pointed out that the minimum number of members, as provided for in the Act on Churches, could become an impediment to the recognition of religious communities which, for theological reasons, do not operate as a large organisation but as individual congregations (communities) [CDL-AD(2012)004, point 52]. The Constitutional Court in its previous decision on the number of congregations in the Lvt took this aspect into account: "By requiring at least one hundred persons for the establishment of a church, the [Religious Freedom Act] intended to satisfy both the traditional concept of a church with a large number of members and the recognition of smaller religious communities as churches. No constitutional objection can be raised against this regulation" [Decision 8/1993 (II. 27.) AB, ABH 1993, 99, 103].

[145] The conditions for recognition of the duration of the religious community may also be linked to the development of religious doctrines and the religious community. Such a condition was not included in the Religious Freedom Act and therefore the Constitutional Court has not previously addressed this issue, but takes into account the case law of the Strasbourg Court on this point. In the judgement in *Religionsgemeinschaft der Zeugen Jehovas* and others v Austria,

the Strasbourg Court analysed the compatibility with the Convention of the rule that a religious community already legally recognised must wait a further ten years before it acquires a status conferring important additional rights and privileges. The Strasbourg Court established that such a period might be necessary in exceptional circumstances such as would be in the case of newly established and unknown religious groups; however, it also ruled that in respect of religious groups with a long-standing existence internationally which were also long established in the country a shorter period of time would have to suffice for the authorities to verify whether the group fulfilled the requirements of the relevant legislation. The Court therefore found that the difference in treatment was not based on any "objective and reasonable justification". Accordingly, there has been a violation of non-discrimination in conjunction with the right to religious freedom under the Convention [Application No 40825/98, paragraphs 97 to 99, of 31 July 2008].

[146] 2.4 In light of the above aspects, therefore, the State may regulate the conditions under which organisations and communities established under the right to freedom of religion may become legal persons in accordance with the specific nature of the organisation or community concerned. Concurrently, the Constitutional Court also points a cardinal out that, even in the case of a definition of substantive criteria for recognition which is in conformity with the Fundamental Law, "it would raise an issue of constitutionality [...] if the legislature were to grant some comparable organisations the possibility of becoming legal persons or of establishing a particular form of organisation, while arbitrarily excluding others or making it disproportionately difficult for them to acquire such status" [Decision 8/1993 (II. 27.) AB, ABH 1993, 99, 101].

[147] For a religious community, the church status even if it does not confer any additional rights other than greater freedom of internal organisation and regulation than those of other social organisations, is an essential entitlement closely linked to the right to freedom of religion. Therefore, the State's decision on the acquisition of church status, that is, on the recognition of a church, cannot be arbitrary, and the procedure on which it is based must comply with the requirements of the right to a fair trial: the matter must be handled impartially, fairly and within a reasonable time, the decision must be duly reasoned [Article XXIV (1) of the Fundamental Law]; and there must be a right of legal redress against the decision [Article XXVIII (7) of the Fundamental Law]. The fairness of the procedure in relation to the decision on the status of a church is also particularly important in order to avoid any doubt that the State has acted in accordance with the principle of ideological neutrality without discriminating against the religious community concerned [Article XV (2) of the Fundamental Law]

[148] The Constitutional Court upholds its previous statement that "religious communities may, at their discretion, avail themselves of any legal form of organisation compatible with their activities, but are not obliged to do so. A religious community acquires a legal status appropriate to the legal organisational form it chooses; it may exercise the specificities of being a religious community within that framework, that is to say, it may not rely on the right of religious freedom to escape the mandatory rules inherent in that legal form, nor may it enjoy any additional rights." [Decision 8/1993 (II. 27 AB, ABH 1993, 99, 101]

[149] However, the Constitutional Court stresses that "the State may not be institutionally associated not only with churches, but with any religion or religious communities, may not identify itself with the teachings of any religion, and may not take a position on the question of religious truths. No constitutional interference with the autonomy of religious communities, irrespective of the organisational form in which they operate, is possible in relation to their specifically religious character." [Decision 8/1993 (II. 27 AB, ABH 1993, 99, 102]

[150] 2.5 The legal relationship of the State and the churches is specific to the historical circumstances of each country. The Constitutional Court has already stated, in applying Article 60 (3) of the Constitution, that its meaning today "cannot be separated from the role of the churches in Hungarian history (including the course of secularisation), from their present-day actual operation, or from the ongoing social transformation. It is a common phenomenon that many, once church tasks, for example, schooling, nursing and helping the poor, became the duty of the state, but the churches also maintained this activity. In these areas, separation is not incompatible with cooperation, even if it is fortified with rigorous guarantees. Treating churches as equals does not preclude consideration of the actual social role of individual churches, either. [Decision 4/1993 (II. 12 AB, ABH 1991, 48, 53]

[151] The Constitutional Court's earlier interpretation of the relationship between the State and churches was upheld by the Fundamental Law when it expressly stated that, in addition to the separation of functions, "the State and religious communities may cooperate to achieve community objectives."

[152] The State has a relatively free margin of appreciation in defining community objectives within the framework of the Fundamental Law; it is not generally obliged to contribute to the attainment of the objectives set by a church or religious community if it does not otherwise assume a State function in relation to the activity.

[153] The State also has a wide margin of appreciation in the field of material and financial support, privileges and exemptions (hereinafter jointly referred to as "material support") to a church, especially in view of the fact that, pursuant to Article N of the Fundamental Law, Hungary applies the principle of balanced, transparent and sustainable budget management (for which the National Assembly and the Government are primarily responsible). Nevertheless, the Constitutional Court lays great emphasis on the fact that in determining the rules for such material support, the State is bound to pay assiduous attention to the specific characteristics of the right to freedom of religion and to the fact that a church should not be placed in an unduly disadvantaged position vis-à-vis other churches or other organisations in a comparable situation [Article VII and Article XV of the Fundamental Law].

[154] The State's obligation to respect and protect fundamental rights [Article I (1) of the Fundamental Law] in relation to religious freedom does not stop at refraining from infringing individual rights, but must also secure the conditions necessary for the exercise of religious freedom, that is, the protection of the values and life situations associated with religious freedom, irrespective of individual needs [cf. Decision 64/1991 (XII. 17.) AB, ABH 1991, 297, 302; Decision 4/1993 (II. 12.) AB, ABH 1993, 48, 53-54]. Therefore, the cooperation of the State with churches in the interests of community objectives is not only an option but also an obligation

in areas closely linked to the exercise of religious freedom and, in this context, to other fundamental rights [in particular, Article XVI (2) of the Fundamental Law provides that parents have the right to choose the education to be given to their children].

[155] No constitutional requirement exists that all churches should enjoy de facto equal rights, nor that the State should de facto cooperate with all churches to the same extent. Practical differences in the exercise of the right to religious freedom remain within constitutional bounds as long as they do not arise from discriminatory legislation or are not the result of discriminatory practice. Whether it is a question of the State's assumption of community responsibilities, the provision of material support of churches or mandatory community cooperation between the State and churches, the ideological neutrality of the State, as confirmed in the preamble to the Act on Churches, must prevail in all three scenarios.

[156] 2.6 Based on the above, the Constitutional Court summarily finds that it is a constitutional requirement under Article VII and Article XV of the Fundamental Law that the State must secure the acquisition of the specific church status enabling religious communities to operate independently and the additional entitlements and privileges available to churches, on the basis of objective and reasonable conditions commensurate with the right to freedom of religion and the entitlement in question, in accordance with Article XXIV and Article XXVIII of the Fundamental Law, in a fair procedure and with the possibility of legal remedy.

[157] 3. The Constitutional Court subsequently considered, on the one hand, the differences in the legal status of religious communities (hereinafter referred to as "religious associations") operating as churches or associations engaged in religious activities as their basic purpose, recognised under the Act on Churches and, on the other hand, whether the rules of the Act on Churches on the recognition of churches comply with the requirements of the right to a fair trial and the right to legal remedy.

[158] 3.1 In its reply to the request of the Constitutional Court, the Ministry of Human Capacities provided detailed information on the differences in the legal status of churches and religious associations recognised under the Act on Churches. On this basis, the Constitutional Court concluded that the Act on Churches and other legislation regulate the rights of recognised churches and religious associations in many cases in the same manner, but that there are also substantial differences in several cases. Without claiming to be exhaustive:

[159] Until the expiry of the First Act on Churches, with regard to the rules of the law on recognition as a church, the right of freedom of conscience and religion and the right of religious associations which submit an application to the Minister but are not recognised as churches under the Act on Churches to exercise their religious activities are also subject to the provisions ensuring greater autonomy for recognised churches and the entitlement that a church person is not obliged to disclose to the State authority information concerning the right of personality which comes to his knowledge in the course of his religious service [Section 34 (2), Section 36, Section 10 and Section 13 (3)]. However, these safeguards are no longer available under the Act on Churches to religious communities that subsequently apply for church recognition but do not obtain it and continue to operate as religious associations.

[160] After the entry into force of the Act on Churches, with the exception of some subsidies which may be granted for a period of up to one year by agreement, only recognised churches may receive budgetary support for ecclesiastical purposes [Section 37 (1) and (3) of the Act on Churches].

[161] A religious association qualifies as an association for the purposes of Act CXXVI of 1996 on the Use of a Specified Amount of Personal Income Tax in Accordance with the Taxpayer's Instruction under the Act on Churches and is entitled to the one per cent that may be offered to the association, provided that it fulfils the conditions imposed by the legislation applicable to such an association by 30 June 2012 [Section 37 (2) of the Act on Churches]. Accordingly, the Act also classifies religious associations as beneficiaries, but not as ecclesiastical beneficiaries, but as beneficiaries under Act CLXXV of 2011 on the Right of Association, Public Benefit Status and the Functioning and Support of Civil Society Organisations, with the exception, for a limited transitional period until 2014, of certain statutory conditions imposed on the latter organisations [Section 8/A].

[162] Recognised churches may provide income from the donations received to church persons (e.g. pastors, parish priests, etc.) for church services and ceremonies free of personal income tax [Annex 1, point 4.8 of Act CXVII of 1995 on Personal Income Tax].

[163] The Church Financing Act provides that the church archives, libraries and museums receive a subsidy for their operation similar to that of the State, in an amount determined in the annual budget law [Section 7 of Act CXXIV of 1997 on the Financial Conditions of Religious and Public Purpose Activities of Churches].

[164] The public activities and institutions of a church are entitled to the same level of budgetary support as State or local government institutions engaged in similar activities. In such an institution, the content of the employment relationship is aligned with that of a public sector employee as regards remuneration, working hours and rest periods; the employees of such an institution are also covered by the central wage policy measures applicable to employees of State or local government institutions under the same conditions. [Section 19 (4) to (5) of the Act on Churches]

[165] The church's religious revenues and their use cannot be controlled by a public body. In particular, the donation of a certain part of personal income tax to the church, the budgetary supplement thereto, the allowance replacing it, and the property annuity and its supplement shall be deemed to be revenue for religious purposes. [Section 21 (1) of the Act on Churches]

[166] The costs of religious and moral education shall be provided by the State on the basis of the law or on the basis of an agreement with the church [Section 24 (1) of the Act on Churches].

[167] On the basis of the foregoing, the Constitutional Court finds that the legislation in force confers on the recognition of churches additional rights compared with religious associations which substantially assist and benefit the religious and financial operation of the recognised churches and thus the right of the religious communities concerned to practise their religion. Consequently, the decision on the recognition of a church must comply with the requirements of the right to a fair trial and the right to a remedy.

[168] The Constitutional Court also points out that it is not in itself contrary to the Fundamental Law for the National Assembly to recognise churches by law, if this does not result in a closed list. By way of historical background, it should be noted that when Act XLIII of 1895 on the Free Exercise of Religion entered into force, Section 6 of the Act provided that "the laws and regulations concerning the Catholic Church of the Latin, Greek and Armenian rites, the Lutheran Protestant Church, the Lutheran Church of faith based on the Augsburg Confession, the Orthodox Serbian and Orthodox Romanian, and the Unitarian Churches and believers, as well as the Israelites, shall remain unchanged". However, Section 7 of the Act also gives citizens a further opportunity, in the event that they wish to "become a legally recognised religious denomination", to "submit to the Minister for Religion and Education for approval an organisational charter containing all the provisions relating to the exercise of faith". Section 8 defined the exclusive cases in which approval could be refused ("shall only be refused"). In 1990, Section 22 of the Religious Freedom Act also provided that the registration in the register of organisations legally recognised as churches or registered monastic orders at the time of entry into force of the Act was to be carried out *ex officio* by the court on the basis of a proposal by the Minister of Education. There is no impediment in the Fundamental Law to a cardinal Act laying down detailed rules for churches providing for the recognition of both churches already recognised and churches which are known to meet the statutory requirements, without any special procedure being required. However, in addition to such statutory recognition, the rules of the Act should also leave open the possibility for other religious communities to acquire church status through a procedure in accordance with the provisions of the Fundamental Law.

[169] 3.2 The Constitutional Court, in reviewing the conformity of the legislation on church recognition with the Fundamental Law, also took into account the history of the legislation and the reasons for its change:

[170] 3.1.2 Under Section 8 of the Religious Freedom Act, a church could be established by persons of the same principles of faith for the purpose of practising their religion; a church could be established for the purpose of carrying out any religious activity not contrary to the Constitution and not in conflict with the law.

[171] A church was registered under the Religious Freedom Act by the county court having jurisdiction over the seat of the church, or by the Metropolitan Court, if the founders declared that the organisation they had established met the former requirements (in other words, that it had a purpose of religious practice in accordance with the Constitution and the laws), the church has been founded by at least one hundred natural persons, has adopted its statutes (which must include at least the name of the church, its seat, its organisational structure and, if any of its constituent parts is a legal person, the name of the legal person) and has elected its administrative and representative bodies. The name of the church could not be identical to or confused with the name of a church already registered. (Section 9 of the Religious Freedom Act)

[172] The notification for the registration of a church had to be submitted by the person entitled to represent it. The notification had to be accompanied by the adopted statutes and a declaration that the church was founded for the purpose of carrying out religious activities not contrary to the Constitution and not in conflict with the law. The names of the persons

authorised to represent the church had also to be disclosed. (Section 10 of the Religious Freedom Act)

[173] The registration of a church could be refused under Section 11 of the Religious Freedom Act only if it did not comply with the requirements described above (in Sections 8 to 10 of the Religious Freedom Act).

[174] It is clear from the judicial practice on the application of the Act that it was possible under the Religious Freedom Act for the court to determine whether the organisation was established for the purpose of collective religious practice (and not primarily for the purpose of economic gain), that is, whether it was in fact a religious community applying for registration as a church. Both the courts of first instance, which refused to register a church in the cases concerned, and the Supreme Court, which upheld the decision of the former in the second instance, considered the applicants' statutes to be capable of being assessed on their merits, and pointed out a number of correlations between them. If the community's activities and assets are dominated by economic activity, the community was not established primarily for the purpose of practising a religion; if the purpose stated in the statutes is the practice of magical activities, it does not constitute the observance of common principles of faith for the purpose of practising a religion; the court did not assess the principles of faith, but had to determine whether the applicant community had the necessary principles of faith to practise the religion in accordance with the Religious Freedom Act, and in the given case correctly found that the applicant community was essentially a cultural community which, by practising certain forms of lifestyle together, formed a cultural community and not a religious ecclesiastical community. [*See* judicial decisions KGD1999. 211., KGD2000. 332., EBH1999. 159.]

[175] 2.2.3 Under the Religious Freedom Act, the public prosecutor could bring an action against an ecclesiastical legal person in the event of a violation of the law by the ecclesiastical legal person. The Act provided for the possibility for the court, on the basis of an action brought by the public prosecutor, to remove from the register a church or an ecclesiastical legal person whose activity violated Section 8 (2) (namely that it was contrary to the Constitution or in violation of the law) if it had not ceased such activity despite having been requested to do so. [Section 16 (2) and Section 20 (2), respectively, of the Religious Freedom Act]

[176] The Constitutional Court has requested information from the Prosecutor General on the measures taken by the Office of the Prosecutor General under the Religious Freedom Act in relation to churches which engage in activities contrary to the Constitution or in violation of the law.

[177] According to the information provided by the Office of the Prosecutor General, the public prosecutor did not exercise any legal supervision over the churches due to the separation of church and State. Until 2001, the public prosecutor was entitled to contact the churches to send data, documents or to obtain information in order to initiate legal proceedings under the Religious Freedom Act, but this power was abolished by Act XXXI of 2001 on the Amendment to Act V of 1972 on the Public Prosecutor's Office of the Republic of Hungary, Act LXXX of 1994 on the Prosecution Service Relationship and Data Processing in the Public Prosecution Service and the Amendment to Other Acts. In the absence of legal supervision as exercised by the

public prosecutor, the previously applicable supervisory powers of Act V of 1972 on the Prosecutor's Office of the Republic of Hungary did not apply to churches.

[178] The Office of the Prosecutor General also informed that during the period of the Act in force, thirty-three submissions and applications related to the activities of ecclesiastical legal persons were received by the prosecutorial bodies (most of them related to the operation of a specific organisation). As a result of the proceedings initiated by the public prosecutor, the number of court applications for the termination of activities was two, while there were five cases of initiation of proceedings by the public prosecutor. In two of the resulting decisions, the court ordered the defendant church to operate in accordance with its statutes and to refrain from illegal activities. There were two successful prosecutorial actions for the dissolution of an ecclesiastical organisation, while in one case the court dissolved the organisation following an action brought by the public prosecutor. On the basis of whistleblowing (that is, a public interest report), on the circumstances surrounding the establishment of a small church, suspicions arose that the legal person had been created for the purpose of profiteering in order to obtain higher State *per capita* support, and an investigation was launched into the well-founded suspicion of forgery of private documents and fraud, which was terminated as no criminal offence was found to have been committed.

[179] 3.2.3 Pursuant to the explanatory memorandum to the Draft Act for the creation of the Act on Churches, the Religious Freedom Act "provided for a broad guarantee of freedom of conscience and religion and the establishment of churches, but it was subsequently evident that the extremely generous conditions for the establishment of churches also provided opportunities for abuses of this fundamental right, both for the unauthorised use of State subsidies to churches and for the registration of organisations that were not actually engaged in religious activities as churches". In the Act on Churches, it has also been formulated in relation to religious activity which activities do not constitute religious activity *per se* [Section 6 (2) of the Act on Churches]. These are activities which churches may and do carry out, but which are not essentially religious in nature and for which a church cannot be established. The explanatory memorandum to the Draft Act stressed that, in many cases, "churches have in fact been registered for such activities, which are essentially commercial in nature, with the support of the State budget, taking advantage of the permissive conditions" of the Religious Freedom Act. "These abuses also justify the new regulation of the status of churches".

[180] Taking into account the rules of the Religious Freedom Act, the relevant court decisions and the information provided by the public prosecutor's office, the Constitutional Court considered that the rules of the Religious Freedom Act also provided an opportunity to prevent the registration of organisations that were not established for a genuine religious purpose, in particular for economic purposes, and to take action against violations of the law. Nonetheless, the Constitutional Court does not dispute the right of the National Assembly to further specify the substantive conditions for recognition as a church, to incorporate additional guarantees into the recognition procedure and to provide more effective legal means to combat violations of the law, if, on the basis of the available data, the procedure for church recognition regulated in the Religious Freedom Act has not proved to be effective enough to detect organisations

carrying out non-religious activities, or if the powers of the prosecution have not been adequate to take action against organisations operating in violation of the Constitution or the law.

[181] The status of an organisation as a church does not constitute an "acquired right" protected by the Fundamental Law in the sense that it cannot be reviewed and, where appropriate, withdrawn if it is subsequently confirmed that the conditions for its use were not met. It is left to the discretion of the legislator to choose the regulatory approach in this respect: to make it compulsory for organisations with church status in general to apply for registration and to prove that they meet the conditions laid down by law, or to provide (afford the possibility) for the competent bodies to initiate *ex officio* procedures for review. Several regulatory approaches may be in line with the Fundamental Law, however, the Constitutional Court underlines the following: As explained earlier in this Decision, as with the procedure for obtaining church status, the constitutional requirement to ensure a fair trial (fair procedure) and the possibility of legal remedy in relation to the procedure for reviewing church status is also a constitutional requirement.

[182] 3.2.4 The Constitutional Court considers it necessary to point out that, even if stricter substantive requirements and procedural conditions of guarantee are regulated, it is possible that a group which has already acquired church status may be found to be abusing its status, whether financially or otherwise, or otherwise operating in a manner contrary to the law. In such cases, the State has not only the right, but also the duty, to take action against such violations. In principle, there are several possible forms of non-compliance with the law:

[183] Firstly, there may be a violation of some other sectoral legislation (e.g. the Accounting Act [*cf.* Section 21 (2) of the Act on Churches]), independent of the legislation governing the church; in such a case, the legal consequences for the violation may be those set out in the relevant sectoral legislation.

[184] Secondly, it is possible that the operation of the church is in some essential aspect contrary to the Fundamental Law or in breach of other legislation. Section 7 (3) of the Act on Churches provides as follows: "A church may only conduct religious activities that do not go against the Fundamental Law, do not conflict with rules of law, and do not violate the rights and freedoms of other communities, or human dignity." Nevertheless, the current rules of the Act on Churches only provide for the right to take action against a church that violates the Fundamental Law, not against any other activity that violates other legislation, and even in such cases, the only possible sanction is dissolution, which would be decided by the National Assembly (by amending the Annex to the Act, that is, by a two-thirds majority) on the initiative of the Government on the proposal of the Minister [Section 26 (c) and Section 28]. This possibility of imposing sanctions is neither comprehensive nor sufficiently differentiated, nor does it guarantee fair trial (fair procedure) and legal remedies, but it may also become the subject of political bargaining for effective action.

[185] Thirdly, if the legislator decides not to automatically grant all potential additional rights and privileges to all churches, it may also happen that a church operates in accordance with the basic rules of church operation and other general legislation, but violates the conditions

and rules for claiming an additional right or privilege and the legislator must also ensure that in such a case the additional right and privilege can be withdrawn (in a fair procedure with a possibility of legal remedy).

[186] In the light of the above considerations, the Constitutional Court concludes that more effective means of action than the current rules of the Act on Churches are justified against possible abuses and infringements by organisations operating as churches.

[187] 3.3 With regard to a group of petitioners who filed the constitutional complaint under consideration in the present decision, the National Assembly decided in the Parliamentary Resolution to reject the application for recognition as a church by applying Section 34 (2) and Section 14 (3) to (5) of the Act on Churches. The substance of Section 7 (1) and (4), Section 14 (1) and Sections 15 to 16 of the Act on Churches is closely linked to these provisions, since they refer to the same procedure and the result of the recognition of churches by the National Assembly.

[188] 3.3.1 Until the entry into force of the First Act on Churches, with regard to the rules of the Act on recognition of churches, the recognition of churches that submit an application to the Minister is decided, similarly to the applications submitted under the rules on popular initiative under Section 14 (1) following the entry into force of the Act on Churches, by the National Assembly on the recommendation of the Committee on Religious Affairs (the Human Rights Committee) [Section 34 (2), Section 14 (3) and (5) of the Act on Churches].

[189] At the request of the Committee, the applicant shall provide evidence of the conditions set out in Section 14 (2) (a) to (f) of the Act on Churches [the Committee shall request the President of the Hungarian Academy of Sciences to issue a position statement on the existence of the conditions set out in Section 14(2) (a) to (c)] [Section 14 (4) of the Act on Churches]. If the Committee submits to the National Assembly a proposal for the recognition of the applicant as a church, in the form of a draft Act amending the Annex to the Act on Churches, and the National Assembly adopts it, the applicant is deemed to be a church from the date of entry into force of the amendment to the Act on Churches on the registration of the church concerned, and the Minister registers the church within 30 days thereafter [Section 7 (4), Section 14 (3), Sections 15 to 16 of the Act on Churches]. The church status is therefore not created by the registration with the Minister, but one of the consequences of the church status is that religious communities with such a status are obliged to be registered by the Minister.

[190] If the conditions defined in Section 14 (2) of the Act on Churches are not fulfilled, the Committee shall indicate this in connection with the proposal as under the Act on Churches. If the National Assembly does not support the recognition of an applicant as a church on the basis of the proposal, the decision to that effect must be published in the form of a parliamentary resolution (and no further popular initiative for the recognition of the association as a church may be launched within one year of publication) [Section 14 (3) and (5) of the Act on Churches]. If the National Assembly refuses to grant recognition to a church that has submitted an application to the Minister before the expiry of the First Act on Churches with regard to its rules on recognition as a church, the church will be deemed to be a religious association as of 1 March 2012 [Section 34 (4) of the Act on Churches; with the proviso that

Section 52 of the Act on Churches amended Section 34 effective as from 1 September 2012, and Section 34 (4) of the Act on Churches is no longer applicable at the time of the present case].

[191] 3.3.2 On the basis of the cited provisions of the Act on Churches, the Human Rights Committee discussed and submitted Draft Act T/5839 of 10 February 2012 on the Amendment of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities.

[192] The Committee's discussion on the proposal revealed that the President of the Hungarian Academy of Sciences had sent a letter to the Human Rights Committee regarding the applications for recognition forwarded by the Minister, and then a second letter at the Committee's request; however, contrary to the expectations of the Committee members, the letters did not contain an opinion qualifying the applicant churches' compliance with the conditions set out as under Section 14 (2) (a) to (c) of the Act on Churches [*see* the Minutes of the Human Rights Committee sitting of 10 February 2012, EMBCB-1/2012, pp. 15, 17, 19-21].

[193] The Human Rights Committee proposed in the draft Act, by supplementing the Annex to the Act on Churches, the ecclesiastical recognition of 13 additional religious communities to the originally adopted Act on Churches, and also stated in an interpretative provision which are the Buddhist religious communities referred to in item 27 of the Annex to the Act on Churches. The proposal to recognise religious communities was accompanied by a detailed explanatory memorandum. The draft Act was adopted by the National Assembly on 27 February 2012 and published in the Hungarian Official Gazette as Act VII of 2012.

[194] Following the submission of Draft Act T/5839, the proposing committee also submitted on 13 February 2012 Proposal for Resolution No H/5854 on the refusal of recognition as a church, in which it proposed the refusal of recognition as a church of 67 religious communities. The proposal for resolution did not contain a detailed justification as to whether the religious communities proposed for refusal met or did not meet the conditions laid down in the Act on Churches or why they did not meet them, but only noted that "this refusal does not entail that these organisations, if the conditions are met, cannot subsequently obtain the status of a church in accordance with the procedure laid down by law, which may be possible for them at a later stage, if justified".

[195] On the basis of Article XXIV (1) of the Fundamental Law, everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act."

[196] In deciding on religious communities applying for ecclesiastical recognition, the National Assembly does not act as a legislature but as an executive (an "authority" within the meaning of Article XXIV of the Fundamental Law), since it decides on the applicant's right in an individual case. This conclusion, drawn on the basis of legal and doctrinal considerations, is supported by the position of the proposer in the committee debate on Draft Act T/5839: "I would like to make it clear that in this matter we are not legislators, but agents applying the law. This is a statutory obligation of the Committee and it is not a matter of choice, as we are in the position

of applying the law" (*see* the Minutes of the Human Rights Committee meeting of 10 February 2012, EMBCB-1/2012, p. 25).

[197] As regards the proposal or decision to refuse, the Act on Churches did not impose any obligation to provide detailed reasons for each applicant, and the proposer of Proposal for Resolution No H/5854 did not even provide individual reasons for the proposal; thus, the religious communities rejected in the Parliamentary Resolution were not given a formal written explanation as to why they could not acquire church status.

[198] In the debate in committee on the proposed amendments to Draft Act T/5839, the position expressed by the proposer of the draft Act itself leaves doubts as to the extent to which the procedure regulated by the Act on Churches was suitable for the preparation of an informed parliamentary decision. (*see* the Minutes of the Human Rights Committee sitting of 14 February 2012, EMBCB-3/2012, pp. 8-9).

[199] The petitioners were unanimous in their complaint that it was not ensured that religious communities meeting the substantive conditions laid down in the Act on Churches could be granted church status, since the National Assembly, which is empowered to decide on church recognition under the Act on Churches, is a political decision-making body and therefore its majority and, since it is a cardinal Act, its two-thirds majority, cannot be obliged to take a decision with specific content.

[200] In the course of its assessment, the Constitutional Court found that the risk of political discretion in connection with the decision on church recognition cannot be excluded not only on the basis of the specific rules of the Act on Churches, but also on the basis of its application practice hitherto emerged. This is also confirmed by the opinion of the proposer, as recorded in the minutes of the committee which tabled Proposal for Resolution No H/5854, that compliance with the conditions laid down in the Act on Churches is necessary for church recognition, but does not confer the right to it: "We take responsibility for the list submitted, because formally they comply with everything and there is a logical order according to which the list has been drawn up. No subjective right to church status is conferred by law in our country. [...] I have to admit that, formally, other religious communities may also meet the criteria. I have used the hypothetical form because when I look at the substance of the question, I can find objections. For the churches that we are requesting to register, we have not found any objections. And not only in one particular case, we are talking about representatives of large international organisations in Hungary." (*see* the Minutes of the Human Rights Committee sitting of 13 February 2012, EMBCB-2/2012, p. 6).

[201] At the meeting referred to, the chairperson of the proposing committee expressly acknowledged that other considerations than those contained in the Act on Churches had been taken into consideration. (Minutes EMBCB-2/2012, p. 11)

[202] In its reply to the request sent by the Constitutional Court, the Ministry for Human Capacities also stated that the National Assembly enjoyed discretionary powers in this case. According to the information provided, this is indicated by the permissive wording of the Act on Churches ("may be recognised") and by the fact that recognition is possible by amending the Annex to the Act on Churches containing the churches, with a two-thirds majority.

[203] The transfer of the power to decide on the recognition of churches to the National Assembly is particularly problematic from the point of view of consistency with the Fundamental Law, including the right to freedom of religion and the rule that the State and the churches are to function separately.

[204] The legislature and the executive, in accordance with the principle of separation of powers enshrined in Article C (1) of the Fundamental Law, are intended to perform a political function in the essence of the function of State administration, in accordance with the political programme of the majority in power. The Constitutional Court, in its Decision 38/1993 (VI. 11.) AB, based on the principle of the rule of law, stated, in the context of the parliamentary system under the Constitution, that "[t]he »separation« of legislative and executive power today essentially means the distribution of powers between the National Assembly and the Government, which are, however, politically intertwined. The parliamentary parties form the Government, while the National Assembly mainly votes on the Government's draft Acts" (ABH 1993, 256, 261). The decisions taken by the National Assembly on the basis of a majority are thus essentially political in character.

[205] Previously, under the Religious Freedom Act, the recognition of churches was decided by an independent and impartial court, subordinate to the law, in a judicial procedure. This was in line with Article 60 (3) of the Constitution and Article VII (2) of the Fundamental Law, which is identical in terms of content: the separation of churches and the State implies that "[t]he State must be neutral in matters of religion and in other matters of conscience." [Decision 4/1993 (II. 12.) AB, ABH 1993, 48] Therefore, it is essential that the requirement of neutrality in the State's decision on the recognition of churches is applied both in substance and in form. Nevertheless, it follows from the foregoing that the parliamentary decision-making procedure that has replaced the procedure incorporated in the Religious Freedom Act is not a legal procedure designed strictly to determine whether the conditions laid down in the law are met, but a political procedure based on the majority principle, which (also) applies political aspects. In this way, the recognition of church status by means of a parliamentary vote, and the mere allocation of this decision-making procedure to the National Assembly, could lead to politically motivated decisions. The removal of the decision-making process from the jurisdiction of an independent court in individual cases of fundamental rights of this kind, which must be assessed on the basis of legal discretion, and the transfer of that decision-making process exclusively to the National Assembly, which is essentially political in nature, is incompatible with the above requirements of the Fundamental Law.

[206] Although the procedure for the recognition of churches is similar to the procedure for the recognition of nationalities (which falls within the competence of the National Assembly), the Constitutional Court stresses that this parallelism is not decisive for the compatibility of the transfer of competence with the Fundamental Law. The status of churches and nationalities is fundamentally different: the latter constitute, under the provisions of the Fundamental Law, State-building factors, part of the Hungarian political community, and may also receive special treatment with regard to their participation in the work of the National Assembly [*see* the National Avowal, Article XXIX and Article 2 (2) of the Fundamental Law]. The above factors do not even arise in the case of churches and religious communities, indeed, Article VII (2) of the

Fundamental Law explicitly provides that the State and the churches operate separately and that the churches are autonomous.

[207] The Constitutional Court also points out that, in the case of an application for recognition of a church, the Act on Churches does not impose a time limit either on the submission of a proposal by the Committee or on the decision of the National Assembly.

[208] In the light of the above, the Constitutional Court has held that the rules governing the decision on church recognition in the Act on Churches do not comply with the requirement of a fair trial laid down in Article XXIV and Article XXVIII of the Fundamental Law.

[209] 3.3.3 In its review of the relevant legislation, the Constitutional Court also found that the Act on Churches does not provide for a legal remedy either in the event of a decision of the National Assembly refusing recognition of a church or in the event of a failure to decide on the application, which would allow for a review of the decision on questions of fact and law and the elimination of possible violations of rights.

[210] Under Article XXVIII (7) of the Fundamental Law, everyone shall have the right to seek legal remedy against decisions of the courts, the public administration or other authorities, which infringe their rights or legitimate interests. In relation to recognised churches under the Act on Churches, the Constitutional Court has pointed out that this legal status confers significant additional rights and privileges compared to the legal status of religious associations. The Constitutional Court has already stated in its present Decision that it is a constitutional requirement to ensure the possibility of legal remedies for decisions on the acquisition of a specific church status allowing religious communities to operate independently and for decisions on additional rights and privileges. The Act on Churches does not meet these requirements.

[211] The Constitutional Court notes that the possibility of filing a constitutional complaint under Article 26 (2) of the Constitutional Court Act (which the complainants in the present case exercised) cannot be considered an effective remedy as required by Article XXVIII (7) of the Fundamental Law, since the Constitutional Court does not review the facts and the legality of the procedure established in the individual recognition proceedings conducted by the National Assembly as the legislature, but only the conformity with the Fundamental Law of the legislation applied in the decision on recognition or directly in force.

[212] 3.3.4 The Constitutional Court concludes, on the basis of the foregoing analysis conducted in the matter at issue, that Section 14 (1) and (3) to (5) and Section 34 (2) and (4) of the Act on Churches do not meet the requirements of the right to a fair trial and the right to legal remedy and, as a result, infringe the right to religious freedom and the prohibition of discrimination and are therefore contrary to the Fundamental Law.

[213] The Constitutional Court emphasises that in the present Decision it did not scrutinise whether the petitioners who had brought the constitutional complaint complied with the provisions of the Act on Churches and whether the National Assembly, or the committee putting forward the proposal, acted in a lawful and fair manner, but, since it is a petition seeking an ex post review of conformity with the Fundamental Law and, in its competence under

Article 26 (2) of the Constitution, of the conformity of legislation (and not of individual procedures) with the Fundamental Law, it reviewed the provisions of the Act on Churches.

[214] 4. "In line with the practice of the Constitutional Court, a constitutional complaint is a legal remedy. [...] The primary purpose of the legal institution of a constitutional complaint under both Article 24 (2) (c) and Article 24 (2) (d) of the Fundamental Law is an individual and subjective legal protection: remedying an actual infringement caused by a legal act contrary to the Fundamental Law or a judicial decision in conflict with the Fundamental Law. In the case of constitutional complaints for the review of a statute, the secondary aim is to prevent similar infringements occurring in the future and thus to objectively protect the constitutional legal order" {Order 3367/2012 (XII. 15.) AB, Reasoning [11] and [13]}. The Constitutional Court interprets the rules governing its competences in accordance with its own constitutional status and the purpose of the given competence [*cf*. Article R (3) and Article 28 of the Fundamental Law], and acted accordingly, in its discretionary competence under Section 45 (4) of the Constitutional Court Act, in determining the legal consequences applied in connection with the provisions of the Act on Churches that were contrary to the Fundamental Law:

[215] The churches the recognition of which was refused by the National Assembly in the Parliamentary Resolution suffered a violation of their rights as a result of the application (entry into force) of Section 14 (3) to (5) and Section 34 (2) and (4) of the Act on Churches which are contrary to the Fundamental Law; therefore, the Constitutional Court annuls Section 14 (3) to (5) of the Act on Churches with retroactive effect to their entry into force on 1 January 2012. Section 52 of the Act on Churches amended Section 34 of the same Act with effect as from 1 September 2012, Section 34 (4) does not exist any longer, while Subsection (2) was amended in terms of content; therefore, pursuant to Section 45(4) of the Constitutional Court Act, the Constitutional Court established general inapplicability of Section 34 (2) and (4) of the Act on Churches as in force between 1 January 2012 and 31 August 2012, from the entry into force of these provisions, that is, as from 1 January 2012; therefore regarding the date of adoption of the Parliamentary Resolution underlying the submission of the constitutional complaints. Although, as a general rule, the unconstitutionality by non-conformity with the Fundamental Law does not affect legal relationships established on or before the date of publication of the decision and the rights and obligations arising therefrom [Section 45 (3) of the Constitutional Court Act], since in the present case the Constitutional Court, pursuant to Section 45 (4) of the Constitutional Court Act declared the annulment and / or inapplicability of the provisions contrary to the Fundamental Law with retroactive effect, contrary to the general rule, the Parliamentary Resolution and the directly effective Section 34 (4) of the Act on Churches cannot have any legal effect, the churches listed in the Annex to the Parliamentary Resolution have not lost their church status on the basis of such provisions, and their conversion into religious associations cannot be compelled.

[216] In view of the findings set out above, the Constitutional Court, on the basis of Section 52 (3) of the Constitutional Court Act, also annulled Section 7 (1) of the Act on Churches, which is closely related to the above, the wording "and recognised by the National Assembly", Section 34 (1) of the Act on Churches, which entered into force on 1 September 2012, Section 37 (1) of the Act on Churches, and Section 14 (1) of the Act on

Churches, which is inapplicable it itself. More specifically, the wording of Section 7 (1) and the wording which reads "specified in the Annex" in Section 34 (1) of the Act on Churches, would, indirectly, uphold church status exclusively with regard to recognition by the National Assembly and inclusion into the Annex; however, the annulment of the wording which reads "specified in the Annex" in Section 34 (1) in force as of 1 September 2012 is susceptible of leading to misinterpretation; therefore, the Constitutional Court decided to annul the entire Subsection [the National Assembly shall be responsible for the replacement of the provision in a form compliant with the Fundamental Law, with regard also to the fact that Section 8/A of Act CXXVI of 1996 on the Use of a Specified Amount of Personal Income Tax in Accordance with the Taxpayer's Instruction refers to the explanatory provision included therein]. Moreover, Section 37 (1) would exclude from budgetary support for ecclesiastical purposes the churches absent from the Annex; therefore, in order for the churches applying for recognition and rejected by the application of statutory provisions contrary to the Fundamental Law not to be left in a unduly discriminatory position in comparison with the churches included in the Annex to the Act on Churches; thus, the Constitutional Court annulled this provision as well. The Constitutional Court nevertheless emphasises, in line with the findings in the present decision, that the State has a wide margin of appreciation in the field of the financial support which it may grant to churches, but that it must be made available on the basis of objective and reasonable criteria and that, as explained above, the procedural guarantees which ensure objectivity were lacking in the case of the inclusion of the churches in the Annex to the Act on Churches.

[217] Under Section 17 of the Act on Churches, the Minister keeps a register of churches. The church status is not created by the registration with the Minister, but one of the consequences of the church status is that religious communities with such a status are obliged to be registered by the Minister. Since, as a consequence of this Decision of the Constitutional Court, there is no rule in the Act on Churches which makes registration by the Minister exclusively conditional upon recognition of the church by the National Assembly (or amendment of the Annex to the Act on Churches), there is no legal impediment to religious communities which were rejected in the Parliamentary Resolution but which have been granted retroactive effect by this Decision and which have not been deprived of their ecclesiastical status under the present decision, to submit their data to the Minister and to be registered by the Minister in accordance with Sections 17 to 18 of the Act on Churches.

[218] The Constitutional Court stresses that this Decision does not affect the status of churches which were included in the Annex to the Act on Churches when it was adopted, nor does it affect the status of churches which, although the National Assembly decided on them pursuant to Section 14 (3) to (5) of the Act on Churches, did not refuse to recognise them in the Parliamentary Resolution, but included them in the Annex to the Act on Churches by way of an amendment to the Act.

[219] In such a legal context, there is no longer discrimination in Section 7 (4) of the Act on Churches, which provides that "the Churches recognised by the National Assembly shall be listed in the Annex", nor in Sections 15-16, which provides that "the association shall qualify as a church as of the day of the entry into force of the amendment of this Act concerning the

registration of the given association", and that the "the Minister shall register the church within a period of 30 days following the entry into force of the amendment of this Act concerning the registration of the given church", since these do not in themselves preclude the maintenance of the ecclesiastical status of religious communities other than the churches recognised by the National Assembly and included in the Annex. For this reason, the Constitutional Court dismissed the petition seeking a finding of unconstitutionality by non-conformity with the Fundamental Law of Section 7 (4) and Sections 15 to 16 of the Act on Churches.

[220] 5. In the Constitutional Complaints Nos V/2785/2012, IV/2786/2012., IV/2787/2012, IV/2788/2012, IV/2790/2012 and IV/2801/2012, the petitioners sought annulment of Section 34 (1) of the Act on Churches on the ground that it had stripped them of their church status, that is to say, of acquired rights protected by Article B (1) and Article VII of the Fundamental Law, and that they no judicial or other remedy was available to them to redress the violation of their rights. The constitutional issue raised in this part of the petitions is therefore whether recognition as a church may be withdrawn by a general legislative act of direct effect without proof of any abuse of a fundamental right or breach of law by organisations which have already acquired church status in individual proceedings.

[221] Section 34 (1) of the Act on Churches was amended by Section 52 of the Act on Churches effective as of 1 September 2012, but it had entered into force for the complainants before that date, and therefore the Constitutional Court first considered the conformity of the provision in force until 31 August 2012 with the Fundamental Law in order to determine its possible inapplicability.

[222] Section 34 (1) of the Act on Churches, in force from 1 January 2012 until 31 August 2012, classified churches registered under the Religious Freedom Act and their independent organisations established for religious purposes as associations by operation of law. However, the provision also defined as an exception to the scope of reclassification, in addition to the churches defined in the Annex to the Act on Churches, the churches which had submitted an application to the Minister with regard to the rules of the Act on recognition as a church before the expiry of the First Act on Churches. Sections 35 to 36 of the First Act on Churches provided for the entry into force of the Act and the submission of applications for recognition (continued operation) of religious communities as churches. However, the Constitutional Court, in its Decision 164/2011 (XII. 20.) AB, which found the First Act on Churches unconstitutional on the grounds of invalidity under public law, found a violation of legal certainty with regard to these provisions due the principle on the clarity of norms being absent: "the regulatory situation is that the provisions of the Act do not make it unequivocal from which date organisations registered as churches before 1 January 2012 are obliged or entitled to register as churches, and from which date set as the final time limit they are obliged or entitled to do so, or to apply for registration under a special Act, presumably the one on associations, failure to do so will result in the dissolution of the church without a legal successor, and what the future legal position of the organisation will be in the event of a refusal by the National Assembly to recognise it as a church, taking into account the fact that the definition of religious activity [Section 6 of the Act on Churches], and the recognition and registration procedure, which neither includes procedural time limits nor an express obligation to make a decision, precludes

any appeal against the decision and also involves consideration by the National Assembly, is in any case uncertain, and the fact that the question of legal status or dissolution may also affect the operation of church-run institutions with a public mission, results in a violation of the right to freedom of conscience and religion due to the lack of clarity of the norms."

[223] The Act on Churches ceased to be in force on 20 December 2011, but the Act on Churches was promulgated only thereafter, on 31 December 2011, and entered into force on 1 January 2012. Churches which had not previously applied for recognition as a church on the basis of legal rules found by the Constitutional Court to be contrary to legal certainty, were no longer able to apply for recognition as a church under the Act on Churches after the Act on Churches was promulgated, in order to avoid being downgraded to the status of an association and losing their ecclesiastical status.

[224] On the basis of all the above, the Constitutional Court found that Section 34 (1) of the Act on Churches, which was in force from 1 January 2012 until 31 August 2012, violated the right to freedom of religion enshrined in Article VII of the Fundamental Law and, in this context, the requirement of legal certainty arising from Article B (1); thus it was contrary to the Fundamental Law, and therefore, in the exercise of its discretionary power granted by Section 45 (4) of the Constitutional Court Act, and in view of the particularly important interest of the initiator of the proceedings, declared the provision to be retroactively inapplicable with respect to the complainants.

[225] 6. Several of the constitutional complainants also moved for a finding that Section 6 (1), Section 14 (2), Section 17, Section 18, Section 26 (c), Section 28, Section 34 (3) and the Annex to the Act on Churches and Section 34/A of the Constitutional Court Act were inconsistent with the Fundamental Law and for their annulment.

[226] As regards Section 17, Section 18 and Section 34 (3) of the Act on Churches, the petitions did not contain any reasoning on the merits. However, the complainants did not demonstrate how the application of the contested Annex to the Act on Churches or its being given direct effect had directly caused them any legal prejudice.

[227] In Section 6 (1) and Section 14 (2) of the Act on Churches, the substantive requirements constituting the conditions for the recognition of the church were challenged, but the existence of the conditions for the constitutional court proceedings, namely that the National Assembly had actually applied them against the complainants, was not proved [*cf*. Section 52 (4) of the Constitutional Court Act]. The Constitutional Court reiterates that, in this Decision, it pointed out that the National Assembly may have failed to verify the existence of the substantive conditions for recognition laid down by the Act on Churches, or may not have considered them sufficient for recognition.

[228] Section 26 (c), Section 28 of the Act on Churches and Section 34/A of the Constitutional Court Act contain rules relating to the dissolution of the church, in respect of which the petitioners have also failed to demonstrate their concernment.

[229] Pursuant to Section 26 (2) of the Constitutional Court Act, a person or organisation concerned in a specific case may apply to the Constitutional Court if its rights have been

infringed [Section 26 (2) (a) of the Constitutional Court Act]. In this context, in line with the interpretation in its Decision rendered in connection with the review of certain provisions of Act CLXII of 2011 on the Legal Status and Remuneration of Judges, the Constitutional Court interpreted the concept of concernment as follows: "The admissibility of the complaint is conditional upon concernment, namely, the fact that the piece of legislation which the complainant considers to be contrary to the Fundamental Law establishes a provision which directly and actually affects the person and his specific legal relationship and, as a result, the complainant's fundamental rights are violated." Accordingly, in the case at issue, "with regard to assessing the admissibility of the complaints, the petitioners who had cases in which the application, that is, the implementation, of the contested legal regulation has been commenced, or it has been completed by way of the discharge contained in the decision of the President of the Republic, were considered by the Constitutional Court to be persons concerned", and further stated, that "the person involved may be found to be concerned even if the acts for the application and enforcement of the law have not yet been performed, but a legal situation has arisen by virtue of the law, from which it is clear that the legal violation complained of will occur in the foreseeable future." {Decision 33/2012 (VII. 17.) AB, Reasoning [61] to [62] and [66]; Order 3367/2012 (XII. 15.) AB, Reasoning [15]}.

[230] In the present case, the petitioners were not actually affected by the challenged legal provisions, no actual violation of rights occurred, they only linked part of the provisions to a possible future violation. On the basis of the grounds set out in the constitutional complaints under review, the Government, one quarter of the Members of the National Assembly and the Commissioner for Fundamental Rights are entitled to file a petition, that is, to initiate a subsequent review of the conformity with the Fundamental Law, irrespective of the affected nature of the petition, which entitlement is derived from Article 24 (2) (e) of the Fundamental Law.

VII

[231] 1. The petitioners sought retroactive annulment of the entire Act on Churches also on the grounds of lack of sufficient preparation time, primarily on the grounds of violation of Article B and Article 4 of the Fundamental Law.

[232] The Act on Churches was adopted by the National Assembly on 30 December 2011, promulgated the next day and entered into force on 1 January 2012. The petitioners therefore argue that the persons concerned had one day to familiarise themselves with the text of the legislation, which introduces fundamental changes in their respect, to prepare for its application and to take any necessary administrative steps. The petitioners submit that the fact that the Act on Churches is identical to the First Act on Churches in a number of respects is completely irrelevant; the preparation period begins on the day of the promulgation of the legislation, in accordance with the principle of the rule of law.

[233] 2. In accordance with the consistent case law of the Constitutional Court, the rule of law requires that the date of entry into force of the law be determined in such a way as to allow sufficient time to prepare for the application of the law [Article 2 (1) of the Constitution and Article B) (1) of the Fundamental Law]. The Constitutional Court has summarised its position on the promulgation and entry into force of legislation in its Decision 28/1992 (IV. 30.) AB (hereinafter referred to as the "1992 Court Decision"). Pursuant to that Decision, in determining the date of entry into force of a law, account must be taken of the need to allow sufficient time

[234] (a) to obtain the text of the legislation and to study it;

[235] (b) for those applying the law to prepare for the application of the law; and

[236] (c) for persons and bodies affected by the legislation to decide how to adapt themselves to the provisions of the legislation in order to provide for the personal and material conditions for voluntary compliance with the law (ABH 1992, 155). The essential element of the requirement of sufficient preparation time, which follows from the principle of legal certainty, is that all the recipients of the legal provisions for whom the law imposes new or additional obligations, whether they are the bodies responsible for implementing the law or other persons and bodies concerned with voluntary compliance, are potentially able to fulfil their obligations and do not commit any breach of duty or unlawful conduct against their will. Both the application of the law and the observance of the law require knowledge of the law, so from this point of view, preparation for the application of the law and knowledge of the law are in a relationship of ends and means.

[237] The 1992 Court Decision pointed out that "the democratic rule of law differs from a dictatorship, however, among many other things, in that it does not abuse the possibility offered to the State by the general requirement of knowledge of the law and the responsibility based on it, but creates, by means of sufficient legal guarantees, the real possibility for legal persons to be genuinely acquainted with the legal provisions governing them and to be able to adapt their conduct to them."

[238] The Constitutional Court had already emphasised in its decision preceding the 1992 Court Decision that "[t]he determination and provision of the time necessary to prepare for the application of the law is a matter for the discretion and decision of the legislator, to whom the responsibility is attributed. Unconstitutionality can be established only in the case of a blatant failure to provide or the absence of a period of time to prepare for the application of the law, which seriously jeopardises or undermines legal certainty." [Decision 7/1992 (I. 30.) AB, ABH 1992, 45, 47] The 1992 Court Decision held that "[t]he assessment of the time required to prepare for the application of a specific piece of legislation is a matter of discretion requiring consideration of economic policy, organisational, technical, etc. aspects, in other words, it is not a problem of constitutional law" (ABH 1992, 155, 158). First, the Constitutional Court is not in the same position as the legislator (the draftsman) as regards the possibility of accurately assessing the time required to prepare for the application of the legislation and, second, since a decision must be taken on a numerical, quantitative issue, the constitutional assessment of the issue cannot always be made on the basis of clear and calculable criteria.

[239] However, the blatant lack of time to prepare for the application of the law leads to an infringement of the Fundamental Law. There is a serious breach of legal certainty where the period of preparation between the promulgation and entry into force of a new or additional legal provision imposing additional obligations is either non-existent or so short that it is obvious that the recipients of the legislation would not be able to comply with their obligations, despite their good faith, best intentions and efforts, or would be able to do so only at the cost of extraordinary efforts. It is contrary to the principle of the rule of law if, as a result of the lack of sufficient preparation time, the recipients of the legislation find themselves in a situation of infringement which is manifestly or probably likely to be the result of extreme difficulty in adapting to the changed provision, in particular if they are (or are likely to be) subject to legal disadvantages as a result.

[240] 3. Since the Constitutional Court has declared a prohibition of application in respect of all the constitutional complaints in the present case, which allege lack of sufficient preparation time, it has not further considered the elements of the petition based on these, but it has considered it necessary to make the following statements of principle in this context:

[241] First, the measurement of the preparation time does indeed commence from the promulgation of the legislation. However, the assessment as to whether the preparation time is appropriate or whether it infringes the requirement of legal certainty must be carried out in the light of changes in the content of the legislation. Rules which are formally new but which are identical in substance to provisions previously promulgated cannot be regarded as identical in substance to new rules.

[242] Secondly, since it is not for the Constitutional Court to assess of its own motion the exact time required to prepare for the application of entire legislative provisions, the petitioner must give detailed reasons why, in relation to certain provisions of the contested legislation, it considers that the time required for preparation is inadequate and how their entry into force leads or has led to a breach of legal certainty. In this context, it is the responsibility of the petitioner to send to the Constitutional Court, if necessary, the documents justifying the grounds of the petition. If the petitioner fails to comply with these requirements, the merits of his petition, which alleges lack of sufficient preparation time, will not be considered. [*cf.* Section 52 (1) (e), (4), (6), Section 55 (3) of the Constitutional Court Act]

[243] The publication of this Decision in the Hungarian Official Gazette is based upon Section 44 (1) of the Constitutional Court Act.

Budapest, 26 February 2013

Dr. Péter Paczolay, sgd., Chief Justice of the Constitutional Court

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Dr. Miklós Lévay, sgd., Justice of the Constitutional Court

Dr. István Stumpf, sgd., Justice of the Constitutional Court, Rapporteur-Justice, delivering the opinion of the Court

Dr. Péter Szalay, sgd., Justice of the Constitutional Court

Dr. Mária Szívós, sgd., Justice of the Constitutional Court