

Annex I. Regulation on the right to freedom of conscience and religion in Hungary

Constitutional and legal background

The Fundamental Law of Hungary grants and guarantees the right to freedom of thought, conscience and religion in a full-scale manner. The cardinal Act CCVI of 2011 on the right to freedom of conscience and religion, as well as the legal status of churches, denominations and religious communities (Church Act) provides for the right to freedom of conscience and religion in detail:

Article VII of the Fundamental Law of Hungary, provides for it as follows:

“(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) People sharing the same principles of faith may, for the practice of their religion, establish religious communities operating in the organizational form specified in a cardinal Act.

(3) The State and religious communities shall operate separately. Religious communities shall be autonomous.

(4) The State and religious communities may cooperate to achieve community goals. At the request of a religious community, the National Assembly shall decide on such cooperation. The religious communities participating in such cooperation shall operate as established churches. The State shall provide specific privileges to established churches with regard to their participation in the fulfilment of tasks that serve to achieve community goals.

(5) The common rules relating to religious communities, as well as the conditions of cooperation, the established churches and the detailed rules relating to established churches shall be laid down in a cardinal Act.”

This is the Church Act, which had already been referred to.

The National Assembly has so far recognized 32 religious communities as established churches. First, under the law, it recognized those churches whose historical past and considerable social integration in Hungary provided due reasons therefore (for example Catholic, Reformed, Lutheran churches, Jewish communities, as well as Orthodox churches connected to national minorities of Hungary); then it recognized – and later declared them established churches - several major internationally significant neo-protestant churches e.g. the Methodists, the Adventists, the Pentecostals, the Mormons, the Salvation Army, as well as the authentic Hungarian representatives of other major world religions like the Muslims, Buddhists and Hindus.

Amendment of Church Act

Act CXXXII of 2018 for amending Act CCVI of 2011 on the right to freedom of conscience and religion, as well as the legal status of churches, denominations and religious communities (Church Act) was passed by the National Assembly at its 12th December session.

The passed act realizes **a consistent amendment of the Church Act**, harmonizing it with the Fifth Amendment of the Fundamental Law. At the same time it **closed the regulatory questions raised by the Constitutional Court and certain international fora (European Court of Human Rights, Venice Commission)**. According to the amendments, **the state does not “recognize”, but registers churches in court proceedings**, with the exception of established churches, for which the decision-making and discretionary role of the National Assembly persists (however, further on the National Assembly will not decide on church status, but on cooperation only). Apart from for the category of established churches, the amendment of the act creates the legal possibility of court registration for **further church categories: listed churches and registered churches**, and in order to ensure the practice of the right of religious freedom at community level, it ensures the possibility of creating **religious associations** as a substantive right, with 10 members already. (The present organizations performing religious activities automatically become religious associations with legal succession.) Besides performing religious activities primarily and considering the length of operation, a reduced operational period - compared to the previous regulation - , the following are required for court registration: for a **listed church, for a period of three years at least one thousand on an annual average**, and for a **registered church, for a period of five years at least four thousand persons on an annual average designating 1% of their personal income tax**. (For those religious communities, which do not accept state support – including the 1% personal income tax -, the legislator ensures the possibility of certifying membership register in the interest of church registration by the court.) Co-operating as an established church may be requested from the National Assembly by a registered church; however for this the church must conclude a comprehensive cooperation agreement with the Government beforehand. The amendment of the act, **as a fundamental principle**, prescribes **that every community defining itself as a religious community** (even without having a legal personality) **is entitled to all that constitutional protection, which is ensured by the Fundamental Law for religious communities in the framework of free practice of religion**. Irrespective of their organizational form, legal status or denomination, the legislative regulation ensures the following for all religious communities performing religious activities primarily, i.e. religious communities: state neutrality, separation of the state and the religious communities, cooperation and its framework between the state and the religious communities, broad autonomy of religious communities (the state cannot establish organizations for supervising and controlling religious communities), free self-determination of religious communities (free choice of organizational form and denomination – including using the “church” denomination), equality of religious communities and prohibition of discrimination.

Considering cooperation between the state and religious communities, **agreements may be concluded with religious associations, listed churches and registered churches for a definite period of time, pertaining to the performance of public duties as well as to the support of faith-based activities**. The state **may also conclude** legally enacted

comprehensive cooperation agreements with registered churches - based on their historical past, social acceptance, as well as their weight, organization and performance of public duties -, **based on which they can become established churches.** (The ECHR has also found that the state has the right to consider, on the basis of objective criteria, which religious communities it wishes to cooperate with in the performance of public duties.) **In accordance with the amendment of the act, comprehensive agreements are required to be promulgated in a cardinal act. The amendment of the act does not affect the legal status of the present established churches; however, agreements may also be concluded with those established churches, which do not have such an agreement yet.**

The amendment of the act **allows for the designation of 1% of the personal income tax for the benefit of all religious communities with legal personality** (“church personal income tax”), which is supplemented by the state for the established and registered churches. **In the course of church registration, when examining the level of social support, the number of those designating 1% of their personal income tax prior to 01 January, 2012 may also be taken into account,** which, after the amendment of the act had entered into force, allowed the religious communities concerned to request church registration from the court.

The amendment of the act provided a special, preferential possibility for church registration by the court of those 16 religious communities, which had previously been awaiting the decision of the National Assembly.

The amendment of the act entered into force on 15 April, 2019.

Relating to the amendment of certain acts, in connection with the amendment of Act CCVI of 2011 on the right to freedom of conscience and religion, as well as the legal status of churches, denominations and religious communities, **Act XXXVI of 2019 also entered into force on 15 April.**

In the meantime, the **Government’s Government Decree 231/2019 (X. 4.) on the implementation of Act CCVI of 2011 on the right to freedom of conscience and religion, as well as the legal status of churches, denominations and religious communities** has been issued.

Legal status of religious communities

Within the category of religious communities, the organizational framework of exercising the fundamental constitutional right to freedom of conscience and religion is the **established church, the registered church, the listed church and the religious association.**

The legal status of religious communities is summarized below (for all religious communities with a legal personality):

- they operate separately from the state, the state may not operate and or establish any organ for controlling and supervising them;
- they have the right to operate under their own principles of faith and system of rites;

- they may participate in value-creating service for society;
- their religious activity shall enjoy enhanced protection under infraction law and criminal law;
- they are also entitled to the enhanced legal protection of their name, system of symbols and rites;
- they may use the designation ‘church’ in their name and with regard to their activity;
- they may participate in civil law relationships without any restrictions;
- the possibility of expressing opinions on draft laws and on legislative concepts shall be ensured for them in the manner laid down in a law.

Religious associations may determine the way of creating membership rights and the scope, tasks and powers of persons who are entitled to make and monitor decisions concerning the religious association, as well as to administer the affairs of and act as the representative of the religious association differently from the rules of associations.

As regards their operation, religious communities are entitled to:

- more favourable taxation rules than those applicable to legal entities that primarily perform business or entrepreneurial activities, in terms of corporate tax,
- receive 1% of the personal income tax, which can be designated by taxpayers,
- receive budgetary support for the upbringing-educational, higher educational, health-care, charity, social activities and services in the field of family, child and youth protection, as well as cultural or sports activities performed by them,
- conclude building society contracts,
- perform works of art in the course of their religious rites and religious ceremonies without the obligation to pay royalty,
- work in the public interest may be performed for them without any restrictions,
- perform chaplaincy services in prisons, hospital pastoral care and spiritual care services,
- exercise their right to the freedom of assembly in religious rites, events and processions without any restrictions,
- provide faith-based instruction in higher educational institutions operated by them,
- provide religious education on an optional basis,
- operate archives for the purpose of collecting official documents administered by them,
- hold burials in the framework of religious rites,
- engage the service of convicted persons for performing reparative work and work in the public interest, ordered in criminal proceedings.

The annual Acts on the state budget include a specific operational support appropriation for religious communities.

In addition to the above described rights granted to all religious communities, **religious communities with ecclesiastical legal status** are also entitled to the following rights:

- they may organize religious education in state higher educational institutions;
- their church officials are entitled to income tax and social insurance allowances;
- their faith-based and business-like activity related to their public purpose activity, as defined in the Church Act, do not qualify as business-entrepreneurial type activity, in details:
 - a, operation of institutions serving faith-based and public purpose activities,

- b, production or sale of publications or objects of piety that are necessary for faith-based life,
- c, sale of immaterial goods, objects or stocks serving exclusively faith-based activities, including the reimbursement of the cost of liturgical clothing,
- d, provision of services complementary to faith-based activities, the non-profit oriented use of appliances serving these activities,
- e, operation of pension institutions or pension funds set up for the purpose of self-support of church officials, and
- f, consent to the use of the name, abbreviated name, commonly used name, coat of arms and emblem of the ecclesiastical legal person by others;
 - their revenue serving religious purposes and the use thereof shall not be monitored by state organs (including 1% of the personal income tax offered for their benefice and its budgetary complement, and in the case of those churches which are eligible to it, the real estate annuity);
 - exemption from the payment of company car tax;
 - not being subject to local taxes (except for the tax on tourism);
 - any pecuniary value provided for them, which is directly connected with a religious service provided by them is exempt from personal income tax;
 - more favourable accounting and tax return rules apply to them;
 - donations of public interest provided for them are exempt from VAT.

In addition to the above, **established churches** are entitled to the following benefits as a substantive right:

- they are entitled to the same amount of budgetary support as is due to state institutions, for their public service activities (other religious communities are entitled to supplementary support based on a special agreement);
- they may hold religious and moral education lessons instead of the compulsory ethics lessons in grades 1 to 8 in schools maintained by the state and by national minority local governments;
- they may provide army chaplaincy services in case of an agreement pertaining to them;
- for them the following shall not qualify as business or entrepreneurial activities:
 - a, operation of sports institutions, as well as undertaking environmental protection activities,
 - b, making use of holiday homes by providing services to church personnel,
 - c, partial usage of real estate used for church purposes,
 - d, maintenance of cemeteries,
 - e, sale of immaterial goods, objects or stocks serving environmental protection activities or public purpose activities defined in the Church Act,
 - f, provision of services complementary to environmental protection activities and activities of public interest defined in the Church Act, and the non-profit oriented use of appliances serving such activities,
 - g, production and sale of products, notes, textbooks, publication or studies created in the course of performing public duties taken over from the state or local governments.