

Hearing on The Trajectory of Democracy: Why Hungary Matters

*Held before the
Commission on Security and Cooperation in Europe
(the U.S. Helsinki Commission)*

Senator Benjamin L. Cardin, Chairman, Presiding

Tuesday, March 19, 2013

Excerpts on Religious Liberties Issues

Witnesses:

- Brent Hartley, Deputy Assistant Secretary for European and Eurasian Affairs, U.S. Department of State
- József Szájer, Hungarian Member of the European Parliament, Fidesz-Hungarian Civic Union, representing the Government of Hungary
- Dr. Kim Lane Scheppele, Princeton University
- Ms. Sylvana Habdank-Kołaczowska, Freedom House
- Dr. Paul A. Shapiro, U.S. Holocaust Memorial Museum

*Full statements and link to video
webcast available at:
www.csce.gov
(click on
“hearings & briefings”).*

Additional statements for the record:

- Written observations on the situation of Roma in Hungary submitted by the European Roma Rights Centre
- Testimony Concerning the Condition of Religious Freedom in Hungary, H. David Baer, Texas Lutheran University
- Statement of Frank Koszorus, Jr., National President of the American Hungarian Federation



**Statement by the Honorable Benjamin L. Cardin
Chairman**

“The Trajectory of Democracy – Why Hungary Matters”

Hearing before the Commission on Security and Cooperation in Europe

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The progressive inclusion of post-communist countries into transatlantic and European institutions reflected the expansion of democracy and shared values, as well as the realization of aspirations long denied. Indeed, in 1997, the Helsinki Commission held a series of hearings to examine the historic transition to democracy of post-communist candidate countries like Hungary prior to NATO expansion.

I was among the many in the United States who cheered when Hungary joined NATO in 1999, and again when Hungary joined the EU in 2004 – illustrating not only Hungary’s post-communist transformation, but also Hungary’s ability to join alliances of its own choosing and follow a path of its own design. Hungary has been a valued friend and partner as we have sought to extend the benefits of democracy in Europe, and elsewhere around the globe.

But today, concerns have arisen among Hungary’s friends about the trajectory of democracy in that country.

Over the past two years, Hungary has instituted sweeping and controversial changes to its constitutional framework, effectively re-making the country’s entire legal foundation. This has included the adoption of a new constitution – already amended multiple times including the adoption of a far-reaching Fourth Amendment just days ago – and hundreds of new laws on everything from elections to the media to religious organizations.

More than that, these changes have effected the independence of judiciary, role of the constitutional court, the balance of power, and the basic checks-and-balances that were in place to safeguard democracy.

It seems to me that any country that would undertake such voluminous and profound changes would find itself in the spotlight.

But these changes have also coincided with a rise of extremism and intolerance in Hungary. Mob demonstrations have continued to terrorize Romani neighborhoods. Fascist-era figures are promoted in public discourse and the public place. A new law on religion stripped scores of minority faiths of their legal status as religious organizations over night including, initially, Coptic Christians, Mormons, and the Reformed Jewish Congregation. Most have been unable to regain legal status, including the Evangelical Methodist Fellowship, a church that had to survive as an “illegal” church during the communist period and today serves many Romani communities.

At the same time, the constituency of Hungary has been re-defined on an ethnic basis: citizenship has been extended into neighboring states on an ethnic basis, and voting rights now follow that.

As the late Ambassador Max Kampelman once observed, minorities are like the canary in the coal mine. In the end, democracy and minority rights stand or fall together. If respect for minorities falls, democracy can’t be far behind. And the rights of persons belonging to ethnic, religious, or linguistic minority groups will likely suffer in the absence of a robust democracy.

Max Kampelman, who was long a friend of the Helsinki Commission, served with distinction as the head of the U.S. delegation to the seminal 1990 Copenhagen meeting, where some of the most important democracy commitments ever articulated in the OSCE were adopted:

The participating States “consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression. They reaffirm that democracy is an inherent element of the rule of law.”

At issue now is whether Hungary’s democratically elected government is steadily eroding the democratic norms to which Hungary has committed itself, in the OSCE and elsewhere. And we care about democracy in Hungary, for the people in Hungary as well as for the example it sets everywhere we seek to promote democracy.

I welcome all of our witnesses here today, and I appreciate that you are giving of your considerable expertise, your insights, and your time.

I especially appreciate that our second witness, Jozsef Szajer, has been asked by the Government of Hungary to represent it here today. As one of the framers of the constitution, we could have no more authoritative voice on the issues we are discussing and I thank you from coming from the European Parliament where you serve to share your views.

Our first witness will be Mr. Brent Hartley, Deputy Assistant Secretary of State for European Affairs, followed by Mr. Szajer.

Our final panel will include Dr. Kim Lane Scheppelle, an expert on constitutional law from Princeton University, Ms. Sylvana Habdank-Kolaczowska from Freedom House, and Dr. Paul Shapiro from the U.S. Holocaust Memorial Museum.

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Excerpts from unofficial transcript

(Additional references may be found in written statements submitted by witnesses for the record)

[...]

SEN. BEN CARDIN: I have the Council of Europe – excuse me on that – on your religious law, where they say that the act sets a range of requirements that are excessive and based on arbitrary criteria with regards to the recognition of a church – in particular, a requirement related to the national and international duration of a religious community and the recognition procedures based on a political decision should be reviewed. This recognition confers a number of privileges to churches concerned. The act has led to the deregistration process of hundreds of previously lawfully-recognized churches that can hardly be considered in line with international standards.

Finally, the act induces, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities depending on whether they are recognized or not. That's from the Council of Europe. Any comment?

MR. JOZSEF SZAJER: Chairman, if you allow me one sentence still on the previous subject, that any decision of the Media Council is due to court review in Hungary. So if you are not satisfied with the decision, you can go there, and there is a bill where you can go through all of this process.

On the – concerning on the religious communities, I think it's a very big and great misunderstanding. The paragraph which is dealing with media – with religious freedom in Hungary states nothing else than your constitution or several constitutions of the world- the charter fundamental rights of the European Union states, that every single citizen, individually or collectively, has the right to exercise their religion publicly or in their home, which means that – this is what your constitution says. It doesn't go farther than that.

However, the European system – and I think the misunderstanding comes from this point. The European system is not about whether an individual or a community can exercise – whether it can exercise or not their religion in – individually or in a community, but in the European system, it's whether – about – they have some additional rights, whether they are entitled to some taxpayers' money, which means that the media – the church law in Hungary is not really about church freedom. I understand that the basis of the first amendment in this country – it's even prohibited to regulate any religion because of the – of the ban like this.

In Hungary, this is also – every single community, let it be whatever. I am not giving examples, because that always leads to – but any community and any individual can exercise this. There is no restriction of any on this right. What the state, in the church law, introduces as a procedure is a recognition – as a – as a religious community, which has some extra claims by cooperating with the state and getting state money – getting the taxpayer's money as a support for paying their priest, for having their charity organization and so on. And so the church law is going beyond of that, and the church law is a normative law, so you cannot apply it arbitrary.

And why – two-thirds majority in the Hungarian parliament is something which is exactly the guarantee of the right consensus needed on – concerning churches.

I also would like to add that in the neighboring countries, the same recognition process – religious communities becoming churches Which are supported by the state, is, in number, much less. Austria has

much less, Slovakia has less state – less churches. Hungary has, at the moment, 34. Romania has less, and several European countries have less recognized churches like that.

So we have various regulations in European countries in which the Hungarian is the most accepting – the most open system which is a public system, and the transparent procedure – how do you recognize, not as a church – a religious community – as a church, but as a religious community which is entitled to taxpayer money.

I think the big misunderstanding here lies here. This is about taxpayer money. It's not really a church law. It's church financing law, which doesn't exist in this country, because it's prohibited by the first amendment of your constitution.

SEN. CARDIN: I thank you for that explanation, but I still believe the discriminatory treatment of one church versus another is of concern. Each country has a different set of circumstances – its relationship to the faith community, but discrimination against one church versus another is an issue of concern, and I take it it is correct to say that this law did deregister hundreds of previously lawful churches in Hungary? Is that accurate?

MR. SZAJER: Yes, and the reason it that the state doesn't want to provide taxpayers money for, for instance, business religions – for religions which are doing only business. So they are free to exercise their religious activity – their faith, because that's the first sentence of our constitution, but they are not recognized as churches which as entitled for taxpayers' money. This is the difference.

However, it also comes to your statements, senator, to the question of double standards, which I think we have to be very careful. In Europe, there are several countries – and I don't name them, because we all know, in this room which they are – they have state religions. They have state religions, which means that the state religion has extra and specific rights over other churches. They are coming from history, but the Hungarian system, I can assure you, is not discriminatory. The constitutional court had a decision on this and gave guidelines, and a new amendment – the fourth amendment made clear how the differences between religious exercise of our religion in community and the cooperation with the state, which involves taxpayers' money.

SEN. CARDIN: I understand that point. The other area that just doesn't look well is that, as I understand it, to become registered under the law – if you're not registered, you need a two-thirds vote of the parliament. Is that correct?

MR. SZAJER: No, no. There is a procedure in which religious community – which is an existing religious community, can ask the recognition as a church, and so, entitled for cooperation or benefits from the –

SEN. CARDIN: And that requires a two-thirds vote of the parliament?

MR. SZAJER: That requires a two-third qualified vote in the Hungarian parliament in order to recognize a church for that. But the fourth amendment introduces and acts on the request of the constitutional court that, on procedural basis, there is an opportunity to have a review of that in the constitutional court, so you can appeal against this decision – on procedural basis – to the constitutional court, which – it built in an extra guarantee to the process, because that's what the constitutional court was missing.

**Testimony Concerning
the Condition of Religious Freedom in Hungary,
Submitted to the U.S. Commission on Security and Cooperation in Europe
(the Helsinki Commission)
by H. David Baer, Texas Lutheran University
March 18, 2013**

Changes in Hungary's religion law, 2011-2013

In July 2011, Hungary's Parliament passed 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." Act C of 2011 was a cardinal law, requiring a 2/3 parliamentary vote to be passed or amended. However, the law was passed through a highly irregular parliamentary procedure inappropriate for legislation on such a fundamental matter as religious freedom. An initial bill was brought to the floor by a representative of the Christian Democratic People's Party (KDNP), a coalition party in the ruling government, but two hours before the final vote, a member of Fidesz, János Lázár, proposed an amendment from the floor that changed the bill in its entirety. Lázár's surprise version of the bill was debated on the floor for two hours and passed by Parliament.

On December 19, 2011, the Constitutional Court struck down Act C on the basis of a narrow objection to the irregular procedure by which the law was passed. Three days later, on December 22, a new religion bill essentially identical to Act C was submitted to Parliament's Committee on Constitutional, Legislative and Judicial Matters (Alkotmányügyi, igazságügyi és ügyrendi bizottság). The Constitutional Committee discussed the bill from 9:09 to 9:53 a.m. and then forwarded it to Parliament, where debate was taken up and closed the very same day. Although representatives in Parliament had less than 24 hours to consider the contents of the bill and propose amendments, it was passed as Act CCVI of 2011 and went into effect January 1, 2012.

Act CCVI of 2011 introduced an elaborate registration procedure for legal recognition of churches. The Act stipulates that religious groups seeking legal recognition must conform to numerous criteria, almost all of which are problematic. Some criteria presuppose a substantive definition of religion that is biased toward Christianity. For example, groups seeking legal recognition need to have "a confession of faith and rites containing the essence of its teaching." Although this criterion may be appropriate for what are called "orthodox" religions, that is, religions like Christianity which emphasize confessional and official teaching, it is hardly appropriate for what are called "orthoprax" religions, that is, religions like Judaism and Buddhism which emphasize religious practices but do not produce authoritative confessions. Other criteria are excessively burdensome. For example, groups seeking legal recognition need to have been "operating internationally for at least 100 years or in an organized manner as an association in Hungary for at least 20 years." Some criteria are sweepingly vague. For example, the activities of a religious group seeking registration cannot be contrary to the Hungarian constitution – a constitution, one might add, that has already been substantially amended four times in a single year.

According to the Act, legal recognition to churches is granted only by a 2/3 vote of Parliament. However, even in cases where a religious group meets all of the criteria enumerated in the law, Parliament is not required to grant that religious group legal recognition. Tamás Lukács, chair of the parliamentary Committee on Human Rights, Minority, Civic and Religious Affairs (Emberi jogi, kisebbségi és vallásügyi bizottság), has stated repeatedly that religious groups do not have a right to be

legally recognized as a church or religious community, but that legal recognition is a matter of political discretion. In Lukács's view the state is free to refuse recognition to religious groups even in cases where they meet all the criteria enunciated in law. Importantly, the Committee on Human Rights which Lukács chairs has been responsible for determining whether applications by religious groups for legal recognition are forwarded to Parliament. Thus Lukács's views on these matters are of consequence.

When Act CCVI of 2011 was first passed, Parliament recognized only 14 churches/religious communities, all of which were either Christian or Jewish. In February 2012, perhaps in response to international pressure, Parliament recognized an additional 13 groups, including Muslims, Buddhists, and smaller Christian groups, thereby raising the number of recognized churches to 27. (Numerous reports have listed the number of accepted churches as 32. However, Act CCVI of 2011 and its "annex" list a total of 27 churches. Five Buddhist communities merged and were recognized collectively as one church in the law. If one incorrectly adds those five Buddhist groups separately to the list of 27 accepted churches, one gets 32). Act CCVI of 2011 also stripped all religious groups not recognized by Parliament of legal standing, forcing them to apply for recognition as civil associations.

Criticisms of Hungary's religion law

In March 2012, the European Commission for Democracy Through Law (Venice Commission) issued an opinion on Act CCVI of 2011. Although the Commission raised questions about many aspects of the law, its most severe criticism was directed against the procedure by which Parliament determined legal recognition. According to the Venice Commission:

the recognition or de-recognition of a religious community (organization) remains fully in the hands of Parliament, which inevitably tends to be more or less based on political considerations. Not only because Parliament as such is hardly able to perform detailed studies related to the interpretation of the definitions contained in the Act, but also because this procedure does not offer sufficient guarantees for a neutral and impartial application of the Act. . . . Motives of the decisions of the Hungarian Parliament are not public and not grounded. The recognition is taken by a Parliamentary Committee in the form of a law (in case of a positive decision) or a resolution (in case of a negative decision). This cannot be viewed as complying with the standards of due process of law. (Opinion 664/2012 par. 76-77).

In fact, as Tamás Lukács pointed out in the Hungarian media, since church recognition is a matter of political discretion, members of Parliament are not even required to offer reasons related to the criteria enumerated in the law for refusing recognition to a religious group.

That members of Parliament do not feel constrained by the criteria set forth in Act CCVI of 2011 was made clear in a meeting of the Committee on Human Rights, Minority, Civic and Religious Affairs held on November 27, 2012. The Committee considered and rejected an application for recognition by a Christian group named Lectorium Rosicrucianum. The publicly available minutes from this meeting indicate clearly that members of the Committee did not make their evaluations on the basis of the criteria enunciated in Act CCVI of 2011. Mária Wittner, a member of Fidesz, reasoned against legal recognition on the following grounds:

There was a time when we were considered pagans; yet we weren't pagans – we believed in one God. Then came the Reformation, the Reformed Church, then the Lutheran, and churches have multiplied, even though there is only one God. Well, even though I don't believe that this association will be able to attract many members in Hungary, I still believe that sects should not be considered churches. I don't know for what purpose or whether it is to reach worldwide hegemony, but I see that the tendency today, even in religion, is to divide and conquer! We have Christianity here, we have a Catholic Church,

which is more than two thousand years old and has existed in Hungary for a thousand years, and we have a reformed Church as a result of the Reformation, but what I was most struck by is that 187 churches have been registered in this country since 1990. Gentlemen! There is only one God! One God! (EMB/147-1/2012, page 11).

The inappropriate character of this reasoning will be apparent to everyone. The point to emphasize, however, is that Act CCVI of 2011 allowed reasoning of this sort to be the basis for determining whether or not a religious group received legal recognition.

The troubling features of Act CCVI of 2011 led Hungary's ombudsman to file a petition with the Constitutional Court, and numerous deregistered religious groups also filed petitions. On February 26, 2013, in a substantial and carefully reasoned decision, Hungary's Constitutional Court struck down as unconstitutional numerous provisions within Act CCVI of 2011. Article 7 of Hungary's new constitution guarantees religious freedom. Article 15 guarantees equality under the law. Articles 24 and 29 guarantee each citizen the rights of due process and legal redress. Thus a religious association of Hungarian citizens has an equal right to apply for recognition as a church by means of a procedure that follows due process and ensures the right of legal redress. The provisions for recognition set forth in Act CCVI of 2011 failed to do this. Thus the Court struck down those parts of the Act in which Parliament had determined legal recognition of religious groups.

Fidesz's response to this, as to other decisions of the high court, has been to amend the constitution. The controversial fourth amendment, passed on March 11, grants Parliament the authority to determine which religious groups are recognized as churches by changing the text of article 7 on religious freedom. The provision of Act CCVI of 2011 most severely criticized by the Venice Commission has now been written into the Hungarian constitution. Reconciling Parliament's power to bestow legal recognition with the rights of due process and legal redress will be a challenge. Furthermore, article 7 allows Parliament to decide not only the content of the law concerning religious freedom, but also its application in individual cases. Such a provision would appear in tension with the separation of powers principle enshrined in article C of Hungary's constitution.

Impact of Hungary's religion law on unrecognized religious groups

In addition to undermining principles of constitutionalism, Act CCVI of 2011 has had a significant impact on religious groups not legally recognized by Parliament. As a consequence of the Act numerous religious communities that had been legally recognized as churches prior to 2011 were stripped of their status. Indeed, Act CCVI of 2011 completely replaced the legal regime that had governed religious freedom in Hungary since 1990. Thus far not much attention has been directed toward assessing the impact of deregistration on those groups. The Venice Commission opinion focused on the registration procedure itself, as did the ruling of the Constitution Court. But in the meantime deregistered religious communities have been forced to adapt to a new legal context in which they are denied what most Americans would consider basic aspects of the right of religious freedom.

Over the past six months I have been working to assess the impact of Act CCVI of 2011 on Hungary's unrecognized religious communities. Using public records and resources available on the internet, I have attempted to compile a comprehensive list of Hungary's unrecognized religious communities. I also visited Hungary in summer 2012 and interviewed numerous representatives of deregistered churches. Additionally, I recently completed a survey of deregistered religious communities that seeks to measure objective indicators of religious discrimination.

Estimates concerning the number of deregistered churches vary. The Hungarian government claims there were well over 300 registered churches in Hungary prior to 2011, but has never explained how it arrived at this estimate. I have been able to identify 122 deregistered churches thus far, some of which ceased operating on their own prior to 2011. I believe this list to be accurate and close to complete. I estimate that somewhere between 160 and 180 independent churches/religious communities were operating in Hungary prior to passage of Act CCVI of 2011, and that the Act deprived approximately 130 religious communities of legal recognition. I have been able to establish contact with 106 unrecognized religious groups, whom I invited to participate in my discrimination survey. Forty-nine groups responded to my inquiry and 43 agreed to participate, which translates to a participation rate of 40%. I closed the survey only two weeks ago and have not yet run a complete statistical analysis of the data. I wish to emphasize, therefore, that the statistical information provided below is provisional.

Initial analysis suggests that while almost all religious groups report some level of discrimination, the amount of discrimination varies significantly, with a little over half of the participants reporting what I would call significant discrimination. After Act CCVI was passed, deregistered churches were told they must apply for recognition as civil associations. Failure to apply for status as a civil association, or failure to meet the deadline for applying as such, would result in total liquidation of the community's assets, that is, appropriation of the community's property by the state. The overwhelming majority of religious groups surveyed indicate that they have been recognized as civil associations. However, I was able to identify two instances where courts ordered the liquidation of a community and a few additional instances where a final decision has yet to be rendered. Even so, a surprising number of those surveyed, almost 15%, report that some of their property was liquidated after deregistration. Others report, again about 15%, that leases they held on rental property were terminated. Among those surveyed, 16% indicated they were forced to shut down schools as a consequence of being deregistered; 30% indicated they were forced to close down charitable organizations; 40% indicated they were forced to abandon additional ministries (other than education and charity work).

Unlike legally recognized churches, religious groups classified as civil associations do not enjoy complete internal autonomy. Civil associations must have a specific administrative structure. For example, they must have a presidency and all members must have the right to vote on decisions made by the association. In many cases, although not all, these administrative requirements violate the religious conscience of believers. Among deregistered religious groups participating in my survey, 17% refused to apply for civil association status, and many of them reported in written comments that their refusal to apply was based on reasons of conscience. These groups now live under the fear of court ordered liquidation. Among deregistered religious groups that did apply for recognition as a civil association, 36% reported that they had been required to change their organizational structure. Additionally, a high number of respondents, 30%, reported that their clergy had been prevented from visiting patients in the hospital; 27% reported that they were prevented from visiting persons in prison. A small but noticeable number of respondents, a little over 10%, reported that they had been forced to change their religious confession, their official teaching, or worship services in order to be recognized as a civil association. Also, unrecognized religious groups are not permitted to have the word church in their official name. Among those groups applying for recognition as a civil association, 60% reported that they had been forced to change their name.

Reasons offered for the new law by the Hungarian government

When Parliament first passed Act CCVI of 2011, the Hungarian government claimed the new law was necessary in order to correct abuses made possible by the previous religion law. In the Hungarian media, representatives of the government frequently spoke of "business churches," an imprecise and polemical term. The claim was that non-religious organizations were registering themselves as churches

in order to receive tax exemptions and state subsidies. However, no impact studies were conducted, so neither the extent of abuse nor the effectiveness of the remedy could be evaluated. The only evidence of abuse offered by the government was the claim that more than 300 churches were operating in Hungary. This number, the government believed, was clearly excessive and indirect evidence of the existence of “business churches.” As already indicated, I believe the 300+ estimate is too high. I would also add that in the course of my research I have been able to identify only two cases where I suspect organizations registered as churches under pretext. The most notable of these involves the mayor of Érpatak, a man named Mihály Orosz who is a member of the right-wing political party Jobbik. Mr. Orosz was affiliated with, or the founder of, at least four different groups registered as churches under the old law.

Even if there were significant abuse under the old law, having Parliament bestow legal recognition on religious groups hardly seems an effective remedy. In fact, the possibility of remedy existed under the old legal regime, something pointed out by the Constitutional Court in its February 2013 ruling. According to the Court, under the old law a state prosecutor had a right to request information and investigate a church suspected of illegal activity. An organization engaged in running a business but seeking registration as a church could thus be prevented from registering, or if already registered, prosecuted for violations of the law. According to the Constitutional Court, under the old law state prosecutors initiated legal proceedings against registered churches on a number of occasions.

Conclusion

When attempting to interpret the behavior of a political regime whose decision-making process is not transparent, political scientists often attempt to infer intentions from effects. That is, instead of taking the public pronouncements of the regime at face value, political scientists examine the effects of the regime’s actions to determine its true intentions. Viktor Orbán’s government is not transparent. Cardinal laws addressing basic human rights and constitutional amendments addressing the rule of law are introduced in Parliament and approved in a matter of hours. Even after fundamental laws have been passed, they are amended immediately whenever the Constitutional Court renders a decision not to the government’s liking. I therefore submit that the best way to understand Viktor Orbán is to look not at what he says, but at what he does.

If we look at what the Orbán government has done in respect to religious freedom, inferring intentions from effects, it becomes difficult to believe that the intention behind Act CCVI of 2011 was to eliminate legal abuses occurring under the old law. First, the Orbán government never made an attempt to assess the extent and nature of the alleged abuse. Second, legal remedy against abuse was already available. Third, the negative impacts on religious freedom caused by Act CCVI of 2011 were far greater than any legal abuses the Act putatively sought to correct. If the aim of the government had been to eliminate abuse, much simpler and less destructive solutions were available. Addressing the problem of “business churches” certainly did not require modifying the constitution in a way that allows Parliament to bestow legal recognition.

A more plausible explanation for Act CCVI of 2011 is that the Orbán government is seeking to hinder the activities of religious groups it dislikes, perhaps because it views those groups as “sects,” perhaps because the leaders of some of those groups have criticized the government, or perhaps because the membership of many of those groups is Roma. Whatever the Orbán government says, its actions indicate that it holds the right of religious freedom in low regard.