

THE MAIN PROBLEMS OF RELIGIOUS FREEDOM IN EASTERN EUROPE

by Tamás Földesi

Dr. Tamás Földesi is a professor of law at the Eötvös Loránd University in Budapest. He has frequently written on issues of religious liberty, and some of his writings have appeared previously in this periodical. This is a segment of a paper delivered at the international conference "Religious Human Rights in the World Today: Legal and Religious Perspectives," held at Atlanta, GA October 6-9, 1994. It is used here by permission of the author.

1. The Past

Any author trying to analyze the problems related to the freedom of religion in Eastern Europe is confronted with an especially difficult task. This is so because there are many states found in a relatively small geographical area (and their number has further increased since 1989, with the dissolution of the Soviet Union and Yugoslavia). Despite the fact that these countries have certain features in common, they are very different. There are both winners and losers of World War II among them; the majority of these states are heterogeneous in respect not only of nationalities, but also of religion. The borders of most of these states were established only after World War I, and there have been very many ethnic conflicts between the churches and religions on several occasions. It is worth mentioning that although Christianity dominates in this region (Muslims and Jews are an insignificant minority), there are significant differences concerning which type of Christianity is followed by the majority of people in the individual countries. On this basis, the countries can be divided into two groups: those more to the East, including Ukraine, Romania, Bulgaria, and Serbia where the Eastern Orthodox religion dominates. In Poland, Slovakia, Hungary, Croatia and Slovenia the Catholic religion is predominant. In addition, in the Czech Republic and the former German Democratic Republic, Protestantism is strong, and the number of Protestant believers is also high in Hungary as well as in Transylvania, Romania, and Slovakia. Albania is predominantly Muslim.

However, despite the large scale ethnic and religious heterogeneity of the region, until recently, each country, except the former Yugoslavia, belonged to the Soviet bloc for at least four decades and as a result of that, certain common features prevailed in human rights and religious freedom despite all the differences.

In order to understand the problems related to religious freedom in Eastern Europe, I have to discuss briefly the concept and practice of human rights in the former Communist countries. The totalitarian system of the Communist countries, no matter whether it was soft or hard dictatorship, was incompatible with the majority of rights to political freedom due to these countries' one party system. For example, the right to organize or the right to free expression could not be realized. This was not changed by the fact that as members of the United Nations, the Communist countries formally recognized the importance of human rights and made certain efforts to implement some economic, social, and cultural rights. Since the political human rights played a subordinated role smaller than their real

value, a specific hypocrisy developed between the proclaimed principles and the actual practice. The same attitude characterized the Communist countries' concept of religious freedom. This stance was fundamentally influenced by the Communist Parties' thinking about the present and future of the churches and religions and especially their role in society based on Marx's interpretation. In this regard, there were basic differences between the evaluations of the role the political parties and the churches played in society. While the ruling idea was that the Communist Party could not have rivals in socialism and no genuine opposition party was allowed to operate or be organized or to propagate related ideas in the media, it was accepted that the existence of the churches was historically justified even if temporarily, in socialism and for a different reason: the limitation of religious freedom was different in nature than that of the political liberties. According to Marxism, all throughout its history, religion met certain social demands. Religion is a specific reflection of the idea that humanity is defenseless first against nature, later to social conditions and that is why it turns to heavenly powers to overcome his own misery. As socialism is also unable to solve a few basic social problems, in this society too, a certain proportion of people need religious consolation. At the same time, the prevailing conservative line of Marxism considered religion to be a dead end, which instead of helping people to experience real liberation as offered by the revolutionary parties declared an illusory solution, and for this reason religion was, to quote Marx, "the opiate of the people." Therefore, the churches and religions were to be considered as necessary evils which unfortunately, could not be done without. Since they were undesirable rivals, the restriction of their activities was absolutely necessary and desirable. It was a merit and not a mistake. From this concept, one more step had to be taken, the declaration that religion was an unnecessary evil. It is not something that would die out with the cessation of the social needs, but it should be eliminated already now. This step was indeed taken by Albania in the early 1970s (it is another question that the lesson of history was once again proven that no religion could be ended by aggression because this effort would only create martyrs and would consolidate its illegal survival).

On the basis of the principle of "necessary evil" the socialist countries elaborated in many ways similar strategies for the maintenance of religions and churches while limiting their operation and influence at the same time. These strategies had a few interconnected elements. The most important feature was the conscious effort to achieve and make permanent the increasing inequality of opportunities of religious and secular ideologies. One field where this was demonstrated was the compulsory teaching of Marxism in higher education in a large number of hours a week with the explanation that this is the "only scientific ideology," while providing no opportunity for the propagation of religious ideas (which was based on the philosophy that religious views were false ideas and just like pseudo-science, had no place in universities where false. Unscientific ideas were not to be allowed in the curriculum). In a similar fashion, in primary and secondary schools the subjects, especially the humanities, were taught in the spirit of Marxism. It was a source of resentment if a teacher was outspoken about his own religious conviction during teaching. In line with this, much emphasis was placed on pushing Marxism through the media as the dominant ideology. Religious ideas were given little or no consideration in programs. The publishing of church literature also suffered heavy restrictions. In some countries, for instance in the former Soviet Union, the Bible was a

rarity which one could hardly obtain legally. It also served the effort of inequality of opportunities that in all socialist countries, the schools were nationalized in the 1940s; in the Soviet Union that happened earlier, and either no school was left or very few continued to exist. Simultaneously, in most countries, the religious orders were dissolved and the legality of religious communities were eliminated. This was a reflection of the general aversion of the system towards civic society. Social activities provided by the churches were also either eliminated or drastically cut back in most of these countries which led to the awkward situation that nuns were not permitted to care for patients, and priests were barred from providing consolation to those imprisoned. The institution of army chaplains was eliminated, with the exception of Poland, and the burdens posed by national service were more difficult to tolerate.

These measures were especially inhumane due to the fact that nuns, as a result of their commitment, were the best care providers. Evidently prison priests can provide help to the convicted to rehabilitate more easily, or the army chaplains assists in tolerating the pressure of service in the army. Consonant with these measures, the autonomy of the church was ended in each and every socialist country; state religious affairs offices were installed to control strictly the financial and ideological activities of the church and to have a say in appointments, etc.

This general approach was more or less characteristic in all the socialist countries even if there were more anti-religious and less strongly anti-religious periods in their history. However, within this general framework, there were fundamental differences between 'soft' and 'hard' dictatorships. The situation of religion and the church was more difficult in the hard dictatorships. The leaders of the church were often persecuted; whipped up court trials were launched against them, and the believers were regarded as second-rate citizens whose position and advancement in the social hierarchy were very negatively influenced by their belonging to one or the other church or religion. It is no coincidence that one of the authors writes that in the Stalinist era Yezhov and Beria carried out the genuine socialist countries' policy towards the church which was to try to corrupt certain church leaders and win them over to support the regime. This succeeded first of all in some Eastern and Balkan states, e.g. in the Soviet Union, Romania and partially in Bulgaria. In the first two of these countries an additional element was the elimination or amalgamation of one church with another. This was how the Greek Catholic Church ceased to exist for decades, or was incorporated into the Orthodox Church in the Soviet Union and Romania.

Under such conditions, the position of the leaders of the different churches became very difficult because while they had to ensure the survival of their duties, even under such circumstances, a certain degree of co-operation with the Communist system was required. At the same time, they had to preserve their relative independence, and throughout the existence of socialism, but especially after its collapse, heated debates arose on the issue of what extent of cooperation was acceptable and what would count as voluntary renunciation of basic church and religious interests.

The long-lasting limitation of religious freedom however, did not yield the result which the Communist system had hoped to obtain. The majority of people in most of these countries did not agree with the restriction of religious liberties and with the lack of accepted Marxist teaching including its principle concerning religion to an increasingly lesser degree. In several countries, first of all in the Soviet Union, most of the church buildings were closed down or used for some other purpose. Turning society into an atheistic one did not happen. Surveys carried out after 1989 show that a very tiny proportion of society was consciously atheist, and secularization was better reflected in the fact that relatively many people do not belong to any religion despite the fact that they claim to believe in God or be agnostic. As a result, in the soft dictatorships, well before 1989, in fact already in the late 1970s and during the 1980s, there were critical voices demanding to place church and religious policy on a new footing, to reduce or eliminate the limitations. Poland was an exception because there the Catholic Church preserved its influence to such an extent that its word and activities fundamentally influenced the position of Polish society, and opposition forces gathered around the Church to a large extent. In other countries the idea was raised that since the church also played a positive role, cooperation with the church would be necessary to solve social and other problems. A dialogue was organized to pinpoint common moral and other values. All this contributed to the erosion of the Communist system and prepared a change concerning religious freedom.

2. The Present

In 1989, the socialist system suffered a domino-like collapse in the countries of Eastern Europe which was then followed by the end of the Soviet Union two years later. Let us now disregard the form in which that revolution took place, whether it was like "velvet," as in Czechoslovakia, or peaceful, as in Hungary, or armed, as in Romania. The end result was pluralist democracy in which multi-party parliamentary democracy was born as a result of basically free elections. Accordingly, a turn took place in the relationship between the state and law. While law in the previous system functioned as a means of power, the new regimes set out as their goal the creation of a law-guided state which was the European equivalent of the rule of law. The new democracy necessarily meant a fundamental change in the relations between the state and individual citizens. While in the previous society people were subordinated to state power and served its totalitarian goals, their rights being nothing more than a donation from the paternalistic state, the new society wished to be formed in the spirit of civic society whose legal system is based on human rights, including the fundamental political freedom rights. Without those there is no pluralistic democracy--just think of the right to organize, assemble or the freedom of expression.

All this naturally brought a change in the fate of human rights. These found a central place in the new (or basically transformed) constitutions which also indicated a change, and the catalogues were supplemented e.g. with the earlier missing right to move or petition, and the formulation of the rights came into harmony with the standards of the UN and the European Convention on Human Rights. In other words, human rights from then on had to be taken seriously, and the hypocritical attitude had to be ended in which

these rights were recognized in words but restricted in practice. (The above description was typical of those East European countries which even if not easily and free from contradictions consistently took the road of democracy. Expectations to this are the warring countries and those parts of a country where human rights are subordinated to nationalistic endeavors and the goal of winning the war.)

It should be pointed out that human rights were rehabilitated only partially, as rehabilitation is the result of a long process which had and still has to be carried out under very difficult conditions. The new political regimes have to transform their economies and change the failed, or not too successful, command economy to social market economy and at the same time transform the whole state and legal system. This leads to several basic problems. Here, I want to mention just one of these problems. In most countries, this transformation has caused a drop in living standards and living conditions of a significant part of the people which has been coupled with significant social tensions. Translating this into the language of human rights, it has meant that economic and social rights have been realized on a smaller scale; for example, unemployment has increased significantly. Progress is not so clear cut in other areas either. Under the circumstances of pluralism, it has happened in more than one country that the political parties which obtained power have tried to bring for instance, the electronic media under their control in order to realize political interests. However, this does not change the general state of affairs that fundamental, positive changes have taken place in Eastern Europe concerning human rights.

Understandably, the changes also made their way to the sphere of religious freedom. The change of the political system has yielded a turn in the development of religious liberty in Eastern Europe. The essence of that change is that the limitations introduced by the socialist state were either immediately or gradually eliminated. But it does not mean that the consequences of the lasting restriction on religious freedom have also disappeared.

The elimination of the limitations of religious freedom is primarily an expression of a political attitude, namely that the new political regimes which regard the restriction of religious freedom also had legal forms in the previous system, such as the closing down of the religious orders, the nationalization of schools, the establishment of the State Office for Church Affairs and the regulation of its operation. The East European countries considered it necessary to make separate laws on religious freedom in addition to its inclusion among the human rights in the Constitution, in full harmony with the human rights documents of the United Nations and the European Convention on Human Rights.

For reasons of length, I cannot discuss the activities of the legislation of the individual East European countries concerning religious freedom, but I want to focus on two laws passed by the Hungarian Parliament in 1990 and 1991 which, to some extent, can serve as a model for the other East European countries. Act IV of 1990 of the "Freedom of Religion and Conscience" lays down an idea already in its introduction which is a reply to the concept of the negative social role of the church and religion proclaimed by Marxism for forty years. Accordingly, the churches in Hungary are "outstandingly

important factors of society bearing values and creating community which play a basic role in culture, education and teaching and in the development of social, health and national awareness." As a consequence, the Republic of Hungary does not only tolerate but protects by law and promotes the operation of the churches. It is also laid down in the law that the church can be involved in any activities which are not exclusively a state duty and it lists the spheres where church activity is especially desirable. It discusses specifically the activities of the representatives of the church in prisons and hospitals.

All this makes it possible for the church to reestablish associations and organizations. Here the legal limitations are only those which are included in the general regulations concerning the establishment of associations. (It is worth mentioning that the operation of religious orders was regulated in another law of a year earlier, Act XVII of 1989).

Section 16 of the 1990 Act is also a response to the former situation when it states that no organization can be established to supervise the church. This is a basic legal guarantee of church autonomy. A very essential feature is that while the previous regime failed to provide any legal guarantee for the citizens in case their religious freedom was violated Act IV of 1990 states clearly that if anyone is limited in the practice of religion with force or threat, those doing the limiting can be punished with up to three year's imprisonment.

With creation and putting into practice of Act IV of 1990, the legal conditions of the restoration of religious freedom were made. With regard to the fact that in the previous period, the church lost its economic basis, assets, and schools, it seemed to be necessary to make a separate law on the material conditions that are needed for the free, unrestricted church to carry out successfully its multifarious activities. That goal was served by Act XXXII of 1991 on the "Settlement of the Ownership of Church Assets." This law starts out from the fact that the church suffered various legal violations in the past which have to be remedied. The emphasis is not on these but rather on the objective conditions of the operation of the church and to ensure the assets. At the same time, the law states that there is a contradiction here between the restitution of the church and the present situation. By the latter, it means that the property taken away from the church in the past four decades was frequently used for very good purposes; for example, universities were housed in them; student hostels were created, and this way their immediate return could create social tensions irrespective of their present function. (It has to be noted that no large landed property has been returned to the church which once was owned by it in Hungary or indeed in any of the East European countries.) As far as the buildings that used to be churches within ten years if a given building is not given back, then resources have to be ensured from which buildings of equal value can be created. In Hungary, but also in other countries of the region, it was necessary to set up an office following the closing down of the institutions like the State Church Office which does not control the church but manages its affairs related to the relationship between the state and church. These committees are headed state secretaries in Hungary, and one of their duties has been to settle the issue of church property. This duty is all the more important as the future of the former church property has to be decided jointly by the church and the local public administration. They have to agree on the conditions and date of the return, and in this they do need help of the above mentioned committees.

The return of church property is a complicated process which is also indicated by Hungary's example. Following the change of system, a Christian-national, conservative government was in power between 1990 and 1994 whose program put emphasis on the return of church property. Despite this, according to 1993 data only one hundred and fifty real properties and other assets have been handed back out of the total six thousand assets requested. That is a mere 2.5 percent. While in 1948 sixty percent of the elementary schools were in church ownership, the figure today is two percent.

The situation is not much better in the other East European countries either. It is indicative that in Bulgaria, three years after the change, a law on the return of church property is in place, but the regulations on the implementation of that law have not been compiled yet. There is not as yet a similar law in Czech Republic or Slovakia.

The return of Greek Catholic Church buildings proceeds in a similarly slow fashion in Russia and Romania. Indicative of the situation is that in Romania, in the absence of church buildings, most of the Greek Catholic services are held outdoors.

The situation is better where the church buildings do not have to be returned by one church to another (to the Greek Catholic Church in the previous example) but where it is the duty of the state to return the assets nationalized in the years of religious persecution. This process speeded up after 1989. In Russia, for example, in 1990 the State Church Office which was then still in place, decided to return about 100 church buildings which was then considered to be an 'achievement.' According to surveys carried out in 1991, 4,500 church buildings had been returned primarily to the Russian Orthodox Church.

While the return of church buildings is a welcome fact, this is just one part of the preconditions of free exercise of religious freedom. In almost each East European country (with the only exception being Poland perhaps), there is a severe shortage of priests.

It is fully understandable that if religious freedom is severely limited, and the church and religion are presented as negative social institutions, then the popularity of a career in the church declines and in a sense, it is a special sacrifice to become a priest. An interesting phenomenon is that in some Baltic countries, the number of people taking up a career of the priest has declined because, in the past, some people used this opportunity only to avoid the compulsory military service.

However, in the East European countries, there is a shortage of not just priests but also of teacher-priests. The schools returned to church ownership would need well-trained teachers, but despite the restoration of church orders, there are not enough teacher-priests. Efforts are made to remedy this situation by including religious teachers in education who are not priests or ministers but are committed to the church. At the same time as this, the number of university students who prepare to be teacher-priests has increased.

To conclude, the inclusion of genuine freedom of religion in the Constitution and the creation of laws on religious liberty led to a change in the state-church relationship and as

a consequence, former state control, patronage, and interference have been eliminated despite some exceptions from this general trends in several East European countries.