The Human Right of Freedom of Religion and Soviet Law

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I. The Presuppositions of International Law and Their Consequences for a Fundamental Assessment of the Human-Rights Problematic in the U.S.S.R.

The freedom of religion has both an individual and a collective or institutional legal character. It is a comprehensive human right, which takes shape in many particular rights. These rights represent in part the concretizing of other human rights within a religious framework. These rights today are guaranteed to a more or less broad extent—by those states which are bound to the European-North American constitutional tradition and which have made human rights and freedom the basis of their political systems. Therefore, the laws of individual freedom of religion show far-reaching similarities, while the differences with respect to the legal status of churches and religious communities could be considerable. Here, historical traditions, confessional peculiarities, and cultural idiosyncracies of the countries of course play a great role.

It would be a grave methodological error—unfortunately, very frequently committed in the literature—to pick out an ideal Western nation with the greatest measure of individual and collective freedom of religion and to criticize the legal and social situation of religious persons and communities in the socialist, ideological states against this standard. It is apparent that such a procedure is arbitrary and incorrect. The question of the standard is a difficult one. Happily, the difficulties are essentially eliminated for us by fundamental, international human-rights agreements which the Soviet Union has not only signed but has also ratified and which, moreover, today enjoy a far-reaching recognition in the international legal community. These are of significance:

1. the International Covenant of December 16, 1966, concerning civil and political rights;
2. the International Covenant of December 16, 1966, concerning economic, social, and cultural rights;
3. the UNESCO Convention against discrimination in education of December 15, 1960;
4. the I.L.O. Convention against discrimination in employment and profession of June 4, 1958; and
5. the Declaration of November 25, 1981, on religious intolerance and discrimination which, unfortunately, is not a legally binding international norm.

These international conventions guarantee the following special rights, which—taken together—constitute the human right of freedom of religion as it is legally binding, by international covenant, on the Soviet Union. From the critical per-
spective of a liberal, democratic, constitutional state, it is barely more than a minimum standard:

1. The freedom for each person—adult or child—to choose for her or himself a religion or worldview, to hold it, and to change it (Art. 18, para. 1, Civil Rights Covenant).

2. The right to be permitted to make use of these rights without external coercion (Art. 18, para. 2, Civil Rights Covenant).

3. The freedom to confess one's religion or worldview alone or in community with others privately through worship, in the form of religious customs, or through education or other practices (Art. 18, para. 1, Civil Rights Covenant).

4. The freedom to confess one's religion or worldview publicly, whether alone or in community with others (Art. 18, para. 1, Civil Rights Covenant).

5. The freedom for parents or other authorized teachers to educate children in accord with their religious convictions (Art. 18, para. 4, Civil Rights Covenant; Art. 5, UNESCO Convention).

6. The freedom for parents to delegate the religious and moral education of their children to a third person (for example, clergy) (Art. 18, para. 4, Civil Rights Covenant; Art. 13, para. 3, Social Rights Covenant; Art. 5, UNESCO Convention).

7. The right of parents to choose educational institutions independent of the state so as to secure the religious and moral education of their children or, if such institutions do not yet exist, to found them (Art. 13, para. 3, Social Rights Covenant).

8. The fundamental rights of equality for all religious persons, that is, the right to practice all the human rights guaranteed in the international conventions without discrimination on account of religious affiliation.

This means especially:

9. The right not to be discriminated against because of religious views when practicing freedom of opinion, freedom to spread opinions, and freedom of information (Art. 2, para. 1, and Art. 19, Civil Rights Covenant); in other words, religious freedom of opinion, propaganda, and information.

10. Correspondingly, the right to meet for religious purposes results from supra (Art. 2, para. 1, and Art. 21, Civil Rights Covenant).

11. In the same way, the right to found and join religious societies is derived (Art. 2, para. 1, and Art. 22, Civil Rights Covenant).

12. The right not to be hindered from the practice of general freedom of movement in one's homeland on account of religious affiliation (Art. 2, para. 1, and Art. 12, para. 1, Civil Rights Covenant).

13. The right not to be hindered from leaving (Art. 2, para. 1, and Art. 12, para. 2, Civil Rights Covenant) or entering the country on account of religion (Art. 2, para. 1, and Art. 12, para. 4, Civil Rights Covenant).

14. Equal access of religious citizens to all public educational institutions, both general and professional (Art. 2, para. 2, and Art. 13, para. 1, Social Rights Covenant; Art. 1, UNESCO Convention).
15. Equal access of religious citizens to professional and work places, including those of "public service" (Art. 2, pars. 2, and Art. 6 or Art. 7, Social Rights Covenant; Art. 25, Civil Rights Covenant).

16. Equal participation of religious citizens in the political affairs of the country and equal access to the positions of political leadership (Art. 2, para. 2, and Art. 25, Civil Rights Covenant).

17. The right of religious minorities "together with other members of their group to attend to their own cultural life, to confess and practice their own religion or to make use of their own language" (Art. 27, Civil Rights Covenant).

While the prohibitions against discrimination are valid without reservation, the freedom rights stand under the well-known condition of "public order"; that is, according to Art. 18, para. 3 of the Civil Rights Covenant, "The freedom to manifest one's religion or worldview is to be subjected to only those legal limitations which are necessary for the protection of public security, order, health, morals or the basic rights and freedom of others." This reservation means, doubtless, a strong relativization of the guarantee of freedom. It does not represent an "escape clause," however, which is open to just any interpretation. The authorization conceded to a state to limit freedom of religion as well as political freedom and freedom of movement through this provision is itself subject to specific limitations, namely:

1. The limitations must be made normative in a formal way through a "law"; a legislative act of a lesser rank or an administrative measure does not suffice.

2. The law is permitted to provide only for "limitations" (cf. Art. 18, para. 3). Explicitly forbidden is not only the formal but also the actual abrogation of rights through their legal undermining (Art. 5, para. 1, Civil Rights Covenant; also Social Rights Covenant).

3. Freedom of religion may not be set aside through emergency measures; it is not to be jeopardized by crises (Art. 4, Civil Rights Covenant).

4. The legal limitations may not affect the prohibition against religious discrimination.

5. Freedom of religion may be limited only for the protection of enumerated, general, elementary legal norms of the society as well as for the protection of fellow citizens' human rights. The restrictive character of this delimitation is such that, in contradistinction to specifically political human rights such as freedom of opinion, of the press, of assembly, and of association (cf. Art. 19, 21, 22, Civil Rights Covenant), the criterion of "national security" is inapplicable (cf. Art. 18, para. 3, Civil Rights Covenant).

Notwithstanding these distinctions, moreover, all the measures a state might enact for the limiting of human rights stand under the prohibition against abrogating them de facto or, indeed, de jure. Herein lies a grave problem by which the characteristic situation of the human right of freedom of religion in ideologically closed Communist states moves into sharp focus. The Soviet Constitution of October 7, 1977, linked the practice of personal religious and political free-
dom and of other democratic rights to the reservation that they be in *positive*
“agreement with the goals of the building of Communism” (cf. Art. 47 and 51,
Soviet Constitution), or likewise “in accordance with the interests of the people
and in order to strengthen and to develop the socialist system” (cf. Art. 50,
Soviet Constitution).

Moreover, each and every basic right of the Soviet citizen stands under the
following duties, which are to be interpreted in accordance with the official
Soviet ideology, to wit: “to respect the rules of socialist community life,” “to
prove oneself worthy of the high calling of a citizen of the U.S.S.R.” (Art. 59,
para. 2, Soviet Constitution) and, furthermore, “to protect the interests of the
Soviet state and to contribute to the strengthening of its power and authority”
(Art. 62, para. 1, Soviet Constitution).

The full juridical meaning of this attendant, obligatory qualification of
Soviet basic rights first reveals itself when one looks at Art. 6 of the Soviet
Constitution. There it is determined that the Communist Party of the Soviet
Union alone possesses the exclusive power to determine authoritatively the inter­
ests of the people, the political goals of the Soviet state, and the measures for
their realization. That means nothing other than that the practice of the funda­
mental rights of the Soviet citizen stands under the sovereign reservations of the
party and state leadership or, to put it another way, that under Soviet constitu­
tional law—I emphasize: *law*—the practice of fundamental rights consists essen­
tially in the fulfillment of party directives. This is precisely, however, no longer
a “limitation” in the sense of the human-rights conventions but rather the *aboli­
tion or abrogation of human rights per se.*

The meaning of human rights does not consist in the dutiful furtherance of
the common good according to the directives of the party-state, but rather in the
free development of individuals in moral self-responsibility with respect for the
equal rights of their fellow human beings and for the elementary conditions of
a peaceful common life in community in the free participation in the shaping of
the political order by having at their disposal an indeterminate number of spiri­
tual and political behavior alternatives among which they can freely choose.

Indeed, the individual also possesses *duties* with regard to the state—thus,
Art. 29 of the General Declaration of Human Rights of December 10, 1948—but
they represent something other than rights. Unfortunately, one must point out
this self-evident fact with respect to the Communist states. Art. 19, para. 3
of the Civil Rights Covenant, which speaks of the “special duties and a special obli­
gation” with regard to the practice of freedom of opinion, would be meaningless
if the basic right of expression of opinion had already been conceived—as it un­
fortunately is in the Soviet Constitution—as a duty.

With this abrogation of human rights and freedom placed in the very struc­
ture of the Soviet Constitution, there arises a profound problem for freedom of
religion. Religion does not have, so to speak, a sharply defined, clearly demar­
cated area as its object; rather, it flows out of the entire spiritual and practical
life of human beings and thus stands in an indissoluble, mutual relationship with
all intellectual and, of course, political activities of human beings. Because the freedom of the spirit is indivisible, the (partial) muzzling of the spirit by the dominant, institutional, secular ideology, with its claim to absoluteness—which, in principle, is not different from the state religion of a confessionally exclusive state of the seventeenth or eighteenth centuries—necessarily endangers freedom of religion. This remains true even when religion is broadly tolerated and effective, as it is today in Poland and the German Democratic Republic. These two examples from the Communist-ruled world show that a limited coexistence and a relatively far-reaching tolerance of religious citizens—given the circumstances—are possible even in an ideologically Communist state with its attendant human-rights nihilism, given a pragmatic attitude on the part of the party and state leadership.

The Soviet Union is also capable of making such accommodations, as was initially demonstrated by the relatively liberal modus vivendi which existed between the Soviet state and the religious communities, namely, the Russian Orthodox Church, between 1943 and 1958. It is therefore in no way prima facie senseless to direct corresponding human-rights demands to the address of the U.S.S.R., even apart from the fact that the observance of human rights in principle must be insisted upon for all states, especially for those—such as the U.S.S.R.—which have admitted, for whatever motives, the international, binding, legal nature of such rights.

II. The Typical Violations, Restrictions, and Discriminations concerning Religious Freedom and Religious Citizens in the Soviet State

In the following expositions, aspects of individual rights as guaranteed by international law will be dealt with systematically from the perspective of the restrictions and discriminations hostile to human rights to which they are subject.


Insofar as freedom of religious profession is a part of the freedom of religious opinion, it shares the chief problematic of this human right in the Soviet state, namely, its strangulation by the application of certain penalties:

1. Art. 190, para. 1 of the Russian Federation (R.S.F.S.R.) Penal Code (hereafter abbreviated R. F. P. C.) considers as punishable “the spread of consciously false fabrications that defame the system of the Soviet state and society.” The infamous Art. 70 of the R. F. P. C. (“anti-Soviet agitation and propaganda”) formally elevates this action to a crime, if the person expressing the opinion

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simultaneously intended with his or her “falsifications” the “subversion or weakening of Soviet power.” With the assistance of these totally capriciously interpreted definitions, Soviet criminal prosecution authorities and courts have long suppressed critical remarks about the actual and legal situation of religious communities in the Soviet state as well as about the religious politics of the party and state leadership—whereby it was completely irrelevant to them if the criticism dealt with provable or proved facts. This means that critical examination of their own status in the Soviet state is forbidden to religious Soviet citizens. In this regard they must comply with the official regulating of speech, which—as the foreign propaganda of the Moscow Patriarchate sufficiently proves—describes religious affairs in the U.S.S.R. in the most favorable light.

2. In practice, the direction of Art. 142 of the R.F.P.C. (March 16, 1966, version) operates with further limitations. It considers punishable the production of any kind of documents—including “letters”—which call for the nonfulfillment of religious legislation, in order to circulate them on a wide scale. This regulation is directed particularly against the exercise of the right of petition by religious citizens, because the mere production of a petition demanding the change or lifting of anti-religious regulations is enough for the courts to determine the culpability (this is interpreted as a call for disobedience). The subjective intention of mass circulation is indisputably concluded from the objective suitability of the documents for circulation.

3. Also threatened by these realities of political criminal law are religious citizens who through the confession of their faith separate themselves critically from atheism and thereby particularly from the atheistic premises of Communist ideology. An energetic apologetics, one not restricted to nebulous formulations, oversteps the limits of tolerance of religious freedom in the Soviet Union (judging from how the authorities act). This is also totally consistent, since, in a Communist worldview which takes itself seriously, criticism of atheistic materialism must be considered a direct attack on the bases of the Constitution. From this there result direct and serious consequences for the content of sermons. Through the special (investigatory) censorship of sermons by the authorities the meaningful addressing of listeners in everyday Soviet life is for the most part prevented.

4. Art. 227 of the R.F.P.C. standardizes a further express restriction of religious freedom which is directed against certain sects. According to the article, one becomes liable to punishment if one occasions “the renunciation of societal activity.” That “participation in public life” is a criminally protected section of the law may appear odd to a citizen of a liberal, democratic, constitutional state, to whom retreat into private life is for the most part open. As noted, active support of the state is a constitutional obligation in the Soviet system. Renunciation of community life arouses mistrust and, if practiced for any length of time, leads to personal difficulties. For the rest, the evidence of criminality rests on the solid tenet of anti-religious education that the best “cure” for religion is participation in public affairs, the incorporation of religiously “infected” people into the “collective.”
B. The Freedom to Spread Religious Opinions

The religious freedom to spread opinions is a further aspect of the freedom of confession. It concerns the process of confession, which can happen privately or publicly, orally or in writing. The freedom of religious propagation was expressly guaranteed in the Constitution until 1929.\(^2\) It then disappeared from the Constitution; since then, only the right “to confess a desired religion and to practice religious rites” stands over against the freedom of atheistic propagation that is guaranteed in Art. 52 of the Soviet Constitution. Soviet authorities derive from it to this day a general prohibition of religious propagation.\(^3\) One must conclude from practice that they tolerate the oral spreading of religious views through private conversations and intervene administratively only when they assume the character of a systematic canvassing. Profession in private correspondence is exempt from punishment.

The public spreading of religious views is forbidden, however. Insofar as it occurs orally, it is treated as an infringement of the community order; when it occurs in written form, the authorities consider it an evasion of the comprehensive censorship provisions whose formal observation is protected by the regulations of the political criminal law. Religious propagation not authorized by the state is considered per se a “defamation of Soviet reality” or “anti-Soviet propaganda.” As it deals here with such materials as \textit{samizdat}, one refers mostly to other crimes, especially to “involvement in forbidden business” (Art. 162, \textit{R. F. P. C.}). What is meant here is, for example, the business of a religious printer, as in the case of the underground publisher “Christianin,” through which the Reformed Baptists formerly published religious writings in large numbers, but whose collaborators without exception have been sentenced to a more or less severe punishment.

The forbidding of public religious propagation, however, is not without exception. Strictly speaking, one could include sermons here. However, they are of course an integral component of the worship service and therefore belong to the freedom of worship. It is different with religious literature, especially with magazines, which the spiritual leadership of the licensed religious communities of the Soviet state are permitted to publish, above all the journal from the Moscow Patriarchate, which even has its own publishing department at its disposal.

It is juridically decisive that these exceptions to the prohibition of religious propagation are completely at the political discretion of the state authorities. Consequently, religious citizens have no legal claim for the editing of religious literature, because that permission is granted them upon the fulfillment of cer-


tain legally determined and realizable prescriptions. The prohibition in principle of religious propagation cannot be justified by the criteria of internationally recognized law, the "ordre public," the public order and safety, the health and rights of fellow citizens. Its sole aim lies in the attempt to restrict artificially the developmental possibilities of religious citizens.

Apart from that, the juridical prohibition of religious propagation in the U.S.S.R. violates international law's prohibition of discrimination, for, in contrast to the religious Soviet citizen, the atheist citizen is expressly empowered, as noted, to practice "propagation" corresponding to his or her convictions. Art. 2, para. 1, and Art. 19, para. 1 of the Civil Rights Covenant are thereby violated.

C. Negative Freedom of Conscience*

The stipulation of Art. 18, para. 2 of the Civil Rights Covenant, that no one may be subject to "pressure" which encroaches on one's freedom to have or accept a religion or conviction of one's choice, encounters absolutely insolvable problems in an ideological state, and this is especially the case with the U.S.S.R. For, contrary to the liberal, anti-clerical phrase that was taken over by the Bolsheviks, "Religion is a private matter," and contrary to Lenin's express injunction against the statistical determination of religious membership, Soviet authorities have long striven to record religious citizens by name. This was done especially through observation of local congregations, through the obligatory state-controlled registration of all religious functions, and through methods of empirical social research. The determination of religious membership and the social composition of the congregations form the decisive condition for the so-called "individual work with believers." This is the technical Soviet term for the systematic ideological indoctrination of the religious citizen at the workplace, at school, and at home through primary and secondary agitators. From an organizational viewpoint, this is a system of psychically enforced atheistization in which authorities, services, educational institutions, unions, the Komsomol, and the Pioneer organizations—as well as further special organizations—work together as one, and according to plan, under the direction of the local party committees. The work of this machine constitutes a flagrant infringement, even a mocking, of the negative freedom of conscience of the religious Soviet citizen. It clearly runs counter to Art. 18, para. 2 of the Civil Rights Covenant.

D. The Freedom of Religious Association

Because the practice of religion regularly takes place within the community, and usually occurs within the context of organized religion, the freedom of religious association occupies a central significance. This is especially true for the Soviet Union because religious practice there is restricted to the legal religious communities, outside of a private area that is hardly worth mentioning (more

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*On this, see ibid., pp. 55-68.
about this later). The freedom of religious association consists of the right to start a religious community, or a part of one, as well as the right to join an existing religious community.

Religious associations in the U.S.S.R. are either local “societies,” that is, groups of at least twenty adult founders, or “groups of believers,” which must consist of at least three founders with the same worship views. The associations may assume their activity when they have been accepted by the state. This occurs through the act of registration, for the granting of which the Council for Religious Affairs of the Council of Ministers of the U.S.S.R. in Moscow is responsible. The Council decides on the application according to its political judgment. Thus, citizens have no legal right with regard to permission. There is also a religious association prohibition, from which exception can be made in unusual cases, but in reality this does not happen very often, for the Soviet state is not interested in the blossoming of religious associations but, in accordance with its own ideological declaration, in their “dying out.”

There is an absolute prohibition of association for a list of “sects” whose doctrinal teachings and activities have an “anti-state or gruesome and fanatical character,” a very indistinct description that is directed first and foremost against all religious associations that are not prepared to accept the repressive conditions of religious practice in the Soviet state. Affected by name are the Jehovah’s Witnesses, the Reformed Baptists, and other splinter groups from officially permitted religious communities or denominations. The members of those religious communities which are committed to resistance are persecuted in accordance with Art. 227 of the R. F. P. C. On the basis of these prohibitions, there is in the U.S.S.R. today practically a numerus clausus of religious societies.

Should the application for permission be allowed for a religious association, the founders receive at the same time consent to use a space for worship, be it in a church or other building. A special-use contract is concluded with the local state administration.

As far as the right to join is concerned, all members of a particular religious community have the right to become formal members of the local association in question. Nevertheless, in actuality the authorities have long demurred to admit more than twenty to thirty persons (so-called dvadcatki, or “Communities of Twenty”).

E. The Extent of the Right of Organized Worship

The sanctioned religious communities in essence are restricted to the worship service itself as well as the remaining activities which are absolutely necessary for the preservation of the cult (such as the preparation of future members).

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5Ibid., pp. 25-30.
6Art. 23, instruction on the application of the legislation on worship of March 16, 1961; German translation is in Otto Luchterhandt, Die Religionsgesetzgebung der Sowjetunion (Berlin: Berlin Verlag, 1978), pp. 54-65.
Congregations may employ clergy, utilize houses of prayer, and cover their costs through financial contributions of those participating in worship services. They may have worship gatherings and celebrate religious rites, insofar as they do not disturb the public order and do not interfere with the rights of fellow citizens. Any social and charitable activities and any special organizations for men, women, youth, or children are forbidden, as are any kind of special religious/cultural presentations, conversation groups, libraries, etc. Religious rites may not be performed outside of the worship space, though the authorities may grant exceptions, especially for funerals.

The spiritual leadership of the religious communities (of the Moscow Patriarchate, etc.) may maintain teaching institutions within narrow limits, hold workshops for making worship objects (such as candles), publish religious literature, and maintain relations with religious communities at home and abroad.

All the aforementioned activities, with the exception of the religious rites that take place within the worship building, require state permission—which can be granted or denied according to the authorities' personal religious/political discretion. Likewise, a permission already granted can be withdrawn at any time without explanation. Thus, religious communities are completely without rights and at the mercy of the Council for Religious Affairs of the U.S.S.R. Council of Ministers and its supervision of religious communities. The state not only uses its power to control and dominate the organizational structures of the religious communities, but it also does not shy from exercising a more or less strong influence on the spiritual-theological content of religious communities with the aid of the largely pliable spiritual leaders. Furthermore, the state manipulates the spiritual leadership to carry out additional restrictions of worship practice in the religious communities not foreseen in the law, which creates the outside impression of "voluntariness." In this manner a portion of the party policy of religious oppression is veiled.

F. The Extent of the Right of Private Worship

As a matter of principle, private performance of religious rites is permitted in the home—that is, simple home and family devotions. They need permission only if clergy are required, such as for dispensing sacraments for the seriously ill or dying. In closed institutions and establishments, namely, in hospitals, the sacraments may be received only with state permission. Even in these instances the authorities decide according to their personal judgment. The legal prohibition against pilgrimages to cloisters and other "holy places" constitutes a serious attack on the individual right of the freedom of worship and of religious usage. Apparently it aims to do away with religious traditions that have deep roots among the people. The instruction in question infringes upon the freedom of movement with regard to religion, which is protected by international law. The religious Soviet citizen is discriminated against compared to atheists, who are allowed to travel freely to the "glorious sites of the Revolution."
G. The Right to Religious Education

A key aspect of the private right of worship is the right to religious education. In the U.S.S.R. this right lies in a gray area between legality and illegality. The right for parental education is regulated in Art. 18 of the principles of marital and family legislation as follows: "Parents should educate their children in the spirit of the moral code of the founder of Communism, look after their physical development, the education and preparation for a societally useful activity . . . Parental rights are not to be exercised in conflict with the interests of the children."

The definitions amount to an indirect prohibition of children's religious education, for the "moral code" in whose spirit education is to be conducted can be found in the program of the Soviet Union's Communist Party. However, Communist and religious morality are mutually exclusive according to the immutable view of the party. While officially no formal prohibition of children's religious education by parents has been derived from this, it is unmistakably pointed out in the pertinent literature that a conscientious exercise of parental rights excludes religious education. In short, while religious education is not expressly forbidden, it is not allowed in the "well-understood" (read: "Communist") interests of the child—a point of view whose contradiction is resolved only when it is understood as an expression of an anti-religious, atheistic, repressive strategy. Since the desired express prohibition of religious education would lead domestically to a civil war with little chance for success and internationally to a loss of face for the state because of its blatant contradictions to human-rights conventions, only the path of political tactics can lead to the state's unchanging goal. While tepid religious education is indeed disapproved of though tolerated without sanctions, intensive religious education is opposed through administrative and juridical measures that include even the withdrawal of the right to education.

Absolutely forbidden, according to official judgment, are the use of physical or psychic force in religious education, as is delegating other people—especially clergy—to conduct it. Therefore, children's religious education can occur only in the family and can be conducted only by the parents.

These restrictions of parental rights obviously infringe on the standards of religious freedom in international law that have been recognized by the Soviet Union. If the pertinent human-rights conventions guarantee parents even the right of nonstate educational facilities, then the mere delegation of religious education to catechists of religious societies is clearly quite allowable. Indeed, one must say that in a state structure like that of the U.S.S.R., in which the entire educational system is nationalized, the carrying out of religious instruction within the religious societies represents a necessary component and is therefore utterly indispensable.

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7Luchterhandt, Die religiöse Gewissensfreiheit, pp. 36-48.
The reluctance to allow nonstate, religiously instituted educational establishments infringes on the human right of religious freedom. The Soviet Union has rejected the observance of this duty on the basis that the right of nonstate educational establishments is valid only for those states in which such establishments already exist. That is to be firmly rejected, for Art. 13 of the Social Rights Covenant and Art. 5 of the UNESCO Convention also guarantee, as stated, the right to found private educational facilities with state recognition. The Soviet argument cannot be accepted—namely, that the nationalization of the educational system excludes applying the right to nonstate educational facilities—for then one could refuse to guarantee human rights at home on the ground that one's own constitution did not foresee them. If this were valid, then one would have to ask for what purpose international-law human-rights documents are ratified.

H. The Right of Religious Equality

The right of religious equality means two things for religious citizens: from a formal perspective, they are to have the same rights as other citizens, without consideration of their religion; from a material perspective, the general law is to respect their religiosity and not subject them to restraint of conscience. It allows them a much more deviating behavior in keeping with their religious conscience, where the conscience is fundamentally concerned and the guarantee of the religiously alternative behavior is acceptable to the state and therefore tolerated by it.\(^8\)

The last prohibitions dealt with—of organizing religious instruction outside the family and of founding private educational facilities—are already evidence of discrimination against religious citizens in the area of the educational system. The very conditions in this area show that the religious citizen is not yet even provided with the formal right of equality. On the contrary, it borders on cynicism when Soviet legislation on one side prohibits discrimination against citizens on account of their religion but on the other side guarantees to religious as well as atheistic parents the right to the atheistic education of their children and to "equal" access to decidedly anti-religious state educational facilities. Such legislation that is apparently sympathetic to human rights endangers precisely the human right of religious freedom.

Further discrimination may be seen in that access to religious literature in public libraries is denied the religious citizen, while atheistic citizens may check out atheistic literature without hindrance. Another aspect of anti-religiously-motivated discrimination in the cultural area is the reluctance to grant religious societies access to state communications media.

In the political area, religious citizens are already discriminated against by constitutional law, because leadership in state and society is reserved exclusively for members of the Communist Party of the Soviet Union (see Art. 6 of the

\(^8\)Ibid.
Soviet Constitution)—and religious citizens may not join the party, since party membership and religious membership are unreconcilable (Art. 2 of the party statutes). This violates Art. 25 of the Civil Rights Covenant. Political discrimination carries over into economic and professional areas. It finds expression in closing off the religious citizen’s access to higher positions and even entire branches of state service, as well as positions in business and social organizations. From the official side, this is openly admitted and justified on the grounds that a religiously oriented functionary could not fulfill the main objective of the Soviet state, namely, the building up of Communism and the educating of fellow citizens “in the spirit of high Communist consciousness.” Consequently, “religious membership” in matters of public personhood functions as a criterion of a qualification deficiency. The religious citizen’s human right of the freedom to choose an occupation is therefore exceedingly restricted; there is a long list of forbidden occupations. Definitively excluded is any involvement with the educational system, culture, or science. This discrimination has already worked against admission to higher levels of education, especially universities.

The artificially contrived restrictions by the Soviet state (numerus clausus) in regard to access to theological-training institutions is one aspect of discrimination in the area of freedom to choose an occupation. It is well known that especially the academics and seminaries of the Russian Orthodox Church have to turn away a large number of student applicants because of the capricious state directives. There are also evidences of discrimination in the area of state social services. For example, citizens who are employees of religious associations or institutions for the maintenance of buildings for worship (boilertenders, custodians, guards, etc.) worry about being excluded by law from the state old-age and invalid insurance if they also attend worship services.

Since pilgrimages are a specifically religious form of tourism, their prohibition, as already noted, infringes on the current right available to all citizens to move freely within the territory of the state. Also, the state refusal to permit religious prisoners the minimal exercise of their beliefs is a discrimination vis-à-vis their atheistic fellow citizens as well as a directly serious restriction of the human right of religious freedom. On the contrary, the religious prisoners are punished because of their possible religious activity. They are denied the possession of religious literature (including the Bible). Considering the spatial and human isolation of prisoners, one must see an especially serious violation of the human right of religious freedom in the sense of Art. 18, para. 1 of the Civil Rights Covenant.

I. International Aspects of Religious Freedom

Because of the international character of the great world religions that expresses itself partially in an international organization of religious communities (the Catholic Church, etc.), as well as in more or less well-developed confessional, ecumenical, and interreligious contacts, the international dimension of the human right of religious freedom is of great importance. Naturally, this concerns not so
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much religious freedom as an individual right as it does the activities of religious societies. Several examples can be given: participation in international conferences, congresses, or other kinds of religious gatherings; the reception and exchange of religious literature; the sending or receiving of financial support; studying at a foreign religious institution; pilgrimages to Mecca, Jerusalem, Rome, Mt. Athos, Lourdes, or other places; visits with another or one's own church leaders, as in the case of the Lithuanian bishops with the Vatican; national religious societies' joining international religious associations or international nongovernmental associations; etc.

The ease of international relations depends on the permeability of the borders and the state's readiness to permit and foster private foreign contacts. As is known, the Soviet Union unfortunately has distinguished itself in this through an inordinate amount of repression. For the most part, the U.S.S.R. fulfills the negative expectations that one tends to have of a totalitarian system.

I can express myself briefly as to what concerns the legal side of the problematic. All international actions by Soviet citizens are, in principle, subject to the prohibition of the state by the withholding of permission, which in every case is granted (or not) by the appropriate party and state authorities. Complete control dominates. As always, the state also decides here, according to its political discretion (that is, there is no means of legal redress). Since it concerns a political judgment, the primarily repressive tendency of the party's religious policy also naturally operates here.

The practice of granting permission differs greatly and understandably fluctuates over time. Repression operates at its strongest against "simple" religious citizens; practically speaking, they have no possibilities of cultivating international religious contacts. Unequally more favorable is the situation of the leadership of the religious societies, especially in the case of the Moscow Patriarchate. Here the state has, as formulated in a resolution of the Central Committee of the Communist Party of the U.S.S.R. at the beginning of 1961, its own direct interest "in bringing religious organizations and their leading personages into the struggle for peace, the unmasking of anti-Soviet propaganda that is generated in foreign countries, as well as the explanation of Soviet legislation concerning worship and of the condition of religion in the U.S.S.R."9

Accordingly, the central state authority for supervision of religion (the Council for Religious Affairs of the U.S.S.R. Council of Ministers) is obligated to support religious societies "in the development of international ties, in the participation in the struggle for peace and the strengthening of friendship between peoples" (Art. 2 of the Statute of 1966). The officially sanctioned religious communities of the U.S.S.R. can develop their international contacts only at the price of placing themselves simultaneously in the service of party-state foreign politics and by fulfilling concrete assignments of the authorities. In practice, it

can be determined that the state has on a number of occasions in past years allowed, especially on behalf of Lutheran communities, the introduction of religious literature from abroad and has proffered other assistance including, in rare cases, study at theological institutions in foreign countries. The Russian Orthodox Church, as is well known, has congregations outside the U.S.S.R. and evidently can care for this part of its organization without special hindrance from the state. With respect to international contacts, religious Soviet citizens are no better or worse off than their religiously indifferent or atheistic fellow citizens, for repression of the Soviet regime affects all Soviet people to the same extent.

III. Concluding Remarks

The comparatively favorable impression one receives from the notable practical opportunities that religious communities have for becoming involved in international matters cannot mask the fact that the typical Soviet citizen’s ability to exercise the human right of religious freedom is restricted to conducting religious rites in a building of worship or within one’s own four walls. Art. 52 of the Soviet Constitution, which regulates freedom of conscience and which the Soviets always praise when speaking about international relations, offers only a minimum of religious freedom; it is a standard of law that is not much beyond avoiding a prohibition. This falls far short of the human right of religious freedom’s content, which the U.S.S.R. has pledged itself to respect and guarantee, in numerous international human-rights conventions.

This minimum of religious freedom in the U.S.S.R. does not result from the alleged natural dying out of religion, which Marx and Engels assumed to be a concomitant of the development of Communism. Rather, it appears to be the result of a constant suppression (at times severely, at other times more moderately, pursued) of citizens’ and people’s opportunities to develop religiously. A quick look at the history of the Russian Orthodox Church bears this out. In 1939 the Church had only several hundred congregations in the U.S.S.R. By 1945 there were more than 20,000; this number did not change till the end of the 1950’s. Suddenly, by 1966 there were only slightly over 7,500 congregations. The numbers have diminished somewhat since then (approximately 6,900). In comparison to the dramatic decline under Khrushchev, it has remained relatively stable.

The fluctuation is not hard to explain in light of the state’s previously described opportunities for administrative intervention with regard to religious freedom. This policy’s guiding principle is repression, and one of its chief characteristics is the anti-religious orchestration of religious legislation. Both factors rest on the fact that the U.S.S.R. as a closed worldview state denies religion’s

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right to exist, as a result of which it also denies the legitimacy of religious communities. Therefore, the U.S.S.R. has separated itself from the spiritual foundation of tolerance, which is nothing else than the realization built into the state apparatus that for the state there can be no final truth, because the breakdown of the medieval system of the comprehensive rule has made the question of truth an object of dispute for people. With these suppositions the state can fulfill its basic function of being the union of peace for everyone living in a certain region only if it wisely declares itself “neutral” in the question of truth and resists the temptation to identify itself with a definite “partial” (that is, representing only one side) “Truth.” There is also the irony that the U.S.S.R. recognizes Art. 52 of the Constitution and guarantees both an unpronounced freedom of conscience as a formal right of citizens and also openness on the question of truth, for the “parity” of the religious and nonreligious conscience expressly pronounced here has no other meaning in essence.

Seen in itself, this juridical definition of freedom of conscience is rooted in the free human-rights tradition—no wonder, since it comes from the pen of Lenin, who took it from the anti-clerical program of left-wing European liberalism. Seen as such, freedom of conscience in the Soviet Constitution as a juridical concept represents a liberal remnant that nevertheless cannot develop its human-rights effect because both party and state base themselves exclusively on a philosophical Marxist meaning of the freedom of conscience, namely, in the sense of a “liberation of the conscience from religious superstition” (criticism of the Gotha Program of 1875). Only when the Communist Party of the U.S.S.R. is prepared to admit that it is dealing with philosophical—that is, “party-bound”—truth which the state cannot make compulsory for everyone can the door be opened for true toleration in the Soviet Union. Unavoidably, that would mean that the Communist Party would voluntarily surrender its specific basis of legitimacy for exercising dominance. Since such a far-reaching revolution in the ideological and political bases of the Soviet state is not to be expected in the foreseeable future, one can only hope and work toward the Soviet party’s and leadership’s lessening—out of sober wisdom—the artificial pressure on religious citizens and, as is true in other socialist nations, their conducting themselves with more “tolerance” with respect to religious practice.

Translated by Alan Mittleman (Part I) and Arthur Turfa (Parts II and III)

12A more elaborate discussion of these two meanings of freedom of conscience in Marxist philosophy is found in Otto Luchterhandt, Die religiöse Gewissensfreiheit im Sowjetstaat. Teil I: Rechtstheoretische Untersuchung der Gewissensfreiheit. Berichte des Bundesinstituts für ostwissenschaftliche und internationale Studien 37 (Cologne, 1976), pp. 8-40.
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