



Federica Botti

(Resercher at the University of Bologna, School of Law)

The meaning of 'Religion' for the former Socialist Countries in ECHR

SUMMARY: 1. Introduction - 2. The laws of the former socialist states of Europe: characteristics and peculiarities - 3. The decisions of the European Court of Human Rights on religious freedom in the former socialist countries - 4. Conclusions.

1 - Introduction

Religious freedom in former European socialist countries is a recent achievement when compared to the other continent states of a longest and more established democratic tradition.

However, although the deployment of this freedom finds its origins in different vicissitudes, East and West Europe today are united by the duty to resolve the same issues.

While in the West the acquisition of legislation for the defense and the protection of the religious phenomenon has had a constant and linear processing, this can not be said for former socialist countries.

At a first stage, Eastern European countries, freed from state atheism, were subject to the assault of "new religious movements" who used a kind of vehicular, fast and cheap communication, such as the web.

These new religious denominations have attempted to settle in territories that they considered at one time unrelated to religious experiences and at the same time in need of them, affecting the individual dimension of religious freedom through intense proselytizing.

The countries concerned by this phenomenon, fearing to see their cultural references transformed, preferred to revitalize the traditional cults as an identity function, restoring their public role, in many cases establishing privileged relationships with them and managing relationships with religious communities through a new legislation that privileged in many cases relationships with one organization for each denomination⁶⁰.

⁶⁰ Bulgaria has chosen to privilege relations with the Bulgarian Orthodox Church, as Orthodox religion is identified in the Constitution as the traditional religion of the Bulgarian people (Article 13). A preference for Catholic religion was expressed by: Hungary, Poland, Slovakia, Croatia and Lithuania. Instead, countries which opted for a



The next impact was the explosion of migratory phenomena. These countries have at the same time become places of emigration, exporting their traditional cultures to the West, while immigration from the South of the world imported new cultures in their territories or, in an even more alarming way, revitalizing religious and ethnic communities that they had fought even using ethnic cleansing during the remodeling phase of their state⁶¹.

It is therefore important to analyze this complex phenomenon because, on the one hand, it affects the multireligious composition of the Western European countries and, on the other, it explains the reasons why many of these Eastern countries are resolutely opposed to immigration⁶², which characterizes the current historical phase of Europe, and to the introduction of new cultures, which has strongly influenced the very concept of religious freedom that these nations have.

These issues have created a number of conflicts that have become the subject of multi-level rights protection.

This process has come to the attention of the European Court of Human Rights, especially in those apical themes that have characterized the various national societies.

The case law of the Court must therefore be read in the light of the general framework outlined in order to be able to understand its characteristics, problems and decisions so that said case-law is seen in the perspective of the development of new rules capable of mediating the conflict.

somewhat equidistant position between the religious cults were Romania, Serbia, Montenegro, Macedonia, Slovenia and Ukraine, while Belarus has shown preference for relations with the Orthodox Church of Moscow obedience. Latvia and Estonia look more favorably at the Lutheran National Church, while the Czech Republic sees the atheist positions prevail among the population and thus maintains an equidistant position among the religious cults. Albania practices the absolute equality of cults and the separation between them and the state in the context of pluralist confessionism.

⁶¹ G. CIMBALO, *Libertà religiosa e cittadinanza nell'area balcanica*, in *Quaderni di Diritto e Politica Ecclesiastica*, I, 2016, pp. 151-165.

⁶² The Visegrád group was formed in 1991. Today, part of it are Poland, Czech Republic, Slovakia and Hungary. Their cohesion was strengthened in 1999 by the establishment of the Visegrád Investment Fund for the enhancement of their economies. These countries had opposed to the decisions of the European Union on the resettlement of immigrants by quotes in the countries of the Union. On 6 September 2017, the Court of Justice dismissed the actions brought by Slovakia and Hungary against the relocation of asylum seekers from Italy and Greece, confirming the (EU) 2015/1601 of 22 September 2015.

The unsuccessful countries, supported by Poland and the Czech Republic, refuse to enforce the sentence even at the expense of having to abandon communitarian funding, claiming that they do not want to introduce people of Islamic faith in their territories.



2 - The laws of the former socialist states of Europe: characteristics and peculiarities

The crisis of the states of socialist democracy has brought in all Eastern European countries the change of constitutional norms and the consequent introduction in the new Constitutions of norms aimed at the protection of religious freedom.

With the set of rules in force before 1989, religious issues had been "resolved" with the imposition of state atheism. The latter had, from the point of view of the exercise in associate and organized form of the various cults, to the denial of the public role of the religious communities, while, as far as the individual aspect of the exercise of religious freedom had led the various socialist regimes to enact specific repressive standards.

The abovementioned regimes thus left as legacy the new ones, established from the nineties of last century, the principle of separation between state and religious communities and the propensity, except for some exceptions, to a special form of protection for the traditional and prevailing religion in their respective country⁶³.

Indeed, although the proclaimed Soviet atheism has influenced the regulation of relations between the state and religious communities in that area, it has been realized in different ways to the point that it allowed - with the only exception of Albania - the survival of favorable relations, though limiting autonomy, with their respective traditional Churches.

The proclaimed separatism and the negation of the autonomy of religious communities, in any case, did not exempt the latter from the emergence of inter - and intra - confessional conflicts which, even after the fall of socialist regimes, remained largely submerged for a long time due to the absence of legislative and jurisprudential intervention which in fact avoided the resolution of these issues.

The incorporation into the Constitutions, in execution of the Treaty of Copenhagen (1995), of the subject of religious freedom as one of the conditions for the recognition of the democracies of the new regimes, put back at the top the issues highlighted.

We find an evident track in the laws on religious freedom, emanated from almost all States ⁶⁴. These laws necessarily had to take on the task of regulating at least some issues, such as:

⁶³ The above-mentioned case of Bulgaria is emblematic. Other states such as Hungary, for example, make this choice by referring in this case (Article VII of the Constitution 3) to a special organic law or to the general law on religious freedom.

⁶⁴ All the laws on religious freedom emanated from Eastern Europe, in their historical succession, can be consulted on the website <http://licodu.cois.it>.



1. the presence of an official or identity religion and the relationship between it and other cults;
2. conflicts within religious communities, also due to the interference made by the past regimes on the organization of the same in order to condition their autonomy;
3. the presence of new cultures that were to be added to the traditional countries of the various countries that had come from the obscuring ashes caused by atheism.

It should be added that the opening up of the political and cultural frontiers of these countries gave way to proselytism activities of the religious organizations from all over the world. The latter considered that the area under consideration was a fertile and virgin land of evangelization and therefore launched a massive religious propaganda campaign in these territories. This type of conduct has found a clear opposition of the traditional confessions that have appealed to new political authorities so that the laws on religious freedom would hinder or at least contain the phenomenon of new cults⁶⁵.

Thus, constitutional law legislation and the laws on religious freedom of ex-socialist countries of Eastern Europe faced the problems that we are currently facing among the actions of the EDU Court.

3 - The decisions of the European Court of Human Rights on religious freedom in the former socialist countries

One of the most relevant matters covered by the ECHR's decisions, is undoubtedly the contrasts that have arisen in traditional religious confessions in order to be accredited as unique and exclusive representatives of the religious denomination.

Significant and emblematic in this sense is the conflict in Bulgaria between the Holy Synod of the Bulgarian Orthodox Church and the Alternative Synod⁶⁶.

It is exceptionally Albania that has refused to enact a specific law on religious freedom, but regulates the phenomenon with the norms of common law. On the Albanian case for all: **G. CIMBALO**, *Pluralismo confessionale e comunità religiose in Albania*, Bononia University Press, Bologna, 2012, pp. 1-242.

⁶⁵ **F. BOTTI**, *La transizione dell'Est Europa verso la libertà religiosa*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (www.statoe_chiese.it), n. 31/2013.

⁶⁶ Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria, ECtHR, Applications nos. 412/03 and 35677/04, 16 September 2010, Final 21 February 2011.



Decided through a copious and alternate jurisprudence of the national Courts of every order and degree, the issue was resolved politically with the recognition of the legitimate representation of the traditional Church of the Holy Synod, which lawfully claimed all the properties built before 1989⁶⁷.

The case was brought before the ECHR to verify the compliance for the rights of religious freedom, the autonomy of religious communities and the recognition of property rights⁶⁸ on the goods claimed by the two confessional members. It ended with the acknowledgment, though partial, of the property rights to the Alternative Synod for parts of buildings built after 1989, although the ruling of the ECHR then had little effect on the Bulgarian legal system.

Also in Bulgaria, under the 2002 Freedom of Religion law,⁶⁹ it was necessary to resolve the conflict within the Bulgarian Islamic community, where two different parties contested the leadership of the Muslim community, contesting the regularity of the elections, so that alternately, they had seen both one and the other preside over the Supreme Council.⁷⁰

This case was also the subject of the EDU Court's interest, which found a violation of Art. 9 of the EDU Convention, reflecting the attitude of the state authorities and, as such, seriously damaging to pluralism within a democratic society.

The two reported very complex events demonstrate a certain inadequacy of Bulgarian national legislation to peacefully resolve intra-confessional conflicts and in any case to regulate in general the religious phenomenon as a whole. Also with reference to the space accorded by the legislation to the new cults.

One can not ignore the fact that - for example - the attribution of the qualification of traditional and identity-based religion to the Bulgarian Orthodox Church, beyond constitutional declarations of equality between different religious communities and respect for the principle of separation between the state and Cults, shows the gaps in Bulgarian law on denominations⁷¹.

⁶⁷ For an exhaustive reconstruction of these events: **K.I. PETROVA**, *La Bulgaria e l'islam. Il pluralismo imperfetto dell'ordinamento bulgaro*, Bononia Univerity Press, Bologna 2015.

⁶⁸ Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria, Applications nos. 412/03 and 35677/04 (today in <http://licodu.cois.it/?p=5589>). On the same site, you can consult decisions of the Constitutional Court and other Bulgarian Courts on these matters.

⁶⁹ <http://licodu.cois.it/?p=945>

⁷⁰ Supreme Holy Council of the Muslim Community v. Bulgaria, ECtHR, no. 39023/97, 16 December 2004 (in <http://licodu.cois.it/?p=5587>).

⁷¹ There are countless cases of non-recognition of legal personality to new cults in



Lacks, to the view of the author, attributable to the pretense of the rule of law, through the Central Institute of Cults, which today is dependent on the Presidency of the Council, to rule on the legal status and internal life of religious communities. It is in fact within this organism - present with different denominations, but with similar tasks in all of the Eastern countries - that, in the example of Soviet experience, the various interests of religious organizations present in each individual State are mediated.

The internal conflict within the Bulgarian Muslim community, among other things, shows another obvious limitation of the law on denominations, which forces the diverse and unequal Islamic religious world to a forced coexistence within a same confessional organization.

Perhaps aware of the limits previously reported, the Romanian legislature, when it issued the Law on Religious Freedom in 2006⁷², has better weighted the criteria for the identification of different cultures. As evidence, we note that the conflict between them is drawn to the attention of the EDU Court, solely in terms of the restitution of confiscated goods in connection with the general laws on the restitution of those goods and the identification of the ecclesiastical denominations, which possessed them prior to confiscation⁷³.

In this case, the conflict does not concern, as is the case in other countries, the restitution or compensation by the state of the confiscated goods, but the restitution of assets already belonging to the Greek-Catholic Church linked to Rome⁷⁴ and attributed to the Roman Orthodox Church⁷⁵, given the privileged role retained by the latter during the previous regime⁷⁶.

The issue of the restitution of ecclesiastical goods confiscated is, in fact, very extensive and affects almost all socialist democracies⁷⁷. It has

Bulgaria. On the point see: **L. VANONI**, *Pluralismo religioso e Stato (post) secolare: Una sfida per la modernità*, Giappichelli, Torino, 2016, pp. 69 ss.; **S. FERRARI**, *La Corte di Strasburgo e l'articolo 9 della Convenzione europea. Un'analisi quantitativa della giurisprudenza*, in R. Mazzola (a cura di) *Diritto e religione in Europa. Rapporto sulla giurisprudenza della Corte europea dei diritti dell'uomo in materia di libertà religiosa*, Il Mulino, Bologna, 2012, p. 44 ss.

⁷² <http://licodu.cois.it/?p=1378>

⁷³ V.: licodu.cois.it, section "Confiscation and restitution of property of religious communities".

⁷⁴ <http://licodu.cois.it/?p=10011>.

⁷⁵ *Lupeni Greek Catholic Parish and others v. Romania*, ECtHR, Application no. 76943/11, 29 November 2016.

⁷⁶ **I. ANGELI MURZAKU**, *Religion and Politics in Post-Communist Romania*, by L. Stan and L. Turcescu, Oxford University Press, Oxford, 2007; **L.N. LEUSTEAN**, *Orthodoxy and the Cold War. Religion and Political Power in Romania, 1947-65*, Palgrave Macmillan, Basingstoke 2009; **C. OPREA**, *Tra Roma, Bucarest e Mosca. Cattolici, ortodossi e regime comunista in Romania all'inizio della guerra fredda (1945-1951)*, Aracne, Roma 2013.

⁷⁷ **F. BOTTI**, *I diritti di proprietà della Chiesa greco-cattolica tra il diritto interno albanese e la "sentenza pilota" della Corte EDU*, in F. Botti (a cura di), *L'Albania nell'Unione europea fra*



given rise to copious national jurisprudence, although this has not always come to the attention of the EDU Court with a clear identification of the conflict between the State and the Religious Communities⁷⁸.

The problem of the uniqueness of denominations also applies to the Moldovan Orthodox Church, where the problem is the recognition of confessional autonomy and of the right under art. 9 of the ECHR Convention to have its own autonomous identity recognized.

The Orthodox Church of Bessarabia, suppressed in 1944 by the Soviets after its failure to be recognized before the Moldovan State Courts, claims to be the legitimate heir to the historic Orthodox Church present in the country⁷⁹. For this reason, it filed an appeal with the ECHR and obtained in 2012 recognition under the Law of denominations⁸⁰, despite the fact that the Orthodox Church of Moldova linked to the Patriarchate of Moscow claimed the right to be the only orthodox identity of the country.

However, strong pressure from the Parliamentary Assembly of the Council of Europe was needed to enforce the sentence, since the Orthodox Church of Bessarabia, as the legitimate heir to the ancient Orthodox Church, could demand the restitution of all the confiscated properties in 1948 (buildings of worship, lakes, land, buildings).

Or, again, in Ukraine, where the violation of art. 9 Convention by the State for having denied a member of the Orthodox Church to abandon the teachings of the Patriarchate of Moscow to embrace those of the Patriarchate of Kiev⁸¹.

The problem is that the emergence of new nationalities after the Soviet Union crisis has stimulated within the Orthodox Church the tendency to constitute self-governing structures based on the existence of

tradizione e sviluppo della libertà religiosa, Bononia University Press, Bologna, 2017, pp.145,172; **F. BOTTI**, *Properties of religious communities in Albania between the restitution or compensation of confiscated goods and the acquisition of new assets*, in *Jeta Juridike*, III, 2015, pp. 167 - 188.

⁷⁸ Cfr. Decision of the Constitutional Court for annulment of Articles of the Law on the Legal Status of Churches, religious community or a religious group. Decision No. 104/2009 adopted on 22 September 2010 (in <http://licodu.cois.it/?p=5358>). Significant is the legal dispute that opposes the Tetovo Tetovo Bektashi community to the Islamic Community of Macedonia, which last, according to the 2008 denomination law, (<http://licodu.cois.it/?p=5363>) claims ownership of certain goods as sole Islamic denomination of the country.

⁷⁹ ECHR, Judgment on cult buildings Metropolitan Church of Bessarabia, Moldova, 15 January 201 (in <http://licodu.cois.it/?p=5727>).

⁸⁰ Law on religious freedom of Churches and their members in 2007 (in <http://licodu.cois.it/?p=1276>).

⁸¹ *Svyato-Mykhaylivska Parafiya v. Ucraina*, ECtHR, Sez. I - Ric. 77703/01, 14 June 2007.



an independent nation⁸². The new regimes, precisely because of the laws on religious freedom adopted, were able to deal with these problems with difficulty.

It should be stressed that this type of legislation does not arise by chance, but it is suggested by the Venice Commission, which, without knowing the internal affairs of the religious confessions of these countries and without taking any account of the reasons which had characterized the legislation before the end of World War II, has recommended advising the adoption of the Belgian Church-State Relationship model⁸³, not suitable for dealing with these situations. Proof of this it's the high interreligious conflict that the law has not been able to mediate and manage⁸⁴.

This makes us reflect on the fact that the Albanian regime, refusing to adopt its own law on religious freedom, and having wisely opted for the use of common law as a general tool for regulating relations with cults, makes every religious community see their civil legal personality recognized under the law governing such matters for non-governmental organizations. Thus, the Albanian system has managed to preserve religious peace and the absence of interreligious conflicts.

Out of the scope of protection under art. 9 of the ECHR on Freedom and Rights of Religious Communities, we have to say that the Court has also focused its attention on the individual protection of religious freedom in relation to art. 11 of the ECHR.

⁸² See, for example, the constitution in Latvia of the autonomous Latvian orthodox Church that refers to the Ecumenical Patriarchate with the intent to distance itself from ties with the Russian Orthodox Church. See: Judgment of the Supreme Court of Latvia, Case No. SKC - 79, February 8, 2006 (in <http://licodu.cois.it/?p=4784>); Judgment Nr. A42673207 AA43-0250-11/14 about entry in the register of the religious denominations of the autonomous Orthodox Church of Latvia (Ecumenical Patriarchate) 2011 (in <http://licodu.cois.it/?p=4786&lang=en>).

⁸³ G. CIMBALO, *Pluralismo confessionale e comunità religiose in Albania*, Bononia Univeristy Press, Bologna, 2012, p. 198 ss.; G. CIMBALO, *Separatismo, laicità, pluralismo e politiche di convivenza*, in F. Botti (a cura di), *La convivenza possibile. Saggi sul pluralismo confessionale in Albania*, Bononia University Press, Bologna, 2015, pp. 9-24.

⁸⁴ Relationships between religious confessions in Eastern European countries are characterized by a strong interreligious conflict that develops in different directions. Conflicts are common inside the general denominations (Orthodox Church, but also Muslim Communities) that contend for the representation of the entire denomination with a conflict fueled by the necessity and interest in recovering goods confiscated from the past regime. The other side of conflict is generated by the so-called new cults who have difficulty penetrating within the narrow meshes of the various denomination laws. These findings suggest to the European Union, and in particular to the Venice Commission, a critical reflection that is fueled by the copious case law of the ECHR, which we have repeatedly referred to.



A case of transition between the two issues is certainly constituted by the freedom of association right, raised by the *Sindicatul Păstorul cel Bun*⁸⁵, concerning the exercise of trade union rights within a religious community, resolved by the Grand Chamber's pronouncement for which the refusal of the departmental tribunal to register the recurring union did not go beyond the margin of appreciation enjoyed by the national authorities in the matter and, therefore, is not disproportionate.

By moving decisively on the ground of individual rights of religious freedom, a very important case of Macedonia, raised by a sanctioned worker after being absent from work to attend a Muslim festival⁸⁶, must be reported. In response to the applicant's allegations, alleging that he had been forced to reveal his religious convictions, the judges stated (§ 39) that

“it is not oppressive or in fundamental conflict with freedom of conscience to require some level of substantiation when that claim concerns a privilege or entitlement not commonly available and, if that substantiation is not forthcoming, to reach a negative conclusion”.

Remaining on the subject of individual protection of religious freedom, but with different outcome and finding a full violation of art. 9 Convention, worthy of note is the ruling on *Ivanova vs. Bulgaria*⁸⁷.

The plaintiff, director of the pool at a public education institute, complained of violation of his religious freedom for being dismissed because of her membership of an unregistered religious organization. This case emerges, with renewed evidence, the shortcomings of the denominations law which has among its main tasks that of containing the expansion of religious differentiation with the intent of safeguarding the country's religious identity.

4 - Conclusions

⁸⁵ F. BOTTI, *L'esercizio dell'attività sindacale dei ministri di culto nella Chiesa ortodossa romena*, in *Stato, Chiese e pluralismo confessionale*, cit., n. 30/2012; F. BOTTI, *Diritto sindacale e confessioni religiose alla luce della giurisprudenza della Corte di Strasburgo. Il caso rumeno: «Sindicatul Pa'storul cel Bun c. Romania»*, in *Quaderni di Diritto e Politica Ecclesiastica*, 2013, vol. I, pp. 171-182; L.S. MARTUCCI, *Libertà sindacale nelle confessioni religiose. Spunti comparativi*, in *Stato, Chiese e pluralismo confessionale*, cit., n. 39 /2014.

⁸⁶ *Kosteski v. The Former Yugoslav Republic of Macedonia*, ECtHR, Application no. 55170/00, 13 April 2006.

⁸⁷ *Ivanova v. Bulgaria*, Application no. 52435/99, 12 April 2007.



The case law of the Court has certainly highlighted the shortcomings and limitations of the laws on religious freedom, especially with regard to the option for a single denomination for each religious community.

This choice harms the autonomy of the religious communities and forces them to unnatural and controversial compromises in order to find a *modus vivendi* within a single organization, regardless of ritual differences, traditions, structure of relations within the clergy, and touching on delicate aspects that concern differences on the theological and doctrinal plan, as well as the differences to international cults.

The sacrifice of confessional autonomy, just to obtain an apparently orderly classification of cultures, which actually conceals a need for control by the state of organisms such as the religious ones of which it deeply distrusts, re-launches the unresolved debate on differentiated agreements with different cultures and communities. Therefore it emerges that there is a need for bilateral or negotiated legislation or, alternatively, for the use of the common law to regulate the collective religious phenomenon.

The case law on the protection of individual rights related to the exercise of religious freedom, however, highlights the need for the principle of religious freedom to be measured by the protection of human rights and the fundamental and irreplaceable principles that a liberal democracy system own and which cannot be disregarded.

In essence, we can see the secularization of the right to religious freedom, though the Court's jurisprudence, as well as the tendency oriented to confessionalization of interpersonal relations and the thrust of many cults to radicalize, resulting in infrequent conflict, or intrinsic, risking to question the peace and social cohesion, rights and political stability of this area of the world.

The hope is that this process of secularisation and secularization linked to the protection of human rights can make a renewal and regeneration element on a more open basis for comparison by the traditional religious communities, making them to measure with the multiethnic and multireligious composition of the peoples and their need for peaceful coexistence.

Keywords: Religion; Religion and Law; Science of Religion; European Court for Human Rights; Socialist Countries.