

NOTE

The Constitutional Protection of Freedom
of Religion in Russia and Hungary:
A Comparative Analysis

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I. INTRODUCTION	149
II. THE CURRENT DEBATE: DOES HUMAN RIGHTS LAW EVEN MATTER?	150
III. INTERNATIONAL LAW	153
<i>A. Historical Development of the Protection of Freedom of Conscience</i>	153
<i>B. Application of Relevant Sources of International Human Rights Law</i>	154
<i>C. Ratification/ Signatory Status: Russia and Hungary</i>	156
IV. THE RUSSIAN CASE STUDY	156
<i>A. Russia's Historical and Demographic Background</i>	156
<i>B. Post-Communist Russia: From Protection to Restriction</i>	158
<i>C. Minority Action</i>	160
V. THE HUNGARIAN CASE STUDY	164
<i>A. Hungary: Demography, History, and Current State</i>	164
VI. WHY RUSSIAN MINORITIES MAY HAVE BEEN COMPARATIVELY BETTER OFF THAN HUNGARIAN MINORITIES AND POTENTIAL SOLUTIONS	168
VII. CONCLUSION	173

I. INTRODUCTION

Freedom of religion is a cornerstone of healthy democracy. Although the commitment to advancing protection of religious minorities was at its peak in the 1990s, it slowly began to erode in both Russia and Hungary. However, despite the recent setback, it seems that Russian minorities were better able to assert themselves within the political sphere than Hungarian minorities.

This Note analyzes why Russian minority religions fared better in pushing against some of the restrictive measures the government advanced while those in Hungary failed. Russia and Hungary are both post-communist countries that have emerged from previously-repressive regimes with aspirations to become democratic countries, built on tolerance of differing values and a commitment to furthering human dignity. However, both countries use several tactics that oppress religious minorities. Some of the major ways majorities represented in government have been able to assert their own principles have been through the promotion of state interests at the cost of the individual. National security, and the health and well-being of others, are commonly asserted as valid reasons to suppress minority dissent.

Further, this Note proposes certain practical mechanisms that minorities may utilize to protect their religious liberty interests, using Russia as an example. I will begin with an analysis of the historical development of the protection of freedom of conscience, with a particular focus on relevant international treaties and resolutions, and their application. Because understanding prior history and the mentality of Russians is an important part of the development of freedom of religion, Part IV traces the history of freedom of religion in Russia from Soviet times up until today under the new Russian Government. It also presents the facts outlining how minorities were able to assert their rights. Then, in Part V, I trace the history and freedom of religion in Hungary, presenting information on how the government was able to override religious minority rights. Finally, Part VI analyzes why Russian minorities were able to previously succeed and what Russian and Hungarian minorities may do to advance their protection. In conclusion, this Note advances five main explanations for why Russian minorities were able to garner more support than Hungarian minorities. First, Russian minorities had built common ground with each other through civic engagement which made cooperation and concerted action easier. Second, Russia may have had greater protection for freedom of expression. Third, Russian courts may have garnered greater legitimacy in the eyes of the public. Fourth, civil consciousness levels seemed to have been higher in Russia than in Hungary. Fifth, there are positive effects from more responsive leadership.

As suggestions for practical ways religious minorities may protect themselves, I argue that religious minorities in Hungary will have to appeal to a larger majority to garner voting power and mobilize their interests. Therefore, appealing to a larger group based on the advancement of structural changes to remedy freedom of expression infringement may be a better avenue for protection. Or, as Russian minorities did, local minorities may create inter-faith initiatives to build a solid foundation conducive to concerted action. Most successful efforts would likely occur in the political arena rather than in the courts, whose legitimacy has been greatly undermined. Secondly, non-governmental organizations (NGOs) would fare better in advancing the protection of human rights by taking a pragmatic approach, while focusing their attention on welfare production, considering the recent attacks on foreign-funded NGOs. By being pragmatic, NGOs may diffuse some of the current negative public perception. Also, if NGOs use their funding for purposes that the government would otherwise have to provide, the government may be less threatened and so there may be a better environment for NGOs to advance their own interests without political backlash.

II. THE CURRENT DEBATE: DOES HUMAN RIGHTS LAW EVEN MATTER?

There is currently a deep debate as to whether human rights law even matters. The scholarly literature on this issue is voluminous.¹ The summary below is illustrative of two polarized views, not completely representative, of this scholarship. On the one hand, Eric Posner has stipulated that human rights law has no effectiveness whatsoever. On the other side of the debate is Beth Simmons, who claims that under some circumstances human rights law may matter. My topic may be placed in this larger theoretical framework where I test these two theories using Russia and Hungary as case studies.

Contributing significantly to this debate, Beth Simmons argues that human rights law matters when domestic groups mobilize for its enforcement and hold their governments accountable by making

1. See, e.g., PETER UVIN, HUMAN RIGHTS & DEVELOPMENT 167-201 (2004); Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT'L L. 121, 121-35 (2001); Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004); Sophia Gruskin et al., *Human Rights in Health Systems Frameworks: What is There, What is Missing and Why Does it Matter?*, 7 GLOB. PUB. HEALTH 337 (2012); Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EUR. J. INT'L L. 171 (2003); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. PEACE RES. 407 (2007).

demands.² She states that even if a regime is “imperfect,” international law may still make a difference when there is room for organization to demand protection of rights and when the use of law is validated.³ In response to Eric Posner’s arguments pertaining to how treaties are too vague to be effective, Beth Simmons contends that while countries that do not care about international treaties will not be responsive, there are countries that are committed to the actual implementation of human rights within their own constitutions and will be responsive to these demands.⁴ Countering Posner, Simmons contends that even though treaties may be vague, constitutions are as well. Vagueness, she contends, is just part of how law works. In particular, she explains that the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Elimination of Discrimination Against Women were useful instruments in facilitating pressure on governments in Chile and Columbia.⁵

Conversely, in his article *The Case Against Human Rights*, Eric Posner asks whether the world has become freer because of human rights treaties, or rather because of economic growth or the fall of communism.⁶ He recognizes that most human rights treaties have been ratified by the vast majority of countries.⁷ However, human rights law has failed under

2. BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 4-5 (2009) (“Depending on the domestic context into which they are inserted, treaties can affect domestic politics in ways that tend to exert important influences over how governments behave toward their own citizens. Treaties are the clearest statements available about the content of globally sanctioned decent rights practices. Certainly, it is possible for governments to differ over what a particular treaty requires – this is so with domestic laws as well – but it is less plausible to argue that the right to be free from torture, for example, is not something people have a right to demand and into which the international community has no right to inquire; less plausible to contend that children should be drafted to carry AK-47s; and less plausible to justify educating boys over girls on the basis of limited resources when governments have explicitly and voluntarily agreed to the contrary. Treaties serve notice that governments are *accountable* – domestically and externally – for refraining from the abuses proscribed by their own mutual agreements.”).

3. *Id.* at 26 (“International legal commitments are now increasingly made by governments that can be held accountable for their commitments by their own people. Xinyuan Dai has argued compellingly that democracy gives rise to constraints that make noncompliance with even weak international regimes potentially costly for governments . . . [E]ven imperfect regimes allow for the organization of rights demands and the use of law as a legitimating political resource are potentially fertile contexts for international law to influence official rights and practices.”).

4. Beth A. Simmons, *What’s Right with Human Rights*, DEMOCRACY, Winter 2015 (“In Chile, for example, the ICCPR was a focal point for opposition to the Pinochet regime—and the Convention Against Torture (CAT), ironically, was responsible for Pinochet’s arrest a decade later In Colombia, women’s groups used the Convention on the Elimination of Discrimination against Women (CEDAW) to convince government and society to reprioritize women’s issues such as reproductive health care. Treaties add pressure because they suggest new ways for individuals to view their relationship with their government and with each other.”).

5. *Id.*

6. Eric Posner, *The Case Against Human Rights*, GUARDIAN (Dec. 4, 2014), <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>.

7. *Id.*

pressure.⁸ For example, in Russia and Hungary, authoritarianism has picked up ground.⁹ Further, LGBT communities in Russia have been disenfranchised.¹⁰ Despite these fallbacks, human rights law has increased with “[t]he use of ‘human rights’ in English-language books [increasing] 200-fold since 1940, and is used today 100 times more often than terms such as ‘constitutional rights’ and ‘natural rights.’”¹¹ Despite its prevalence, Posner argues that human rights’ top-down approach has failed.¹² The major reason why it has failed is because the language in the treaties is ambiguous and so governments may use treaties to justify actions that would otherwise be considered “wrong.”¹³ There are a plethora of human rights and the number and variety of rights provides no guidance to governments on how to implement or prioritize those rights.¹⁴ Lastly, there are no effective institutions to interpret or define the vague rights, partly due to the lack of hierarchy in international human rights institutions.¹⁵

Although there is disagreement about the ultimate conclusion of whether international human rights treaties are actually useful, both would agree that countries that are apathetic will not be responsive and will not be greatly influenced by the values portrayed in human rights treaties.

Contributing to this larger debate, Professors Chilton and Versteeg have found that a constitution’s protection of certain rights, specifically the prohibition of torture,¹⁶ the freedom of speech, the freedom of movement,¹⁷ and the right to healthcare and education,¹⁸ is not associated with actual better rights practices. However, they find that when rights are practiced by and within organizations, governments are less likely to encroach on rights. Organizations have both the incentives and means to protect their own rights against the government. Freedom of religion, among other rights, is an organizational right, and as a result religious groups are well-positioned to protect their religious freedom rights. Specifically, religious groups have a loyal member base, a clear organizational structure and frequently use the constitution to protect their

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Adam S. Chilton & Mila Versteeg, *The Failure of Constitutional Torture Prohibitions*, 44 J. LEGAL STUD. 417 (2014).

17. Adam S. Chilton & Mila Versteeg, *Do Constitutional Rights Make a Difference?* 4-5 (Univ. of Chi. Coase-Sandor Inst. for L. & Econ., Research Paper No. 694, 2014).

18. Adam S. Chilton & Mila Versteeg, *Rights Without Resources: The Impact of Constitutional Social Rights on Social Spending* 22 (Va. L. & Econ. Research Paper No. 2016-20, 2017).

interests.¹⁹ In their forthcoming book, Chilton and Versteeg illustrate this logic in action in Russia.²⁰

However, to narrow the question for purposes of this Note, the main issue within this larger theoretical framework is whether Russia and Hungary are countries that Posner, Simmons, Chilton, and Versteeg would agree to be generally unresponsive or countries that will be receptive to treaties. Note, each country falls on a scale. Just because there may be regression in the protection for international human rights does not mean that the country can be automatically classified as a repressive regime. Rather, there is pushback from minorities or disenfranchised groups and the ultimate issue is how those groups may mobilize to protect their rights.

III. INTERNATIONAL LAW

A. Historical Development of the Protection of Freedom of Conscience

Protection of freedom of religion, belief, or conscience is the oldest right protected under international law. Since 1555, starting with the Religious Peace of Augsburg, there has been an effort to establish a principle of *cuius regio, eius religio*, or in other words “whose realm, his religion.”²¹ This stemmed mainly from an effort to place Lutheran rulers on the same playing field as Catholic rulers within the Holy Roman Empire.²² In 1648, the Peace of Westphalia led to the acceptance of the Reformed Calvinist Church, the Lutheran Church, and the Catholic confessions and allowed for a five-year grace period in which worship, both public and private, would be respected and tolerated without restriction.²³ In 1878, the Treaty of Berlin was created for the reiterated commitment of the protection of religious minorities.²⁴ Then, in 1948, the Universal Declaration of Human Rights (“UDHR”), Article 18, was enacted to explicitly provide every individual with the right not only to freedom of religion, but also to freedom of thought, and conscience.²⁵ The Article references the right to change one’s belief or religion, to practice in a community, publicly or privately, and to manifest one’s religion through various means including teaching, practice, worship, and observance.²⁶

19. Chilton & Versteeg, *supra* note 17, at 12-14.

20. See ADAM S. CHILTON & MILA VERSTEEG, RESISTING REPRESSION: THE ORGANIZATIONAL BASIS OF CONSTITUTIONAL RIGHTS (forthcoming).

21. ALLEN D. HERTZKE, THE FUTURE OF RELIGIOUS FREEDOM: GLOBAL CHALLENGES 1, 31 (2013).

22. *Id.*

23. *Id.* (noting, however, that after the five-year grace period, holders of beliefs other than Calvinists, Lutherans, and Catholics would be required to leave the country).

24. *Id.* at 32.

25. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at art. 18 (Dec. 10, 1948).

26. *Id.*

Supplemental to the UDHR is the International Covenant on Civil and Political Rights (“ICCPR”).²⁷ Its aim was to create legally binding treaty obligations to protect the rights articulated in the UDHR.²⁸ To affirm its commitments to freedom of conscience, in 1981, the U.N. General Assembly passed the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief with the hopes of establishing a principle among all countries of respect for all systems of belief, large or small, and the inalienable right of believing and practicing as one desires.²⁹ A series of UN resolutions since passed have reaffirmed the goal of promoting and encouraging universal respect for freedom of religion, belief, or thought.³⁰

B. Application of Relevant Sources of International Human Rights Law

There are two primary sources of international law that may create obligations on States: treaties and customary law. The ICCPR is binding under international law and countries that have ratified the relevant provisions have a duty to instill such norms domestically. Generally, once a provision is accepted, it serves as a floor below which the country should not fall. Further, a party should not invoke the provisions of its domestic law as a reason to not comply with the treaty’s requirements.³¹ The State, therefore, has an obligation to perform its treaty obligations in good faith: to see that the terms of the treaty are fully implemented in the state constitution, other laws, and general practice.³² Unilateral narrowing of treaty obligations is impermissible.³³

Despite such broad protection for conscience, this right may be limited (as indicated under the limitations clause) under certain circumstances.³⁴ However, the limitations clause only applies to *manifestations* of belief. So, a country may not control internal freedom of belief when there has been no action based on that belief.³⁵ Countries that require registration, for example, would intrude on such internal freedom

27. HERTZKE, *supra* note 21, at 36.

28. *Id.* at 33.

29. *Id.*

30. See G.A. Res. 48/128, Elimination of All Forms of Religious Intolerance (Dec. 20, 1993); G.A. Res. 49/188, Elimination of All Forms of Religious Intolerance (Dec. 23, 1994); G.A. Res. 51/93, Elimination of All Forms of Religious Intolerance (Feb. 28, 1997); G.A. Res. 55/97, Elimination of All Forms of Religious Intolerance (Dec. 4, 2000).

31. HERTZKE, *supra* note 21, at 37.

32. *Id.*

33. *Id.*

34. *Id.* at 41-42. (citing Article 18 of the ICCPR: “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”).

35. *Id.* at 42.

since there is regulation based on religion, belief, or thought, even though there is no actual manifestation of beliefs.³⁶ Further, unreasonable restrictions on how believers practice their religions may violate the limitations clause because the paragraph includes the word “necessary.”³⁷ Similar to the United States’ limitation on religious freedom, if a State targets religion or if there is an individualized assessment for a public benefit, etc.,³⁸ then laws must be narrowly tailored to further the permissible legitimate ends. If religious groups can point to alternative ways a compelling State end may be achieved without burdening the group at issue, then the method the State has put forth may not be actually “necessary.” In summary, the limitations clause must be strictly construed. For example, in order for a State to place limitations on religious freedom to establish “public order,” a State should demonstrate that such limitations are necessary to prevent a concrete public disturbance, not that a disturbance is merely probable.

The UDHR and the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination are only UN resolutions and so are not legally binding in and of themselves.³⁹ However, they may have a direct impact in clarifying the meaning of binding treaty language, or the norms they embody may acquire customary international law status.⁴⁰ Despite the fact that thirty-two percent of countries around the world maintain high or very high restrictions on religion and seventy percent of the world’s population lives in countries with such restrictions,⁴¹ the commitment to religious freedom is considered customary law.⁴² States are

36. *Id.*

37. *Id.* at 43-44 (stating that the UN Human Rights Committee has defined “necessary” as “limitations . . . applied only for those purposes for which they are prescribed and . . . directly related and proportionate to the specific need on which they are predicated.” The European Court of Human Rights defined “necessary” as only when there is a pressing social need that is proportionate to the legitimate aim pursued.); *see also* Human Rights Committee, General Comment No. 22, Article 18 (48th session, 1993), U.N. Doc. HRI/1/Rev.1 at 35 (1994) (“The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”).

38. *See* *Emp’t Div., Dep’t of Human Res. v. Smith*, 485 U.S. 660, 675 (1988) (citing *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)).

39. G.A. Res. 36/55, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Nov. 25, 1981).

40. HERTZKE, *supra* note 21, at 34-35 (providing an example of the importance of the UN Resolutions, Article 18 of the UDHR, and its direct correlation with Article 18 of the ICCPR, which incorporates the key language of the earlier UDHR almost exactly. ICCPR, due to its specificity, clarifies the UDHR. The same is true for the 1981 Declaration whose provisions are almost exactly the same as the operative language of the beginning provisions of the ICCPR.).

41. *Id.* at 87.

42. *Id.* at 34.

prepared to make forceful statements in forums to illustrate their obligations.⁴³ Although much progress still needs to be made, there have been substantial developments within States to protect religious communities by granting them recognition and legal status, which allows them to incorporate, create trusts or religious incorporations, and access legal structures.⁴⁴ However, the countries that have refused to ratify the key provisions of the ICCPR are unlikely to submit to the jurisdiction of international tribunals, so customary law may be only persuasive and unlikely to hold such countries accountable.

C. Ratification/Signatory Status: Russia and Hungary

Russia ratified the ICCPR on October 16, 1973.⁴⁵ Hungary did the same on January 17, 1974.⁴⁶ Russia abstained from signing the UDHR,⁴⁷ while Hungary—not yet a member of the United Nations—did not have the opportunity to sign it.⁴⁸ As members of the Council of Europe, both Russia and Hungary had the opportunity to sign and/or ratify the Convention for the Protection of Human Rights and Fundamental Freedoms;⁴⁹ Hungary signed the Convention on November 6, 1990, and ratified it on November 5, 1992,⁵⁰ and Russia signed the Convention on February 28, 1996, and ratified it on May 5, 1998.⁵¹

IV. THE RUSSIAN CASE STUDY

A. Russia's Historical and Demographic Background

Russia is an interesting country due to its historical background and demographic composition. Its population is diverse, but it has not had a

43. *Id.* at 34-35.

44. *Id.* at 37.

45. See *Status of Treaties, International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4 (last visited June 23, 2019).

46. *Id.*

47. U.N. GAOR, 3d Sess., 183d plen. mtg. at 933, U.N. Doc. A/PV.183 (Dec. 10, 1948).

48. *Universal Declaration of Human Rights Signatories*, ETHIOPIA BLOG, <http://unethiopia.org/universal-declaration-of-human-rights-signatories/> (last visited Apr. 21, 2017).

49. Convention for the Protection of Human Rights and Fundamental Freedoms art. 59, Apr. 11, 1950, C.E.T.S. 005.

50. *Chart of Signatures and Ratifications of Treaty 005: Convention for the Protection of Human Rights and Fundamental Freedoms*, COUNCIL OF EUR., <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures> (last visited Apr. 21, 2017).

51. *Id.*

tradition of religious pluralism.⁵² Orthodoxy is the largest Christian religious denomination, while Protestantism is the second largest.⁵³

The following is a brief account of Russia's political history leading up to the demise of the Soviet Socialist Republics ("USSR"): Around 1917, most people in Russia lost faith in the leadership of Czar Nicholas II. There was immense government corruption, a terrible economy, and deep regret about Russia's involvement in World War I (1914–18).⁵⁴ During that year, Russia had a revolution that led to the eventual resignation of the imperial government. Afterward, in the Bolshevik Revolution, Vladimir Lenin led leftist revolutionaries in occupying government buildings and formed a government where he was head of state.⁵⁵ In 1920, the anti-Bolsheviks were defeated and two years later, the USSR was established.⁵⁶ After 1924, Joseph Stalin took on leadership and exercised total control over all aspects of economic, social, and political life.⁵⁷

During USSR control (and during the Civil War that followed the Revolution), there was forced secularization.⁵⁸ Religion was considered to be the result of social inequality and a tool of oppression.⁵⁹ The state severely repressed the Russian Orthodox Church and promoted "scientific atheism."⁶⁰ The Communist Party destroyed churches, mosques, and temples.⁶¹ The government executed religious leaders and consumed public spaces with anti-religious propaganda.⁶² Scientific atheism was the official Communist Party view and stood as a label for the ideal moral codes of conduct, which led to the creation of atheistic rituals and ceremonies.⁶³ In promoting scientific atheism, the USSR seized all private property; therefore, religious groups often did not have a place to meet.⁶⁴ The costs of practicing religion were very high since the government executed religious leaders and sentenced people to decades of hard labor.⁶⁵

52. Marat S. Shterin & James T. Richardson, *Local Laws Restricting Religion in Russia: Precursors of Russia's New National Law*, 40 J. CHURCH & ST. 319, 321 (1998).

53. HERTZKE, *supra* note 21, at 174.

54. *A Brief History of Russia*, UNIV. CAL., S.F., http://missinglink.ucsf.edu/lm/russia_guide/historyofrussia.htm (last visited June 23, 2019) [hereinafter *Brief History*].

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Pierre J. Beemans, *Scientific Atheism in the Soviet-Union: 1917-1954*, 7 STUD. SOVIET THOUGHT 234, 240 (1967).

61. *Brief History*, *supra* note 54.

62. Beemans, *supra* note 60, at 235.

63. Paul Froese, *Forced Secularization in Soviet Russia: Why an Atheistic Monopoly Failed*, 43 J. FOR SCL. STUDY OF RELIGION 35, 35 (2004).

64. *Id.* at 41.

65. Beemans, *supra* note 60, at 235. ("The government ordered the dissolution of most of the monasteries and convents during this period, the closing of many churches, the confiscation of the

By 1941, “less than eight percent of Russian Orthodox Churches [were] still functioning.”⁶⁶ They were closed and converted into places to conduct Communist activity.⁶⁷ To prevent active or hidden participation in religion, Soviets created work schedules to conflict with religious holidays, prevented Sunday liturgy by eliminating Sunday as a day of Sabbath, and created state holidays to counteract religious ones.⁶⁸

After Stalin’s death in 1953, Soviets dismantled many of the brutal laws that legitimized the arrest or death of those who disagreed with Stalin’s policies.⁶⁹ In 1989, Gorbachev’s commitment to bettering relationships with the international community by halting the arms race and withdrawing Soviet troops from Afghanistan stimulated a series of peaceful revolutions across Eastern Europe and the fall of the Berlin Wall, signaling the end of the Soviet Union.⁷⁰

B. Post-Communist Russia: From Protection to Restriction

Russia has undergone periods of high and low protection of freedom of conscience. In 1990, Russia enacted the Law on Freedom of Conscience, which provided broad religious liberty protections by eliminating any restrictions on registration or activities of religious associations.⁷¹ This law followed the stipulations of the UDHR, European Convention of Declaration of Human Rights, and other international conventions. In the Russian Constitution (Article 28) and the 1990 law, all citizens and noncitizens enjoy rights to believe and practice any religion they choose, and to form associations to practice those beliefs as they please.⁷² They have the right to promote their religious opinions through oral and written forms.⁷³

Three years later, legislative bills were introduced to amend the 1990 law and eliminate the principle of equality among religions.⁷⁴ Bills began to support traditional religions (which include Orthodox Christianity, Islam, Buddhism, and Judaism),⁷⁵ granting them a variety of privileges while

vast wealth of the Church treasures, and the execution of an estimated 28 bishops and 1200 priests.”).

66. PAUL FROESE, *THE PLOT TO KILL GOD: FINDINGS FROM THE SOVIET EXPERIMENT IN SECULARIZATION* 52 (2008).

67. *Id.* at 42.

68. *Id.* at 43.

69. *See Brief History, supra* note 54.

70. *Id.*

71. HERTZKE, *supra* note 21, at 159; *Russian Law on Religion*, CTR. FOR STUDIES ON NEW RELIGIONS, <http://www.cesnur.org/testi/Russia.htm> (last visited Apr. 23, 2017) [hereinafter *Russian Law on Religion*].

72. KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 28 (Russ.).

73. *Russian Law on Religion, supra* note 71.

74. HERTZKE, *supra* note 21, at 159.

75. Shterin & Richardson, *supra* note 52, at 340.

restricting activities of religious minorities and foreign missionaries.⁷⁶ There were many reasons for these restrictions. Many thought that if religious organizations were free to roam as they pleased, then they might abuse their rights.⁷⁷ It is likely that this is partly due to the large portion of people who identify as Russian Orthodox believers. “Legislators received countless letters from citizens worried about destructive and mind-control cults invading Russia and destroying families.”⁷⁸ Certain religions were seen as threats to peace, national security, and a person’s psychological, physical, and social health.⁷⁹ This includes religions such as Scientology, Baptists, and Mormonism.⁸⁰ Due to the disadvantaged state of the Russian Orthodox Church after the fall of the Soviet Union, non-orthodox outsiders were seen as threats to the Russian Orthodox Church, considered to be “the embodiment of the Russian national tradition, the core of national identity, and the guardian of the psychological well-being of the nation.”⁸¹ This led to a hierarchy of religions in which Orthodox Christianity is most preferred, followed by Judaism, Islam, and Buddhism.⁸² Beneath these “traditional” religions, determined on the basis of whether they are tied to ethnic or national identity, are the religions considered to be new to Russia (Catholicism, Protestantism, and some forms of Buddhism) followed by totalitarian, threatening sects.⁸³ Many of these threatening sects are associated with the West or are generally considered foreign.⁸⁴

Eventually, in 1997, the country revised the Law on Freedom of Conscience once more to allow only Russian citizens the ability to establish local religious organizations.⁸⁵ Foreigners and stateless citizens may only participate in religious organizations after providing proof that their residence is within Russia.⁸⁶ This law further distinguished religious

76. *Id.* at 328.

77. *Id.* at 321.

78. *1997 Law Restricting Religious Expression in Russia*, RELIGIOUS TOLERANCE, http://www.religioustolerance.org/rt_russi1.htm (last updated May 11, 2007) [hereinafter *Restricting Religious Expression*].

79. Shterin & Richardson, *supra* note 52, at 321.

80. *Restricting Religious Expression*, *supra* note 78.

81. Shterin & Richardson, *supra* note 52, at 333.

82. *Id.* at 322.

83. *Id.* at 337 & n.59 (“Such movements are called Scientology, in other words, Charismatic Protestants . . .”).

84. *Id.* at 338 & n.60 (“For example, during the 1995 election campaign, the pro-governmental political movement . . . published a leaflet in which all religious organizations were divided into three categories: first, the Russian Orthodox Church which was promised ‘full necessary support’; second, all traditional confessions in Russia which were offered ‘harmonic peaceful co-existence’; and finally, ‘totalitarian sects and foreign missionaries’ (one category!) which only could expect restrictive measures The new Law was vigorously supported in the Duma by the communists and nationalists with the biggest liberal faction, the Yaboloko, abstaining from the final vote.”).

85. HERTZKE, *supra* note 21, at 161.

86. *Id.* at 160.

organizations with full legal status and those which may be permitted to register but are denied full rights.⁸⁷ Although the law stipulated that Russia remains a secular state and rejected an official religion, it treated the Orthodox Church (which, as previously mentioned, has the largest number of followers in the country) as unique and special among all religions, referring to the Church as in unity with Russia's historical, spiritual, and cultural heritage.⁸⁸

In addition to creating a hierarchy of preferred religions, the new law created a distinction between "religious organizations" and "religious groups."⁸⁹ The former are granted all the rights of a legal entity, while the latter may only operate within the limits of rigid restrictions. It also drew a line between size and scope of religious organizations and created a category of "foreign religious organizations" which cannot have representatives in Russia unless they are invited by a Russian religious organization and have gained permission from the Russian government.⁹⁰

In conjunction with this stipulation, the law required a fifteen-year probation period of activity for non-traditional religious associations.⁹¹

Part of this regression may be attributed to the anti-cult movement advanced by the Russian Orthodox Church.⁹² Part of it may also be due to foreign religions' portrayal in the media as a threat to national security. "In Russia the ability to 'use the law' against minority religions seems to depend not so much on a higher social status of those participating in the [anti-cult movement] as on their ability to point to the inferior cultural status of 'foreign religions' and the superior cultural status of the Mother Church (or traditional religions)."⁹³ Politicians adopted an anti-missionary rhetoric that cultivated impulses to control foreign religions and their potential influence, while the Russian Orthodox Church accused minority religions of proselytizing with the goal of undermining them and regaining control.⁹⁴

C. Minority Action

Despite this regression, law enforcement has failed to carry out the law to the full degree. Indeed, more discriminatory measures were proposed

87. *Id.*

88. Shterin & Richardson, *supra* note 52, at 323.

89. *Id.* at 323-24.

90. *Id.* at 324.

91. HERTZKE, *supra* note 21, at 160.

92. Shterin & Richardson, *supra* note 52, at 334.

93. *Id.* at 336.

94. *Id.* at 338.

but rejected due to the persistent “efforts by human rights activists, the leaders of the State Duma, and members of the Yeltsin administration.”⁹⁵

As early as 1999, there was resistance to the application of the new law. Lawyers representing the Proslavleniye Pentecostal Church in Abakan, Republic of Khakassia, prepared a legal complaint about the fifteen-year probation period.⁹⁶ A similar complaint was made on behalf of the Jehovah’s Witnesses in the city of Yaroslavl.⁹⁷ Due to the similar basis of complaint, the two cases were consolidated and were transferred to the Constitutional Court.⁹⁸ The question before the Court was regarding the constitutionality of Article 27’s restrictions.⁹⁹ Despite upholding the law’s constitutionality, the Court held that the provisions did not apply to organizations that existed prior to 1997 and to “local religious organizations that are integrated within the centralized structure of religious organization.”¹⁰⁰ Therefore, although the fifteen-year requirement could be thought as restricting many religious groups and a sizable population, practically, it really only applied to a relatively small number of independent religious groups and new religious movements, which were able to successfully function despite lack of registration.¹⁰¹ The Court elaborated upon its decision by stating that a holding to the contrary would violate the guarantee of freedom of religious association and legal equality.¹⁰² Therefore, the Court managed to liberalize the law without declaring the Article outright unconstitutional.

In 2002, the Court used this sort of reasoning to exempt the Independent Russian Region of the Society of Jesus (Jesuits) from Article

95. HERTZKE, *supra* note 21, at 159 (explaining that there was a fifty-year, rather than a fifteen-year, ban proposed by Metropolitan Kirill).

96. *Id.* at 160.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. See Marina Thomas, *Russian Federation Constitutional Court Decisions on Russia’s 1997 Law “On Freedom of Conscience and Religious Associations”*, 6 INT’L J. NOT-FOR-PROFIT L. 9 (2003) (citing Article 27.3, which was created in 1997, stating that religious associations, “which do not possess a document proving their existence [in Russia for] at least 15 years are to enjoy the rights of a legal person on the condition of re-registration every year until the expiration of the indicated 15-year period. During this period, these religious [associations] are not to enjoy rights stipulated in [other] Articles . . .”). Jehovah’s Witnesses filed for re-registration; however, they were unable to show that they had a presence in Russia for fifteen years, so they were denied registration. Previously, their rights included “the right of replacing military service with alternative civil service for their members; the right of priests not to be drafted; the right to establish educational entities (including ones preparing professional clergy); the right to have foreign representation; the right to perform religious services in hospitals, orphanages, and prisons; the right to buy and export religious literature, audio, and video recordings; the right to establish educational organizations and mass media; and the right to invite foreign citizens to perform religious and missionary activities.” *Id.*

102. *Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 23 noiabria 1999 [Ruling of the Russian Federation Constitutional Court of Nov. 23, 1999]*, ROSSIISKAIA GAZETA [ROS. GAZ.] Dec. 16, 1999.

27's requirements, taking a step further and stating that any structural requirements imposed by Articles 8.3 and 8.4 (which require local religious organizations to be established by at least ten citizens of Russia) do not apply retroactively to religious entities registered prior to 1997.¹⁰³ In addition, the Court allowed religious entities, such as the Jesuits, that existed prior to the enactment of the 1997 law to include "Russia" in their official names.¹⁰⁴

Public figures and minority religious leaders—Protestants and Catholics in particular—were able to collaborate and to halt implementation of the rigid and discriminatory 1997 laws.¹⁰⁵ The Christian minorities were able to set aside differences to forge collective action. Beginning in 2004, minority religions have all collaborated in producing social welfare programs.¹⁰⁶ Their clergies and church staff meet consistently to share ideas about how to produce optimal results in projects. While Orthodoxy separates itself from these denominations, some of its churches support these local interfaith initiatives.¹⁰⁷ For example, Protestants work with Orthodox parishes in homeless outreach programs.¹⁰⁸ In summary, various religious denominations have been forced to find common ground in order for these programs to flourish.

In 2006, under Putin's leadership, there was a step backward when the State Duma proposed a bill that would restrict preaching and missionary activity and required documentation for those who wanted to preach.¹⁰⁹ In conjunction, there was increasing support for Orthodox Christianity in government rhetoric.¹¹⁰ The following year, Russia's intellectuals spearheaded a protest against the State's establishment of Russian Orthodox Church values by submitting an open letter to President Putin, calling for separation between the Church and State affairs, particularly an end to the Church's interference in State matters.¹¹¹ Among the protesting groups were the Russian Academy of Science and Nobel Laureates Jaures Alferov and Vitaly Gizburg.¹¹² Another letter was drafted by various

103. Thomas, *supra* note 101.

104. *Id.*

105. HERTZKE, *supra* note 21, at 161.

106. Melissa L. Caldwell, *The Politics of Rightness*, 56 PROBLEMS OF POST-COMMUNISM 29, 33 (2009) ("[T]he Christian Church of Moscow specialized in feeding programs, primarily for elderly pensioners and veterans . . . the Anglican Church has focused on support for the homeless and drug on alcohol rehabilitation. The Korean Methodist community has actively cared for orphans and the disabled, while the Catholic Church has provided extensive support for refugees and asylum seekers, and the Baptist Federation has worked with ex-prisoners and children, among others.").

107. *Id.* at 34.

108. *Id.* at 35.

109. HERTZKE, *supra* note 21, at 164-65.

110. *Id.*

111. *Id.* at 165-66.

112. *Id.* at 166. (stating in the letter: "If we assume that all atheists who are of Russian nationality are to be considered Orthodox, then Orthodox Christianity will certainly claim the

scientists and teachers similarly protesting Orthodox Christian teachings within school curriculum.¹¹³

Perhaps, due to these combined efforts, laws designed to prevent missionary work and restrict religious minorities were no longer adopted.¹¹⁴ Further, “[a]s the second largest congregation after Orthodox Christians, Protestants marked a significant event in 2006 when one of their bishops, Sergei Ryakhovsky, a leader of the Pentecostal Church, was selected as a member of the Public Chamber of Russia.”¹¹⁵ He and other activists continue to fight for democratic ideals in the country.¹¹⁶ During Vladimir Putin’s first regime, “authoritarian trends . . . proved to be somewhat weak, with government actions inconsistent and contradictory and the promotion of Orthodox ideology by authorities superficial and often empty.”¹¹⁷

Under Dmitry Medvedev’s leadership, the Russian Orthodox Church had much support advancing as a dominant religion, since President Medvedev was committed to developing a country that encouraged the Church’s active role in building civil society.¹¹⁸ The State Duma approved a February 2010 bill allowing only certain religious organizations to receive “socially oriented status.”¹¹⁹ The Ministry of Justice of Russia sought to amend a law to curtail missionary activity.¹²⁰ This sparked dissent from religious figures and human rights activists based on its conflict with international norms, Russia’s Constitution, and the Law on Freedom of Worship.¹²¹ The amendment would have penalized those who preached in public spaces without proper documentation to a greater degree than those who caused public disturbances.¹²² Persons could also be penalized for not preventing a minor from engaging in religious association activities.¹²³ Due to the complaints of the dissenters, the law was postponed.¹²⁴ It was because of this “civil consciousness” that such state endorsement of religion was not able to pass.¹²⁵

majority. However, if we exclude all atheists then, alas, Orthodoxy will become a minority. Well, this is beside the point. Is it really necessary to treat people of other religious denominations with such contempt? Does this itself not resemble a form of Orthodox chauvinism? In the end, it would be nice if the Church’s hierarchy took a moment to think about its own policies and what it is leading to—the consolidation of the country or its collapse?”).

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 167.

119. *Id.* at 170.

120. *Id.* at 171.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 170-71

125. *Id.* at 171.

As another example of civil consciousness, when a university dismantled a school monument and replaced it with a cross before the Russian Orthodox Patriarch came to visit, the students did not hesitate to point out how this action violated the University Charter.¹²⁶ This sort of concerted action has translated into halting regressive measures. By way of illustration, when the Russian Orthodox Church wanted to transfer artifacts to itself, “150 representatives of the museum community signed an open letter to President Medvedev requesting that the museum’s treasures not be transferred Under public pressure the Ministry of Culture endorsed the revision of the legislative proposal to transfer museum property to religious associations.”¹²⁷

V. THE HUNGARIAN CASE STUDY

A. Hungary: Demography, History, and Current State

Hungary has an interesting religious demography. The government does not collect information regarding religious affiliation, but on the 2011 national census’s optional question of religious identification, “[r]esponses indicated 37.1 percent of the population identifies as Roman Catholic, 11.6 percent as Hungarian Reformed Church (Calvinist), 2.2 percent as Lutheran, 1.8 percent as Greek Catholic, and less than 1 percent as Jewish. In the same census, 16.7 percent indicated no religious affiliation and 1.5 percent indicated they were atheists; 27.2 percent offered no response.”¹²⁸

To begin with a brief historical background of Hungary, communists took over power in 1919.¹²⁹ Many years later, in 1941, Germany invaded the country and Hungary declared war on the USSR, the United Kingdom, and the United States.¹³⁰ Not long after, Hungarian Nazis deported Hungarian Jews and gypsies to death camps.¹³¹ In 1945, Soviet forces drove the Germans out of Hungary and, two years later, communists consolidated power and Hungary aligned itself with the USSR.¹³² During the early stages of communist rule, churches were attacked and many religious persons were persecuted.¹³³ The Roman Catholic Church lost its

126. *Id.* at 173.

127. *Id.* at 172-73.

128. U.S. DEP’T OF STATE, HUNGARY 2015 INTERNATIONAL RELIGIOUS FREEDOM REPORT 1-2 (2015), <https://www.state.gov/documents/organization/256409.pdf> [hereinafter U.S. DEP’T OF STATE 2015].

129. *Hungary Timeline*, BBC NEWS, http://news.bbc.co.uk/2/hi/europe/country_profiles/1054642.stm (last updated Feb. 14, 2012).

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

land prior to the communist takeover.¹³⁴ Religious schools were seized by the state.¹³⁵ Monks and nuns were deported, and religious newspapers and other media were banned.¹³⁶ During the 1960s, the State and the Vatican worked out an agreement allowing the Church to operate; however, the State had an active function in selecting members of the Roman Catholic Church.¹³⁷ The State also integrated the Protestant Churches, and the Reformed (Calvinist), Unitarian, Lutheran, Greek Orthodox, and Jewish communities were all accommodated by the government.¹³⁸

It was not until 1989 that the communist state in Hungary was abolished and a transition to democracy began.¹³⁹ Shortly thereafter, in 1990, Hungary passed the Law on Religious Freedom which allowed any sect or cult with at least a hundred members to register as a church with full legal rights.¹⁴⁰ Having had only seventeen registered denominations under communist rule, the country soon had hundreds of denominations.¹⁴¹ Seven years later, Hungary ratified a treaty with the Vatican where it agreed to return buildings to the Roman Catholic Church up to values of \$550 million dollars, while offering index-linked payments in compensation for others.¹⁴² To remediate some of the damage caused by banning religious education, Hungary promised the Church's two hundred schools and colleges the opportunity to receive the same subsidies that public schools and colleges received.¹⁴³

In April 2011, Premier Viktor Orbán's center-right government pushed a new constitution, which introduced state promotion of religion by beginning the main passages of the constitution with the words "God bless the Hungarians," and a note recognizing the "role of Christianity in preserving nationhood" and the value of "the various religious traditions of [the] country."¹⁴⁴ Despite these references, Article VII of the constitution protects freedom of conscience and religion, explicitly stating that the "right shall include the freedom to choose or change one's religion or other belief, and the freedom of everyone to manifest, abstain from manifesting, practice or teach his or her religion or other belief through

134. RICHARD S. ESBENSHADE & DEBBIE NEVINS, CULTURES OF THE WORLD: HUNGARY 86 (3d ed. 2016).

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. HERTZKE, *supra* note 21, at 190.

141. *Id.*

142. *Id.*

143. *Id.*

144. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY.

religious acts, rites or otherwise, either individually or jointly with others, either in public or in private life.”¹⁴⁵

Hungary quickly became more regressive afterward when, in July 2011, the government replaced the 1990 Religious Freedom Law with a restrictive law withdrawing recognition from hundreds of associations and churches, only granting incorporation to:

[twenty-seven organizations] . . . including the Catholic Church, a variety of Protestant denominations, a range of Orthodox Christian groups, or other Christian denominations such as The Church of Jesus Christ of Latter-day Saints (Mormons), Seventh-day Adventists, and the Salvation Army, several Jewish groups, and the Hungarian Society for Krishna Consciousness, the sole registered Hindu organization. This figure also includes Buddhist and Muslim umbrella organizations . . . bringing the total number on the registered list of incorporated churches to [thirty-two] individual religious groups.¹⁴⁶

Domestic and international human rights organizations responded with criticism, many turning to the Constitutional Court for protection.¹⁴⁷ On December 19, 2011, the Constitutional Court found that the new religion law violated parliamentary procedure and on that same day, Parliament repealed the law.¹⁴⁸

However, later that month, on December 30, 2011, Parliament adopted a new version of the law.¹⁴⁹ It set the following criteria, among others: a religious organization must show that it has had international operation for at least one hundred years, or in Hungary for at least twenty years; must have one thousand signatures of approval; must have religious activity as its primary aim; and must present a formal statement of faith and rites.¹⁵⁰ Any religious group that receives approval may not violate the Fundamental Law, pose a threat to national security, violate basic human rights (including physical and mental health), or threaten the protection of life and human dignity.¹⁵¹ After the Hungarian Academy of Sciences (MTA) provides an opinion, upon request, as to whether or not applicants met those requirements, Parliament’s Committee for Human Rights and Religious Affairs would then send a legislative proposal to Parliament

145. *Id.* art. VII.

146. U.S. DEP’T OF STATE 2015, *supra* note 128, at 4.

147. U.S. DEP’T OF STATE, HUNGARY 2011 INTERNATIONAL RELIGIOUS FREEDOM REPORT 3 (2011) [hereinafter U.S. DEP’T OF STATE 2011].

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* at 4-5.

recognizing or not recognizing the religious group.¹⁵² In addition, only recognized “churches” (which may include associations other than what are considered to be typical churches) may receive taxpayer donations to pay salaries of the clergy, who are exempt from personal income taxes.¹⁵³

Again, domestic and international individuals and organizations criticized the new law based on anti-discrimination principles and separation of church and state.¹⁵⁴ Many members of the country’s democratic opposition in the 1970s and ‘80s collaborated and wrote to the European Union and the Council of Europe’s human rights commissioners, seeking intervention:¹⁵⁵

Over a dozen signatories [including the Budapest mayor and well-known writers] to the letter requested EU Commissioner Viviane Reding and CoE Commissioner Thomas Hammarberg ‘to take resolute action in defense of freedom of religion and other fundamental liberties that are presently in great danger’ ‘Never before has a Member State of the EU so blatantly dared to go against the principles of freedom of beliefs, equality before the law, and separation of church from state. These are all established fundamental rights in our common Europe’ they . . . wrote.¹⁵⁶

In response to the worldwide pressure and criticism, Parliament recognized more churches, resulting in a total of thirty-one recognized churches from the previous fourteen.¹⁵⁷

In March 2012, the Venice Commission issued an opinion on the law criticizing, *inter alia*, Parliament’s procedure in deciding which religious organizations are to be legally recognized.¹⁵⁸ In 2013, the Hungarian

152. *Id.* at 5.

153. *Id.*; see also Renáta Uitz, *Hungary's New Constitution and Its New Law on Freedom of Religion and Churches: The Return of the Sovereign*, 2012 BYU L. REV. 931, 947 (2012) (“On February 27, 2012, parliament adopted an amendment to the cardinal law on churches, adding another eighteen communities to the list of ‘recognized churches’. On the same day, parliament, in a resolution, refused to recognize the church status of some sixty-six previously registered churches without providing any reasons for the refusal. Some of the eighteen new registered churches clearly do not meet the statutory criteria for church status as they undisputedly did not appear to have 1000 believers in Hungary.”).

154. U.S. DEP’T OF STATE 2011, *supra* note 147, at 4.

155. Stefan J. Bos, *WWRN Hungary Pressured to Revoke Controversial Church Law*, WORLD-WIDE RELIGIOUS NEWS (Aug. 14, 2011), <https://wvrn.org/articles/35946/>.

156. *Id.*

157. FORUM FOR RELIGIOUS FREEDOM, HUNGARY: TWO YEARS AFTER RULING BY ECtHR CHURCH LAW REMAINS UNALTERED 2 (2016), <http://www.osce.org/odhr/268711?download=true>.

158. H. David Baer, Professor, Tex. Lutheran Univ., Testimony Before the U.S. Commission on Security and Cooperation in Europe (Mar. 18, 2013), <https://hungarianspectrum.wordpress.com/2013/03/20/testimony-of-h-david-baer-texan-lutheran-university-for-the-record/> (citing the Venice Commission “the recognition or de-recognition of a religious community (organization) remains fully in the hands of Parliament, which inevitably tends to be more or less based on political considerations. Not only because Parliament as such is hardly able to perform detailed studies related

ombudsman, along with many deregistered religious entities, filed a petition in the Hungarian Constitutional Court.¹⁵⁹ The Court struck down the contentious provisions, finding that all religious entities are equal and may apply through a procedure that takes into account “the rights of due process and legal redress.”¹⁶⁰ However, rather than complying with the Court’s decision, Parliament amended the constitution in March 2013 to allow for its authority in determining which groups may be legally recognized.¹⁶¹

After a series of other repressive government actions,¹⁶² the European Court of Human Rights held the following year that Hungary had violated the European Convention of Human Rights. Again, rather than respecting the Court’s judgment, the government created a new draft that ignored international opinion; however, the new draft failed to garner the necessary votes in Parliament in order to pass. Moreover, Parliament did not take steps to amend the “church” law.

VI. WHY RUSSIAN MINORITIES MAY HAVE BEEN COMPARATIVELY BETTER OFF THAN HUNGARIAN MINORITIES AND POTENTIAL SOLUTIONS

Generally, religious minorities in Russia have been better able to overcome restraints on their religious freedom. On the other hand, religious minorities in Hungary were not able to overcome restraints after a period of broader protection. There are no dispositive reasons as to why this is the case. Both countries’ laws have a pro-Christian bias and place limitations on the freedom of religion. There are various potential reasons why Russian religious minorities were better able to overcome restrictions and Hungarian minorities struggled. Below, I present five main explanations of why Russian minorities may have been able to garner more support than minorities in Hungary.

to the interpretation of the definitions contained in the Act, but also because this procedure does not offer sufficient guarantees for a neutral and impartial application of the Act. . . . Motives of the decisions of the Hungarian Parliament are not public and not grounded. The recognition is taken by a Parliamentary Committee in the form of a law (in case of a positive decision) or a resolution (in case of a negative decision). This cannot be viewed as complying with the standards of due process of law.”).

159. *Id.*

160. *Id.*

161. *Id.*

162. FORUM FOR RELIGIONS FREEDOM, *supra* note 157, at 2 (“In June and September 2013, Parliament amended Act CCVI to create a two-tiered classification consisting of ‘religious communities’ and ‘incorporated churches.’ In September 2013, Parliament also amended the constitution explicitly to grant Parliament the authority to select religious communities for ‘cooperation’ with the state in the service of ‘public interest activities.’”).

First, and what could be drawn most clearly from the case study, Russian religious minorities' actions were somewhat more concerted and focused. They drew attention not only from other religious minorities but from secular institutions and influential people who could place pressure on Parliament. Protestants and Catholics, in particular, collaborated to bring about fundamental change.¹⁶³ As indicated previously, religious minorities already knew how to put aside differences to reach their common social goals. They also created amicable relations with local Orthodox parishes. In Hungary, while influential leaders (such as the ombudsman) took action and the Constitutional Court tried to protect freedom of religion, actions were sporadic and there was not much political pressure from the religious minorities themselves. Compared to Russia, Hungary does not seem to have a similar history of interfaith religious minority collaboration, which may have led to difficulty in developing a strong foundational connection conducive to concerted action.

Second, religious minorities in Russia were, and perhaps still are, able to fare better than similar minorities in Hungary partly because of the differences in the right to freedom of expression. There is an interplay between freedom of speech, or expression more broadly, and religious freedom. At the core of religious freedom is freedom of speech, which includes worship and preaching in various forms.¹⁶⁴ States may prop up interests in public order, national security, and safety that may swallow up the freedom of religion.¹⁶⁵ Once a State begins restricting expression in one area, even totally unrelated to religion, the door is opened to restrict other areas, including freedom of religion.¹⁶⁶ Note, restrictions may come in the form of lack of scrutiny by courts or a change in law, and they may also limit the functions of NGOs. In Hungary, all media is placed directly under government control and this may inhibit freedom of religion.¹⁶⁷ While a comprehensive review of Russia and Hungary's freedom of expression laws is outside the scope of this Note, it is noteworthy that perhaps minority religions may protect more freedom of religion rights by focusing on the protection of freedom of expression.

Third, one explanation may be in the way the courts have garnered legitimacy among the public. For newly-formed democracies, legal institutions called "constitutional courts" have emerged to place checks on potentially corrupt governments. These courts also provide a mechanism

163. HERTZKE, *supra* note 21, at 161.

164. *Id.* at 101.

165. *Id.* at 9.

166. *Id.*

167. INT'L FED'N FOR HUMAN RIGHTS, HUNGARY: DEMOCRACY UNDER THREAT 7 (2016), https://www.fidh.org/IMG/pdf/hungary_democracy_under_threat.pdf.

to allow people to be heard. In Russia, despite the 1993 restrictive law, the Constitutional Court played an important role in interpreting the law less restrictively: “[T]he Constitutional Court is more committed to religious liberty than the legislative branch that passed the [1997] law in the first place.”¹⁶⁸ On the other hand, in Hungary, due to major changes in the constitution and the institutional design¹⁶⁹ of the Constitutional Court, the Court has been undermined. Therefore, there is great potential for executive overreach.¹⁷⁰ This is evident in the 2011 Court opinion referenced in the previous section, where the Court outright insisted that the religious law was unconstitutional, and the Parliament simply ignored the ruling by creating a new law that was arguably even more regressive. Perhaps the greater issue is the ease with which Parliament is able to change constitutional provisions, rather than the circumvention of the Court’s rulings. The rule of law in Hungary is eroding, which has “considerably reduced the ability of individuals and civil society organizations to act to defend their constitutionally guaranteed rights,” including the right to freedom of religion.¹⁷¹

Fourth, civil consciousness levels seem to be higher in Russia than in Hungary. Civil consciousness is generally difficult to quantify and so I use NGO restrictions or levels of involvement as a way to compare the two countries. NGOs work with social issues and place pressure on governments to take into account international treaties and resolutions that have been ratified or signed. They may also draw public attention to particular matters through social media, protests, and lobbying efforts.

In Russia, NGOs were crucial from the beginning when the Soviet Union collapsed, assisting in remedying the welfare gap that plagued the country.¹⁷² “[T]he US and Europe called for stronger global ties and for the growth of transnational actors. These two conditions supported an

168. Wallace L. Daniel & Christopher Marsh, Editorial, *Russia's 1997 Law on Freedom of Conscience in Context and Retrospect*, 49 J. CHURCH & STATE 5, 14 (2007) (“Of course, this is not necessarily bad news, for it mirrors our own development of religious liberty and separation of church and state. The extension of religious liberty in the United States evolved largely out of the Supreme Court’s rulings on a large number of cases involving the violation of religious liberty and a breaching of the wall of separation by police agencies, state legislatures, and the U.S. Congress.”).

169. INT’L FED’N FOR HUMAN RIGHTS, *supra* note 167, at 14 (arguing that part of the issue is that Court procedures changed so that they were only allowed to judge on the merits a small minority of cases and so that majorities in Parliament have a huge advantage over nominations. For example, “in 2014, out of 737 petitions addressed to the Court, only twenty-five were examined on the merit.”).

170. *Id.* at 4 (“[R]eforms weakened independent institutions and eroded democratic checks and balances, by bringing them under government control or emptying them of their prerogatives and hence their capacity to exercise effective control over the executive. As a result, the power balance has been distorted in favor of the executive to the detriment of other established and non-established (e.g. media, NGO) powers.”).

171. *Id.* at 13.

172. Jacqueline Dufalla, *Non-Governmental Organizations in Russia: Adapting for Success*, GEOHISTORY (Aug. 23, 2014), <https://geohistory.today/ngo-russia/>.

influx of NGOs in Russia, and with new reforms, elements of globalization and global civil society followed.”¹⁷³ NGOs were able to play an active part in the formation of a new democratic society.¹⁷⁴ However, some saw NGOs as outsiders, bringing ideas that would improve the West’s geopolitical standing at Russia’s expense.¹⁷⁵ This theory was codified in the Foreign Agent Law, which required NGO registration before receipt of any funding for political activity.¹⁷⁶ Failure to register would result in fines and perhaps closure. In 2012, the law was amended to refer to NGOs as “foreign agents.”¹⁷⁷ Under Putin’s leadership this hostility has continued; NGOs are referenced as threats to Russia’s sovereignty.¹⁷⁸ Many NGOs are under attack and questioned as to whether they are receiving foreign funding or maintaining contact with non-Russian organizations.¹⁷⁹ This law changed the position of NGOs in Russian politics, inciting negative public perceptions.

However, this perception is not universal. In reality, some NGOs were and are still able to thrive by developing local civil society.¹⁸⁰ These NGOs survive because of their pragmatism, avoiding still-contentious issues such as LGBT rights.¹⁸¹ In addition, many socially-oriented NGOs have been able to maintain relations with foreign organizations because “political activity” as defined under the law does not include the promotion of human rights.¹⁸²

Like Russia, in Hungary NGOs played a role in establishing social welfare organizations. The government encouraged this since it did not have the financial capacity to address the plethora of social need.¹⁸³ As NGOs expanded, the government started funding many of their activities, and its desire for control and regulation accordingly increased.¹⁸⁴ In this respect, Hungary differs greatly from Russia since many of the NGOs there received their funding from foreign sources, which translated into less reliance on the government for continued operation. Because of this reliance in Hungary, the government was able to further its chosen ends (providing funding to activities that are church-based, for example).¹⁸⁵ Any

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. See generally S. P. Osborne & A. Kaposvari, *Non-governmental Organizations and the Development of Social Services. Meeting Social Needs in Local Communities in Post-communist Hungary*, 18 PUB. ADMINISTRATION & DEV. 365, 365-80 (1998).

184. *Id.* at 373.

185. INT’L FED’N FOR HUMAN RIGHTS, *supra* note 167, at 38.

group that advances goals that counter government objectives, often organizations dedicated to human rights work and especially those that work toward increasing government transparency, forfeits funding and faces challenges to continue work.¹⁸⁶ In response, NGOs have sought funding from foreign entities, but that has led to an attack by the government through “government denunciation, hostile media campaigns, politically motivated audits and other administrative and criminal procedures and police raids.”¹⁸⁷ Just recently, in March 2017, Parliament sought to introduce legislation to attack foreign-funded NGOs that would require organizations to share how much funding they receive from foreign sources.¹⁸⁸ This law would halt any sort of NGO activity that engages in human rights work since they would likely be unable to receive domestic funding.¹⁸⁹

Further, to get registered, NGOs must “wait [six to eight] months on average . . . and are subject to cumbersome regulations, contrary to the recommendations made by international bodies requiring the procedure to register NGOs be ‘simple, non-onerous and expeditious.’”¹⁹⁰ These initiatives serve as tools for the government to suppress dissent, especially from religious minorities.

It is unclear how minorities in Hungary may protect themselves against what has been called an unprecedented attack on civil society forces.¹⁹¹ NGOs will need to garner more public support. As seen from Russia, NGOs would benefit from increased monitoring of public perception, while furthering a pragmatic agenda that is conscientious of majority preferences. This may withdraw some of the recent political backlash. Further, NGOs should create a way to provide government with the support services it lacks and that it would otherwise outsource. This may include coordination between top level officials and NGO leaders.

Fifth, minority success may be somewhat dependent upon who is in leadership. Under the recent leadership of Putin, it is undeniable that Russia has been regressing into a rigid authoritarian government.¹⁹² This may be true also for Hungary where the right wing has been able to draw back progress to a more democratic state.¹⁹³ Right-wing leaders tend to

186. *Id.*

187. *Id.* at 43.

188. Lili Bayer, *Hungarian Law Targets Soros, Foreign-backed NGOs*, POLITICO (Mar. 3, 2017), <http://www.politico.eu/article/hungary-vs-civil-society/>.

189. *Id.*

190. INT’L FED’N FOR HUMAN RIGHTS, *supra* note 167, at 38.

191. *Id.* at 43.

192. HERTZKE, *supra* note 21, at 162.

193. INT’L FED’N FOR HUMAN RIGHTS, *supra* note 167, at 4 (“Since Prime Minister Viktor Orbán took power in 2010 following the country’s general elections . . . Hungary has undergone a progressive shift away from the principles on which a democratic state is built. Constitutional and

limit NGO involvement while encouraging religious hegemonies to flourish, with power concentrated in the executive at the expense of NGO and overall public power. More democratic candidates tend to encourage a strong civil society with fewer restrictions on people's ability to form groups and express themselves, through religious or nonreligious means.¹⁹⁴ Therefore, minorities may try to place continued pressure; however, due to their weak voting power they may have difficulty.

It is clear that larger community support would greatly benefit Hungarian minorities. In Russia, many of the minorities gathered with secular organizations, academics, scientists, and human rights organizations to call attention to some of the repressive laws and warn of a return to an authoritarian government similar to the USSR. Hungary's minorities are few in number and so there is less of a threat that they may potentially alter any sort of election. It is crucial for Hungarian religious minorities to garner support from all local minorities to increase voting power. Although it will be hard to garner the support of hegemonic religions, it will be vital for them to have a larger presence to mobilize. Perhaps the best way to do so is to appeal to secular entities on the basis of limitations to freedom of expression, particularly to gain support for deregulation of media outlets which would provide an avenue to change the negative perception of NGOs and hold the government accountable for some of its actions. Another method could be in developing stronger ties and forming common ground with other religions through civic engagement and interfaith project initiatives. These efforts will be especially crucial for placing pressure on politicians and demanding responsiveness.

VII. CONCLUSION

After the collapse of their communist regimes, the new governments in Russia and Hungary brought hope for non-discrimination between religious majorities and minorities. During the first years of the transition, this hope translated into laws that provided for broad protection. However, these protections were soon limited by the state, whether for national security or because of a concern for the health and well-being of other citizens. Russian minorities were able to overcome the pressure from the hegemonic religion and fight back against an increasingly oppressive

other legislative reforms implemented since 2010 have threatened democratic principles, the rule of law and human rights in the country.”).

194. Dufalla, *supra* note 172 (“For instance, the LGBT movement in the USSR noticeably began in the 1980s and developed further under the liberal rule of Boris Yeltsin [T]here was great optimism for LGBT rights. At first, domestic LGBT activists successfully campaigned for the decriminalization of homosexuality under Russian law. They backed Yeltsin and garnered some support from him.”).

country. Unfortunately, in Hungary, that was not the case and we have yet to see what the response may be.

Russia fared better for five reasons: (1) Russian minorities had built common ground with each other through civic engagement, which made cooperation and concerted action easier; (2) Russia may have greater protection for freedom of expression; (3) Russian courts may have garnered greater legitimacy in the eyes of the public; (4) civil consciousness levels seem to be higher in Russia than in Hungary; and (5) Russian leadership was more responsive at the time.

Hungarian minorities will have to appeal to a larger majority to garner voting power and mobilize their interests. They may be able to do this by basing their appeal on the advancement of structural changes to remedy freedom of expression infringement. In conjunction, religious minorities may find common ground through inter-faith initiatives based on non-religious grounds. Secondly, NGOs would fare better in advancing the protection of human rights by taking a pragmatic approach, while focusing their attention on welfare production. This may diffuse some of the current negative public perception and garner greater support. If NGOs use funding for welfare production, the government may begin to rely on NGOs and feel less threatened. A more amicable relationship between NGOs and government will create a better environment for NGOs to advance the interest of religious freedom without political backlash.

Returning to the larger theoretical question of whether human rights law matters, Beth Simmons' theory appears more reflective of what occurred in Russia and Hungary. The ICCPR, the UN resolutions, and the countries' constitutions are vague. It is true that the government, depending on leadership, abused the vague language in treaties in the name of preserving the peace and well-being of the nation. However, once the countries signed and/or ratified the international instruments, moral bases for the countries were established. Although the arguments made by individuals and organizations, both domestic and international, did not solely rest on the duties international instruments imposed, their arguments were based on the moral underpinnings of the international instruments.¹⁹⁵ Domestically, the public held their governments accountable by making demands. Hungary's downfall is that the religious minorities did not generate focused, concerted action in order to produce consistent favorable outcomes. But, referring back to the Hungarian 2011 law that sought to deregister many religious entities, domestic and international individuals and organizations criticized the new law based on anti-discrimination principles and separation of church and State – the

195. HERTZKE, *supra* note 21, at 167-71 (explaining that when the State Duma approved the February 2010 bill, there was great dissent based on its conflict with international norms).

philosophical bases of the international instruments.¹⁹⁶ The country's democratic opposition collaborated and wrote to the European Union and the Council of Europe's human rights commissioners, seeking intervention. In response, Parliament recognized more churches.¹⁹⁷ This simple example demonstrates that while the international instruments may not have force on their own, there is great potential for the treaties to have a large impact depending on whether there is enough focused and concerted action by those seeking to enforce their terms and define their meaning within society.

196. U.S. DEPT OF STATE 2011, *supra* note 147, at 4.

197. FORUM FOR RELIGIOUS FREEDOM, *supra* note 157, at 2.

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