

1972

Nonconformity in the Law of Socialist States

Dietrich A. Loeber
University of Kiel

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

Recommended Citation

Dietrich Andre Loeber, Nonconformity in the Law of Socialist States, 24 S. C. L. Rev. 27 (1971).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact digres@mailbox.sc.edu.

NONCONFORMITY IN THE LAW OF SOCIALIST STATES

Professor Dietrich Andre Loeber*

Before I came to Columbia, I read in the last issue of the *South Carolina Law Review* a comment on student hair styles. It analyzed a number of recent cases decided in federal courts. The legal issue was whether school regulations requiring closely shorn locks should be upheld, or whether they violate constitutional rights.¹ Proceeding from the assumption that student hair styles may be an expression of nonconformity, and realizing that hair styles may have a legal aspect, as we see, I started looking for pertinent Soviet cases. I checked the published collections of Soviet court decisions. But I have to report to you that I found not a single case on hair styles in the Soviet Union. All I did come across was a statement by the Soviet Russian Minister for Safeguarding Public Order, made in 1966. This is what he had to say:

"All petty hooligans, regardless of their hair styles, will have their hair cut off; since we cannot increase our establishment of hairdressers, we shall do it on a voluntary basis, so to say: the hooligans will cut each other's hair."²

This makes, I submit, for a "contrast in today's world," as the subtitle of our conference reads. To analyze this contrast, I propose first to define our subject, that is to find out what we understand by "nonconformity in the law."

DEFINING NONCONFORMITY IN THE LAW

Nonconformity is not a legal term. It is probably borrowed from the language of political scientists. But this is not an obstacle to approach it from a legal point of view. In doing so, we may distinguish between various types of nonconformity.

*LOEBER, Dietrich André. Born 1923 in Riga, Latvia. Dr. Jur. (University of Marburg), M.A. (Columbia University), Professor of Law at the University of Kiel and Cooperating Professor of the Stanford Law School.

1. Comment, *The Barber and The Board: Constitutional Aspects of Administrative Regulation of a Student's Hairstyle*, 23 S.C. L. REV. 150 (1971).

2. Radio Moscow, August 1, 1966. Translated in Z. ZILE, *IDEAS AND FORCES IN SOVIET LEGAL HISTORY* 423 (2nd ed. 1970).

The first distinction is one of *degree*. You can have mere criticism; the next step may be dissent; it can grow into opposition. There are various *ways and means to express* nonconformity. It could be internal, or be public; it could be spontaneous, or organized; it could be in accordance with the law in effect, or in violation of the law. And very importantly, nonconformity can be peaceful, or violent. We should furthermore distinguish various *areas* of nonconformity; the political field; national relations; labor relations; or social relations in the broad sense including the moral attitudes or even the world of fashions and hair styles.

As far as the socialist countries are concerned, there are at least two more fields where nonconformity finds some expression. The first one is science, literature, and art; this is so because the Communist Party claims the right to direct science, literature, and art. Another area is religion; this is to be explained by the anti-religious character of the Communist Party; a churchgoing Party member is, by necessity, a nonconformist.

MEASURES TO COMBAT NONCONFORMITY

Those in power combat nonconformity. There are various means and ways to do this. First, the rulers may take *administrative measures*. Secondly, *disciplinary sanctions* can be applied. And finally we have *judicial sanctions*, mainly criminal trials or measures applied against “insanes”. The weight, the frequency and the deterrent effect of these measures vary, depending on the economic and social system in question. For instance: if a government is practically the only employer in the country—as the Soviet government—it is relatively easy to effectively apply disciplinary sanctions.

Administrative and disciplinary measures have usually an internal character. They are not publicized widely, whereas judicial sanctions like criminal trials catch the attention of the public. It is fair to say, therefore, that the struggle against nonconformity is led in an iceberg fashion. We see but a small portion of the many manifestations of nonconformity and of the struggle against it.

In the Soviet Union many political anecdotes are attributed to Radio Erevan in Soviet Armenia. According to one

anecdote a listener asks Radio Erevan: "Wouldn't it be the simplest way to dispose of all of the dissidents by putting them into jail?" Radio Erevan answers: "In principle, yes; but who is going to do then the work in the factories and on the farms?"

There is some truth to this anecdote: the regime in power is reluctant to apply criminal sanctions; it prefers that part of the iceberg which remains under the water: it uses more frequently administrative and disciplinary measures.

1. *Administrative and Disciplinary Measures.* To illustrate my point let us take, as an example, the field of mass communications — publication of books, radio, TV and films. In the Soviet Union all these activities are in the hands of state owned enterprises. They operate under the guidance of the Party and are run by State committees — the Committee on the Press, the Committee on Films, the Committee on Radio and TV. The committees have *organizational power*. They decide whether a publishing house should be established, or whether it should be liquidated. They exercise also *economic power*: the enterprises work in accordance with a plan, and the plan has to be approved by superior agencies. The supervisory agencies have, moreover, *financial power*; the assets of the enterprises, e.g., of the publishing houses, are assigned to them by the superior agency. At the end of the planning year, the assets may be redistributed. Finally, the superior agency has the *power to hire and to fire*. The director of a publishing house is appointed by the Committee of the Press, and the director of a film studio is hired by the Committee on Films. The director would be well advised to be on good terms with his boss in the Committee.

This network of subordination provides ample opportunities for administrative regulation and for applying disciplinary sanction. They can be used as instruments to cope with nonconformity.³ They are likely to be efficient since the State enjoys an almost-monopoly position as an employer.

In addition, Communist Party discipline acts as a check against nonconformists. According to the Rules of the Com-

3. D. LOEBER, ADMINISTRATION OF CULTURE IN SOVIET LATVIA. DIRECTION OF LITERATURE AND THE ARTS IN THE MIRROR OF THE WRITTEN LAW, IN: RES BALTICA 133-146 (Leiden, 1968).

munist Party of the Soviet Union⁴ “a high degree of conscious discipline” is the “inviolable law” of the Party. “All manifestations of factionalism and group activities” are outlawed since 1921.

Discipline is also enforced among students. In Soviet universities students “must conduct themselves in a disciplined manner, . . . and they must maintain a proper appearance”. When the teacher enters the classroom the students must stand. For disciplinary offenses disciplinary penalties can be decreed, ranging from “admonition” to “expulsion.”⁵

2. *Criminal Sanctions.* If administrative and disciplinary measures are not available or fail, the state resorts to criminal sanctions. A number of acts typically committed by nonconformists entail criminal liability. This applies in the first place to the political area, but extends also to such fields as literature and the arts and even to religious activities. Let us review some manifestations of nonconformity and how it is treated in the law of socialist countries.

MANIFESTATIONS OF NONCONFORMITY

1. *Political Field.* “Participation in an anti-Soviet organization” is an “Especially dangerous crime against the state” in the Soviet Union (RSFSR Criminal Code Art. 72).⁶ The same holds true of “Anti-Soviet agitation and propaganda.” This term includes “circulating or preparing or keeping . . . literature” containing “slandorous fabrications which defame the Soviet state and social system” if this is done “for the purpose of . . . weakening Soviet authority.” It may be punished by deprivation of freedom up to 7 years (Art. 70). Any “organizational activities directed toward the preparation for or commission of” such acts is likewise an “Especially dangerous crime . . .” carrying the same punishment (Art. 72). These provisions make it sufficiently clear that there is no room for organized opposition in the Soviet Union; it is not protected under Soviet law.

4. Translated in: J. HAZARD, SOVIET SYSTEM OF GOVERNMENT 242-57 (4th ed. 1968).

5. Model Rules for the Internal Regulation of Colleges (Approved by the Minister of Higher Education of the USSR November 21, 1961) §§ 41, 43, 45.

6. CRIMINAL CODE OF THE RSFSR OF 1960 (Translated in: 1 SOVIET STATUTES AND DECISIONS No. 1 [Fall 1964]).

A demonstrator in Moscow's Pushkin Square who demanded a revision of Art. 70 of the Criminal Code (just quoted) and who protested the arrest of some young writers was tried and sentenced in 1967 to 3 years in a hard labor camp.⁷ If a group of students would block a draft board in the Soviet Union, as it happens here in this country, and thus obstruct the "normal work of a state institution" they may be indicted for "wrecking," provided the act was committed "for the purpose of weakening the Soviet state."⁸

In the German Democratic Republic (GDR) it is a crime to "establish contacts with organizations . . . or individuals whose aims are opposed to the State system in the GDR."⁹ It carries a punishment of imprisonment of up to 3 years. In Romania you may be sent to prison up to 6 months for joining "groups which, by their mode of living, express a parasitic or anarchic Life conception."¹⁰ Thus, to live a hippy-life may be, in itself, a criminal act in Romania.

The latitude of permitted nonconformity is broader in Yugoslavia. The system of self-management reduces the area of centrally guided administrative measures. But there is still room for disciplinary sanctions, among others because the Communist Party is the only party in Yugoslavia. You may recall also the criminal cases against Djilas.¹¹

2. *Literature and Art.* The statute on "Anti-Soviet agitation" (quoted above) was applied in the well-known case of Siniavskii and Daniel. These two Soviet writers chose to publish some novels anonymously abroad. Their works implied criticism of the Soviet system. Siniavskii and Daniel were arrested and brought to court in 1966. One of the legal issues was whether they committed the act "for the purpose

7. Trial of Vladimir Bukovskii. Final Trial Statement of September 1, 1967 by V. Bukovskii translated in: 17 PROBLEMS OF COMMUNISM 32-35 (No. 4 July - August 1968). Reprinted in: IN QUEST OF JUSTICE. PROTEST AND DISSENT IN THE SOVIET UNION TODAY (A. Brumberg ed. New York, 1970).

8. CRIMINAL CODE OF THE RSFSR of 1960, note 6 *supra*, Art. 69.

9. CRIMINAL CODE OF THE GDR of 1968 Art. 219 (translated in: LAW AND LEGISLATION IN THE GDR No. 2 [1968]).

10. Decree on Punishing Violations of the Rules of Social Cohabitation of March 24, 1970 Art. 1 (translated in: D. Loeber, Law of the Socialist States in Europe and Asia 241-44 [Stanford, 1971]).

11. The Case of Djilas, BULLETIN OF THE INTERNATIONAL COMMISSION OF JURISTS, No. 7 (1957) and No. 14 (1962).

of . . . weakening Soviet authority.” Both accused were found to have had this intent and were convicted to 7 and 5 years of hard labor camp respectively.¹² The Soviet leadership, apparently, had some second thoughts about the case which stirred up public opinion widely in-and outside of the Soviet Union. A new criminal statute was enacted soon after this case; it makes it a crime to circulate “falsehoods derogatory to the Soviet state and social system,” regardless of intent.¹³

There is a similar provision in the statute books of the GDR.¹⁴ In addition the GDR punishes a person who “publicly defames” the state order or “publicly brings into contempt” some “measures” of the state. He may be imprisoned for such act up to 2 years. “The same penalty applies to a person who publicly voices statements of a fascist or military nature.”¹⁵

In Poland two young scholars, Kuron and Modzelewski, analyzed the Polish economic and social system critically from Marxist positions. The document they wrote was seized and led to their arrest. Kuron and Modzelewski were sentenced in 1965 to serve 3 years in prison.¹⁶

3. *Religious Activities.* Professing a religion may be, as I said, an expression of nonconformity in a socialist country. A certain amount of this nonconformity, however, is officially tolerated. To keep it under control a tight scheme of administrative measures has been devised in the Soviet Union. A few examples will show its range:

A group of believers wishing to form a parish (called a “religious association” in Soviet administrative terminology) has to register it with the government. The competent

12. On Trial. The Soviet State Versus “Abram Tertz” and “Nikolai Arzhak” VI, 183 pp. (M. Hayward ed. 1966) (Transcript of the trial against Siniavskii and Daniel).

13. CRIMINAL CODE OF THE RSFSR OF 1960 Art. 190-1. This provision has been added to the Code by EDICT OF THE RSFSR OF SEPTEMBER 16, 1966 (Translated in: ZILE *supra* note 2 at 439-40 J. HAZARD *et al.*, THE SOVIET LEGAL SYSTEM 88-89 [2d ed. 1969]).

14. CRIMINAL CODE OF THE GDR OF 1968 (*supra* note 9) Art. 106.

15. *Id.* at Art. 220.

16. Revolutionary Marxist Students in Poland Speak Out. J. KURON AND K. MODZELEWSKI, AN OPEN LETTER TO COMMUNIST PARTY MEMBERS, 96 pp. (New York, 2nd Printing, 1969).

state agency may refuse registration. The election of members to the parish board similarly requires government approval. The state agency enjoys a right of veto; it may decline somebody already elected. If the parish wants to use a church building it has to apply to the state because buildings have been nationalized and all churches are state property. The same applies to "cult objects," such as vessels. If the state agency agrees with the requested use it concludes a contract of lease with the parish. No person is allowed to leave property to the church in a will, because the church is not supposed to own property.

The church is barred from engaging in economic activities. Even charitable work is not allowed; it is said to be beyond the only permitted religious activity which is the "practice of the cult," the performance of religious rites.

The church in the Soviet Union is not free to conduct "religious propaganda." This ban rules out religious instruction. Thus a parish is prevented from organizing circles of children for the purpose of Biblical instruction. But there is, on the other hand, "freedom of anti-religious propaganda"; it is guaranteed in the Soviet Constitution.¹⁷

All of this regimentation shows the extent to which the church is dependent administratively on the state. It illustrates my thesis that administrative measures can be used effectively to combat nonconformity in a Soviet-type society.

Discrimination of believers has no foundation in Soviet law. Nevertheless, a believer may be passed over when his promotion is due, for instance. Criminal sanctions for religious activities are the exception rather than the rule; but the Soviet press has reported a number of such cases in recent years.

Yugoslavia provides a contrast in her methods to overcome religion. It permits religious life within relatively liberal limits and tolerates "religious instruction."¹⁸ Yugo-

17. D. Loeber, *The Legal Position of the Church in the Soviet Union*, 9 STUDIES ON THE SOVIET UNION No. 2 pp. 16-50 (1969) (with further references).

18. CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA OF 1963 Art. 46; BASIC LAW ON THE LEGAL STATUS OF RELIGIOUS COMMUNITIES OF 1965 Art. 4 (translated in: COLLECTION OF YUGOSLAV LAWS, Vol. 15 [Belograd, 1967]).

slavia is the only socialist country which held formal discussions with the Holy See.¹⁹

4. *National Self-Determination.* The Soviet Union is a multi-national state, but it is guided by a centralist communist Party. There is evidence of strong national sentiments in the Ukraine, in the Baltic States, in the Caucasus and in Soviet Central Asia. The problem of formerly persecuted minorities, like the Crimean Tatars, remains to be sensitive. Asserting national rights may, thus, easily become a potential form of opposition. The national issue provides a natural basis for nonconformity, in particular if the national movement joins forces with the democratic movement.

Yugoslavia is a multinational state, too. She inherited deep seated nationality problems from the past. The present status has been characterized by this enumeration: Yugoslavia has seven neighbors, six republics, five nations, four languages, three religions, two alphabets, but only one party.

The Soviet Union and Yugoslavia differ with regard to the way they handle national problems administratively. The domestic passport is one example. The Soviet passport records the ethnic nationality of the holder of the document, whereas a Yugoslav citizen is guaranteed the freedom to declare or not to declare "which nationality he belongs to."²⁰ This difference is of practical importance. Soviet citizens are supposed to carry their domestic passports with them. The information on the ethnic nationality may be relevant in their dealings with government officials. A citizen is not permitted to change his ethnic nationality at will; it is inherited.

5. *Labor Relations.* The channels for voicing nonconformity in the field of labor relations are strictly regulated in the Soviet Union. Individual grievances are decided in a labor dispute procedure. If there are collective grievances the case is taken up by the trade union. But a trade union in the Soviet Union has a different function from its counterpart in the U.S.A. It is entrusted with the task of encouraging labor discipline and plan fulfillment. The Soviet trade unions

19. Protocol of June 25, 1966 (translated in: COLLECTION OF YUGOSLAV LAWS, Vol. 15 pp. 84-86 [Beograd, 1967]).

20. CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA OF 1963 Art. 41.

operate in a sense like a Ministry of Labor.²¹ Thus, there is no room for strikes in Soviet law. In fact, however, some strikes did occur; they were mostly of local significance. We can draw a parallel here to governmental employees in this country. They, too, are denied the right to strike.

In Yugoslavia strikes are called "work stoppages." The Communist Party faced this manifestation of nonconformity straightforwardly and conceded "that the causes of conflicting situations and stoppages of work . . . are a reality" at present in Yugoslavia. The Party Presidency called "for more resolute ideological-political and social action by "Communists" to eliminate the causes of work stoppages.²²

CONCLUDING QUESTIONS

The material I presented invites several questions:

1. Has the struggle against nonconformity proven to be effective in the socialist countries? There seems to be enough evidence to answer affirmatively. This at least was true in the Soviet Union until about 1966. In that year Siniavskii and Daniel, the two writers mentioned above, were tried and sentenced. A certain section of the Soviet population considered the judgment to be unjust and alarming. A few citizens started openly to protest. The wave of protests continued when further such cases were tried and when dissenters were sent to insane asylums. Those who were courageous enough to come out in public to defend the cause of "nonconformity" were ready to sacrifice their professional career and frequently also their freedom. For them administrative and disciplinary measures ceased to be effective.

2. How does a system of the Soviet type compare with other social systems as far as nonconformity is concerned? Observers from the West are likely to see the narrow margin allowed for nonconformity in the Soviet Union. Party members are under an obligation there "to advance the scientific ideology of communism" and "to combat manifestations of

21. Hazard, *supra* note 4 at 195; D. Loeber, 18 AMERICAN JOURNAL OF COMPARATIVE LAW 668-69 (1970).

22. *Presidency of the League of Communists. Conclusions on Conflicting Situations in Work Organizations* (of 1969), SOCIALIST THOUGHT AND PRACTICE (Beograd) No. 38 pp. 104-10 (1970).

bourgeois ideology and morality.”²³ The communist demand for conformity rules out any kind of organized opposition as well as most cases of public dissent and of sensitive criticism, no matter whether it is expressed violently or peacefully. The area of enforced conformity stretches from politics into science, literature and art as well as into such fields as religion, national and labor relations. Among the instruments to fight nonconformity administrative and disciplinary measures stand out in a Soviet-type society. They can be used more easily and effectively than in a system based on private property, competition and private initiative.

At the same time we should be aware of the fact that countries of the Soviet type are not the only ones in the world which tend to enforce political conformity rigidly. There are other such states, e.g. Greece, while Yugoslavia — a socialist country — is relatively liberal. Thus the degree of permitted nonconformity is not necessarily related to the ownership of the means of production.

3. To what extent can we draw parallels between nonconformity within a state and nonconformity on an international level? It can be argued that the Soviet interventions in Hungary, 1956, and in Czechoslovakia, 1968, were efforts to enforce conformity.

4. Finally it may be asked whether and how a system of the Soviet type is able to meet the challenges of our century, such as raising the level of education, the enormous increase in the volume of information and — most importantly — the spectacular advances in science and technology. Does a closed system tending to enforce conformity provide the proper answer or is a society permitting nonconformity better equipped to cope with the problems? This is such a complex question that I have to leave it with you.

Thank you !

23. THE PROGRAMME OF THE COMMUNIST PARTY OF THE SOVIET UNION (of 1961) pp. 80-81 (London, 1961).