

Letter to Friend No. 3 [1977]

Dear friend,

thank you very much for your letter. I read it with great concern and I must confess it inspired me again. If I were to respond to everything I found in your last letter (as in all preceding ones), I would have to write probably a small book. Therefore I shall chose only something. You have doubts whether it is at all possible to joint in one law system the ideological monopole of Marxism-Leninism in cultural policy and education guaranteed by our Constitution (Constitution of CSSR, part 16, par. 1) and the freedom of thought, conscience and religion, as well as the freedom of religious and moral education of children according to the conviction of their parents as it is guaranteed by General Declaration and particularly by International pacts which became Czechoslovak statutes and a part of our law system (strictly speaking: three months after the ratification papers were filled with the General Secretary of UN). I am not a lawyer and so I shall explain my opinion only as a layman. However, I know there is an old principle saying that a new statute functions as interpretation and limit of older statutes. In other words: the older bills existing until now cannot be any more interpreted in such way which would encroach upon or contradict the obligatory character of new bills. Thus it is impossible to interpret any law or even Constitution of CSSR in contradiction to those two International pacts. If it still came out that texts of some laws quite obviously contradict new bills (e.g. both pacts) then they need to be corrected or replaced. This is our state obliged to do due to the ratification of both pacts. For example, article 2., par. 2. of the International pact about civil and political rights says: "Every state which is a part of the Treaty is obliged, unless it is set down by already existing legislative or other measures, to take necessary steps in keeping with it's own legislative procedure as well as with the enactments of this Pact in order to pass laws necessary for the application of laws acknowledged by the Pact." These rights may become a subject to certain limitations which must be set down and this can be done "only if it is compatible with character of these rights and solely in order to support common prosperity in democratic society" (International Pact about economic, social and cultural rights, article 4.). Nevertheless, it is impossible to deviate from some articles even in exceptional situations, e.g. from article 18. of the International Pact about civil and political rights, you quote in your letter (see art. 4., par.2.). That means our state is obliged to respect fully the right of freedom of thought, conscience and religion: "This right includes freedom to profess or accept religion or belief according to one's own will and freedom to express this religion or belief alone or with others, privately or publicly, in form of religious acts, divine service, rituals or teaching." Paragraph 3. of the same article (18) then reminds that "freedom to express religion or belief may be subject only to the limits set by law and necessary for protection of public security, order, health or morals or other basic rights and liberties."

Our laws, particularly those lately accepted, thus secure freedom to express publicly religion or belief (this formulation is important as it can be claimed also by those Christians who do not consider Christianity as religion and on the contrary consider belief as something refusing and resisting any religiousness), also by teaching children or adults. This freedom is only a special case of freedom of expression; the right of freedom of expression includes (art.19., par.2., International Pact about civil and political rights) "freedom to seek, accept and propagate information and ideas of all kind, disregarding the frontiers, verbally, in writing or by press, through art or by any other means according to one's own choice." That means e.g. that a Christian poet, writer, painter or sculptor, composer or musician, actor, singer etc., but also a scientist,

philosopher and theologian, i.e. a layman as a parson has not only right to partake as everyone else in cultural life (art. 15., par.1., International Pact economic, social and cultural rights), but also has right to express his belief and to propagate - by means of his art, scientific work or philosophic (and of course theological) studies Christian ideas and information about Christianity according to his own choice including education of children and adults. And parents have a right to secure religious and moral education of their children according to their own conviction (art.18., par.4., International Pact about civil and political rights, compare also art.13., par. 3., International pact about economic and cultural rights). This proves your question how to tune all this with article 16., par.1. of the Constitution of CSSR fully justified and completely understandable.

Strictly speaking, however, the mentioned article does not speak about the citizens duty to see to it that all cultural policy in CSSR, upbringing and education are carried out" in the spirit of scientific world-view, Marxism-Leninism", although other parts of the Constitution directly speak about the duties of citizens and organizations. The text only states apparent fact: reality appears to be as it is described here. Lawyers might say it is only formality with no legal weight. Let us leave the question of form aside. It is still indisputable that the text of article 16., par.1. of the constitution of CSSR is no longer possible to interpret in such way that it would contradict both Pacts. That means if Federal Assembly agreed with the text, if President ratified both Pacts and if no party yet objected to ratification, then any interpretation of the mentioned article which would contradict the text of the Pacts, which would interfere with or even weaken some of their articles, would have to be considered as lawlessness and as violation of socialistic law. And if this is the case, then it must be revealed by General body of prosecutors as contradictory to a constitutional or other law of the Federal Assembly. And if there is a case of action or decision taken by an organization limiting or otherwise violating the mentioned citizens' rights given by the pacts, everybody is entitled to ask the prosecutor for revision of such action or decision. The prosecutor is obliged to take such claim into account and to let the claimant know about his decision as well as to give him the reasons. The request or claim must be settled in two months' time (Bill concerning Prosecution from 20 March, 1970).

In other words: interpreting article 16., par.1. and article 24., par, 3. of Czechoslovak Constitution as if parents or members of a church, whether layman or clerics, were not entitled to teach, educate and bring up their children according to their conviction or belief, privately and publicly, as a part of divine service or outside the service, at schools, in chorus or parsonage or in families! as if church or religious societies did not have right to teach and educate also their adult members, whether as a part of divine service or outside the service, in the spirit of religion, belief or any other conviction if they wish so and if they take part in this education voluntarily; as if church could not organize courses e.g. for young people under 18 or Christian brigades of any kind; as if pedagogical schools and institutes (not speaking about secondary schools and universities in general) should not be accepting young people of other than strictly Marxist-Leninist orientation or as if teacher-christians (or just non-marxist-leninist teachers) should not teach at state and public schools or as if they were obliged to hide their conviction and pretend they were Marxist-Leninist; interpreting the mentioned articles as if Christian art (or just any other art than that inspired by Marxism-Leninism) did not have right to exist, to be published and distributed; as if religious (or just non-marxist-leninist) scientists or philosophers did not have right to publish their works unless these were absolutely cleared of every trace of their Christian belief or just any other orientation than Marxist-Leninist

orientation; as if Christians or just in other ways thinking personalities were not to be given place in radio or television broadcasting, newspapers and magazines; as if mass communication media were to be on disposal only for Marxist-Leninist etc., etc. such interpretation is incorrect, lawless, it leads to violation of rights and liberties our state is obliged to observe. And as such, this interpretation must be patiently and concretely revealed, pointed at and the damages it causes must be remedied on the basis of citizens' initiative and in collaboration with social organizations (which themselves need many amendments) and also with prosecutors. This will cost a lot of work and will certainly cause various misunderstatement as these false interpretations of our laws have become, particularly lately, deeply rooted in various organs and organizations and on various levels.

With best regards

Ladislav Hejránek

Prague, 24 Feb., 1977