

Honorable and Distinguished Guests, Dear Colleagues and Participants of this Symposium on International law and religion.

When I first read this year's Symposium topic; 'Connecting communities of discourse: How the Judiciary, Academia, Government and International Institutions further the work of Religious Freedom,' I had to think about the actual situation in Albania and whether there has been any progress in respect of the freedom of religion.

In answer to this question, I would like to share with you today some of the legal issues that are currently part of the legal debate in Albania:

1. The status of religious liberty in Albania;
2. The relations between the Albanian State and religions in Albania, with a focus on the issues of state control, and state assistance and mutual collaboration.

To begin, let me try to give you a little information, based on my involvement in these issues in Albania, on the history and legal basis which form the actual situation and give rise to the main questions concerning how we can better implement human rights in my country.

A poet in Albania once said, "the Religion of Albanians is Albanianism." (From the Poem "Moj Shqypni e mjera Shqypni," 1880 – "Albania poor you Albania" – Pashko VASA). You might have heard during my colleague's speech that the principles and characteristics of religious liberty in Albania have been established as a result of the historical currents in Albania throughout the years. Therefore, I will briefly mention some of those currents which form these characteristics.

Albania was first declared an independent state in 1912. Prior to that time, Albania had been, for nearly four and a half centuries, under occupation by the Ottoman Empire. During this occupation, the Ottomans forced Albanians to convert to the Islamic religion. Only some Albanians, especially in the north, stuck to their original Catholic belief, given the high authority of "Leke Dukagjini's Cannune", a special and unique code of Albania in that time. Besides these conversions and resistance, there have always been three or four main religions in Albania (Muslim, Catholic, Orthodox, Bektashi) and the different divisions of these faiths.

In 1912, after Albania proclaimed its independence, the state declared that there was no official belief in Albania.

In addition, following World War I, the Lushnja Congress Government in place at the time re-declared the independence of religious communities from state authority in Albania. Notwithstanding the frequent changes in governments in Albania between 1920 and 1925 (which included 12 prime ministers beginning with Sulejman Bej Delivina, through Ilias Bej Vrioni), some progress in the free exercise of religion was made.

The progress was reflected in the documented separation of the religious communities from the state at that time, the history of the free exercise of religious belief (even though it included 3 different belief systems, including Muslim, Catholic and Orthodox), as well as the enactment of some state acts to establish principles for the organization and supervision of religious communities.

The aforementioned acts obliged religious communities to establish their own by-laws, or statutes, to create an independent organization. (Nevertheless, the Catholics in Albania remained dependent on the Vatican Church.)

Further progress was made during the monarchy of King Ahmet Zog from 1925 – 1939. It respected the beliefs of the population, and also created a legal state basis for regulation of the establishment and organization of religious communities in Albania – Law on Religious Communities in Albania 1929 Act.

Allow me to now jump to the communist regime, which totally changed the religious situation in Albania. The first communist constitution in 1946 proclaimed the separation of the state from religious communities, and allowed religions to self-regulate their internal affairs. In addition, it allowed the state to give financial assistance to religious communities.

By contrast, in 1976 the second constitution of the Socialist People's Republic of Albania affirmed the state's 1967 policy against all religious beliefs. By that time, many cult objects had been destroyed and no one was permitted any longer to practice his own religion.

It was not until 1991, with the adoption of Albania's new, fundamental constitutional principles, that the recognition of religious liberty was re-affirmed. Thus, the constitutional principles adopted on April 29, 1992 provided in Article 7 ("Secular State") that: (1) The Republic of Albania is a secular state; and (2) The state observes the freedom of religious belief and creates conditions to exercise it.

Despite the communist period, everything that Albania has gone through in its history has given rise to a very good state of tolerance and religious harmony in Albania. I will not enter into deeper analysis of the aforementioned 1991 constitutional provisions, for I now would like to give you the current principles governing human rights in the Albanian constitution approved in 1998.

Freedom of religion is protected under Albania's current constitution, particularly by means of articles 3, 9, 10, 18, 24 and 167.

I will address Article 10 separately in a moment. Together, these provisions form the basis for religious coexistence (3); the prohibition of the religious hatred (9); non-discrimination based on one's religious or philosophical beliefs (18); freedom to choose or to change ones' religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals (24). Likewise, Article 24 affirms the right of all citizens to take part or not in a religious community or in religious practices or to make his beliefs or faith public.

These past 2 days and a half, we have been privileged to hear many good speeches by the distinguished speakers. Ms. Marie Claire Simone provided details from the practice of the European Court of Human Rights in Strasbourg. She identified the Court's three criteria for fair implementation of human rights – legitimate aim, reasonable means, and proportional measures and necessity. With these principles in mind, I would like now to describe the legal basis for the establishment of a religious community in Albania and the latest developments in this respect.

Article 10, of the Albanian Constitution (1998) provides that:

"In the Republic of Albania there is no official religion. The state is neutral in questions of belief and conscience, and also, it guarantees the freedom of their expression in public life. The state recognizes the equality of religious communities. The state and the religious communities mutually respect the independence of one another and work together for the good of each of them and for all."

Further, it provides that: *"(5) Relations between the state and religious communities are regulated on the basis of agreements entered into between their representatives and the Council of Ministers. These agreements are ratified by the Assembly."*

Religious communities are juridical persons. They have independence in the administration of their properties according to their principles, rules and canons, to the extent that interests of third parties are not infringed.”

These paragraphs have raised a very deep debate over many years regarding the means of establishing religious communities; and the relations between those communities and the state.

The establishment of religious communities:

As noted above, the constitution provides that religious communities are judicial persons. Therefore, it has been concluded that the registration of a religious community, giving it its own legal personality, is required. This registration also provides the possibility to acquire other rights and duties within the Albanian community and relative to the state, such as begin able to obtain long-stay permissions, labor permissions, performance of activity, tax registration, etc.

But for years the legislation in Albania did not give any details concerning how these judicial persons should be organized. Through years of judicial decisions and practice, it has been determined that religious communities must be established in the form of judicial persons which have a non-benefit or non-profit mission, and whose activity is conducted in an independent manner and without being influenced by the state.

In compliance with the law no. 8788 dated May 7, 2001, religious communities are now formed and treated by state organizations as a form of non-governmental organization.

According to this law, religious communities must organize as either a form of association, or foundation, or center to be funded in Albania. This law regulates issues related to establishment, registration, activities, transformation, merger, interruption of activity, or dissolution.

It is up to the religious community that needs to register in Albania, to choose one of these forms. Foundations and centers are NGOs without membership created by one or more persons or by testament, while associations are NGOs with membership, established by the free will of at least five physical persons or two juridical entities, i.e. persons created by law, such as NGOs or companies.

According to the law, everyone, including juridical entities and foreigners, has the right to create an NGO, to be a member of an NGO, or to participate in the governing organs of an NGO.

The Tirana District Court registers the NGOs in Albania. The permission of the competent state organ, which is the office of the state acting in a similar field as the field of activity of the NGO, is required for the registration of foreign NGOs. The state institution which collaborates, represents the state and settles the relations with the religious, humanitarian communities in Albania was established by means of Council of Ministers 459 dated 23 September 1999 “On the establishment of the state committee on cults.”

Therefore, today, a religious community that desires registration in the court must first enter into relations with the Albanian State Committee on Cults, choose an organizational form, and draft the legal bylaws in front of an Albanian public notary. These documents, which include (i) the organizational Statute, (ii) the Act of Incorporation, (iii) a description of the community’s program of activity, and (iv) a formal request to the court for registration are what is required to obtain legal personality in Albania. These are then the official documents that provide for the governing bodies of the community, rights and duties of members, the governing bodies, etc. Accordingly, a religious community must follow these basic legal requirements concerning the governing bodies, and maintain their own rules inside their organizations. On the other hand, Article 10 of the Constitution defines that religious communities “have independence in the administration of their properties according to their principles, rules and canons, to the extent that interests of third parties are not infringed”. Technically under this law, a religious community’s independence to use its own governing rules extends only to the administration of their properties. Nonetheless, the state has never influenced a religion relative to its manner of organization. Thus, it is easy to distinguish the 2 standards that a religious community may apply.

I would also like to discuss the purpose and role of court registration of religious communities. To establish the religious community, a formal court decision is required. This decision is granted after the court reviews the documents described above in a judicial proceeding.

Normally as a matter of practice, the scope of this review is limited to assuring the registration package is consistent with our constitution and legislation on the establishment and registration of the non-governmental (non-profit) organizations (laws 8788; 8789), and to determining that aim, purpose, mission and activity of the organization are legitimate under these provisions. Nonetheless, nothing technically prevents a court from a wider review.

For many years, different working groups have been formed for drafting a specific law applicable to religious communities. The latest working group has drafted a law that has been sent to the Venice Commission for review. It was returned with some special remarks and the whole draft might be considered ready for approval. Furthermore, another working group has been formed to create a register within the court for the religious communities that will include all their relevant data.

The relationship between the Albanian state and religious communities:

As previously mentioned, the Albanian constitution provides that the relations in between of the state and religions are established by means of formal agreements which are ratified in the Parliament.

While the Albanian constitution with this provision was approved in 1998, the first four agreements were signed and ratified only in January 2008. These agreements were reached with the Bektashi religion, the Muslims, the Orthodox and the Catholic Church.

Article 10 of the constitution provides that every religious community is entitled to an agreement with the state, ratified in the Parliament. This article also sets the general principles of mutual collaboration between of the state and religious communities. Specifically it states: *“The state and the religious communities mutually respect the independence of one another and work together for the good of each of them and for all.”* – Art. 10 of the constitution.

Besides these constitutional provisions, the law on non-governmental organizations provides for state support and facilitation of NGO activities. The form of assistance includes tax exemptions, state aid on different fields of activity, etc.

Actually, a law on state finance for the four traditional religious communities was approved on May 5, 2009 through the means of the law no. 10.141, “On the financial assistance of the religious communities that have entered into the agreement with the Council of Ministers.” This law gives financial state aid to the religious communities in fields of education, religious administration and construction of cult objects. In addition to this mutual assistance, the law functions as a type of “history repairman” for the damage caused to religious communities that were present in Albania in the past, when the state destroyed all their cult objects, and banned the performance of their activity.

In addition, in the last couple of years, the government has taken many measures to return religious property to the ex-owners – the religious communities. In cases where cash compensation is the only solution, the religious communities have been treated in priority in the line of compensation by means of law.

Conclusions:

- History has shown in Albania that, although there have been difficulties, there has been harmony and religious tolerance in our country. Nonetheless, we must continue to encourage collaboration and good relations between religions that are present in Albania.
- For many years in Albania, religions have been required to borrow a form of organization in order to formally and legally exist. Government institutions, academics, and lawyers need to work together to make more frequent changes so as to comply with the needs and requirements in a democratic society and to conform the law according the citizens' interest.
- Court oversight of the registration of a religion should be limited, under the law, to checking compliance with the national interest. Any other oversight should be conducted by appropriate administrative offices rather than courts.
- Free exercise religion and religious liberty are critical elements of human freedom. While various legal requirements may be necessary, we need to be vigilant to assure that government oversight does not become too limiting.
- Finally, mutual assistance to be given from the state to the religion has only been an issue in paper given the level of development of our state economy. But some forms of assistance have been chosen for the 4 traditional religious communities. However, such assistance should also be provided to other religious communities so as to avoid improper discriminations.