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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS**

**ON THE DRAFT LAW  
ON FREEDOM OF RELIGION, RELIGIOUS ORGANISATIONS  
AND MUTUAL RELATIONS WITH THE STATE**

**OF ALBANIA**

by

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*\*This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

## **Introduction**

The Minister for Tourism, Culture, Youth and Sports from the Republic of Albania has requested the Venice Commission to support the preparation of legislation in the field of freedom of religion and to provide an opinion on the compatibility of the draft law “On freedom of religion, religious organisations and mutual relations with the state” of the Republic of Albania with international standards relevant in this field.

The most important legal documents in this field are:

### **A. International conventions and other documents**

- International Covenant on Civil and Political Rights (1966) (ICCPR)
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)
- United Nations Human Rights Committee General Comment 22

### **B. Council of Europe conventions and other documents**

- Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (ECHR) including the jurisprudence of the European Court of Human Rights

### **C. OSCE**

- Commitments and Concluding Documents of the OSCE process (particularly the 1989 Vienna 1989 Concluding Document)
- “Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities”
- Previous Panel legislative analyses
- Recommendations by the OSCE High Commissioner for National Minorities

Furthermore the opinion is based on the OSCE/ODIHR Guidelines for legislative reviews of laws affecting religion or belief (CDL-AD(2004)028 (quoted as “Guidelines”))

## **Basic aims and scope of the Albanian draft law**

### ***Objective and structure of the draft law***

The draft law has a twofold aim. Its object is to regulate human rights questions linked to freedom of religion on the one hand and questions concerning the status of religious organisations within the State on the other hand. Basic principles are “human dignity”, “religious pluralism”, “laicism” and “harmony of relationships between public institutions and religious organisations” (Article 5). It is to be highly welcomed that the law refers to international standards at several occasions.

The draft law is subdivided in six chapters: General provisions (I), freedom of religion and conscience (II), relations between the State and religious organisations (III), cooperation in the interest of citizens (IV), organisation of religious organisations and their legal entity status (V), and financial status (VI).

### ***Basic notions***

#### ***Freedom of religion – freedom of conscience – freedom of belief***

The scope of the regulation is not clear, though. The title refers only to “freedom of religion”, whereas throughout the law there are also regulations on “freedom of conscience” and “belief” or “religious belief”. The basic definition given in Article 2 of the Law explains that “freedom of

religion and conscience” is understood as “the freedom to chose, or not, a religion or a religious belief and to express it individually or collectively, privately or publicly”.

Generally, in human rights documents, “freedom of religion” and “freedom of conscience” are dealt with separately. On the other hand, international standards guarantee the freedom of religion together with freedom of belief. The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Both religion and belief are entitled to protection (cf. Guidelines A 3).

This aspect is not clear in the Albanian law. The words “religious belief” and “belief” are used interchangeably (cf. e.g. Article 11 para. 1: “religion or *religious beliefs*” vs. Article 11 para. 2: “religion or *beliefs*”; Article 9 para. 1: “...act contrary to their *religious beliefs* ... or be denied the right to express their *belief* individually or collectively ...”).

**Recommendation: It might be helpful to check the wording used in the law and to make sure that both religion and other beliefs (such as atheism and agnosticism) are protected.**

*Religious organisation – religious community – religious association – religious group*

Furthermore, the status of religious organisations is regulated. Here, the law distinguishes between “religious organisation”, “religious community”, “religious association” and “religious group”. According to the definition given in Article 2 a “religious organisation” is a “generic term gathering both Religious Communities and Associations”. The status of a “religious community” seems to be the most privileged one. It is “recognised by the State as a legal entity through the stipulation of a bilateral agreement, and registered in the Registrar of Religious Communities, Associations and Groups.” (Article 2). But it is not clear if those elements (bilateral agreement, registration) are preconditions of the existence of a religious community as Article 16 explains that a religious community can request the stipulation of an agreement. The logical consequence of this regulation must be that a religious community can exist before the conclusion of a bilateral agreement.

**Recommendation: It might be useful to review the definitions used in this context in order to make them clearer.**

### **Legislative technique**

The draft law contains very detailed provisions on both the freedom of religion and the status of religious organisations. One danger of such a legislative technique might be that the interpreters stick to the text in a positivist way and exclude all the options not laid down in the text. One example might be Article 7 which enumerates in nine bullet points what the exercise of the freedom of religion includes. This enumeration does not include the internal freedom (forum internum). It might be argued that all that is not explicitly included is excluded.

Some of the regulations within the draft law are redundant. Redundancies might cause problems when they give rise for inconsistent interpretation. Thus, the limits to freedom of religion are mentioned several times throughout the text. But the formulations are not identical. Article 10 para. 1 provides: “The individual or collective exercise of religion or conscience shall only be restricted by law, with the purpose of guaranteeing public security, public order and social moral or in order to assure the observance of basic rights and freedoms of other individuals.” Article 3 (d) provides that “the freedom of religion can not be subject to other restrictions other than those provided by law and which constitute the necessary measures taken by a democratic society for the protection of order, state, public moral and health or for the protection of the rights and freedom of others. Whereas “public security” is not mentioned in Article 3, “health” and “state” is not mentioned in Art. 10 para. 1. Such inconsistencies should

perhaps be avoided. In this context it might also be mentioned that according to international standards the forum internum cannot be subjected to limitations of any kind.

Although the draft law contains a lot of details it very often refers to special legislation to be passed, to “the legislation” in general, or to decisions of the Council of Ministers. The latter is a useful legislative technique helping to keep laws short and concise and delegating more detailed regulations to competent bodies. But it might be dangerous if important questions are not solved by the legislator himself. This applies for example to the regulation of the duties, composition and structure of the State Committee on Cults. It seems to be an essential question who is represented in this body (e.g. members of certain religious organisations, members of State bodies etc.). The controversies arising in this context should be solved by the legislator (Art. 14 para. 3).

Furthermore, questions concerning the very essence of the right to freedom of religion should also be regulated in the relevant law itself and not delegated to other legal acts. Otherwise the human rights protection granted in the law might be undermined. One example might be the regulation in Art. 24 according to which the state authorities do not have any right to intrude to religious buildings “except for the cases when it is required by the legislation ...”. That means that the legislator is free to reduce the protection provided for by the draft law.

The same might be true for example for the provision of Article 34 about the right to financial or material support from foreign entities or individuals. Here, too, the legislator has complete discretion to regulate this question as the right exists only as long as it is not “in contradiction with the legislation in force”.

**Recommendation: It might be useful to review the definitions used in the draft law and to avoid redundancies und inconsistencies.**

### **Substantive issues**

#### ***Registration as a precondition for the exercise of freedom of religion***

According to international standards registration of religious organisations should not be mandatory. Individuals and groups should be free to practice their religion without registration if they so desire (Guidelines F.1).

The Albanian draft law does not contain any provision prohibiting the practice of a religion without registration. For the exercise of individual and collective freedom of religion it does not seem necessary to be part of any registered religious organisation (Article 3 (b)). But both religious associations and religious communities seem to require the registration as a legal entity (Article 2, 25), although this is not quite clear. Whereas Article 2 defines a “religious association” as a “group of religious people ... registered” Article 28 states that “religious organisations *can be* registered ...” As the right to “perform religious rituals in accordance with its internal registration” seems to be reserved to (registered) religious organisations (Article 29), the scope of the activities of non-registered religious organisations is not clear.

**Recommendation: It might be worth clarifying this point in order not to restrict the right to practice the religion without registration that is guaranteed in Article 9 ECHR.**

The reasons for a refusal of registration are set out in Article 28 para. 4. Whereas the reasons given in Article 28 para. 4 (a) (incomplete documentation) and Article 28 para. 4 (c) (issues of public order) are in accordance with the requirements defined by the European Court of Justice (Carmuirea Spiritual a Musulmanilor din Republica Moldova v. Moldova, 14/6/2005), it is not clear what additional requirements are set by Article 28 para. 4 (b). According to this provision registration can be refused if the doctrine, aims and organisation is in contradiction with the

Constitution of the Republic of Albania or the *legislation* of the country. Which “legislation” is meant here? If the legislator is free to define reasons for refusal of registration that go beyond those mentioned in Article 28 para. 4 (a) and (c), this might be in contradiction with the jurisprudence of the European Court of Human Rights quoted above.

**Recommendation: Both the status of non-registered religious organisations and the conditions for registration should be clarified.**

#### ***Distinction between “religious organisation” and “religious community”***

Article 31 explains that “every religious organisation has the right to request the registration as a religious community” under certain preconditions. One of the conditions is that it operates “inside the territory of the Republic of Albania since 20/30/50 years from the registration date as a religious Organisation.” Furthermore, two steps are necessary: First, a bilateral agreement has to be stipulated with the Council of Ministers. On this stage a legal remedy is provided in case of refusal. Second, this agreement has to be ratified by Parliament by majority vote. For minority religions it might be difficult to attain such a majority vote. There is no legal protection against discrimination in this case.

Although it seems to be evident from the draft law that the status of a “religious community” confers special privileges not connected with the status of a “religious organisation”, the distinction is not really clear. As this aspect has been elaborated in the expert opinion given by Professor Louis-Leon Christians it is not necessary to repeat the relevant findings here.

**Recommendation: Basic rights guaranteed under Article 9 ECHR should not be made dependent on the recognition as a “religious community”. The procedure of recognition should avoid any possibility of discriminating against any religion or belief.**

#### ***Questions of internal organisation***

It is to be welcomed that interference in the internal organisation is prohibited by the draft law. This seems to be an absolute prohibition as no exceptions are mentioned (Art. 13 para. 3). On the other hand it is requested that internal regulation is in compliance with the legislation in force (Article 26 para. 3) and that every change in the internal regulations is reported to the State Committee of Cults (Art. 26 para. 5). Furthermore, the officials as well as changes in the management body have to be notified to the Council of Ministers before public nomination (Article 33 para. 3). These provisions might undermine the guarantee against interference in internal affairs.

**Recommendation: The scope of the prohibition of interference in the internal organisation should be clarified.**

#### ***Right to legal remedy***

The draft law provides for a legal remedy before a court in the context of various rights of religious organisations (e.g. Article 15 para. 8, Article 31 para. 3). It is not clear why limitations of the freedom of religion related to “protests and gatherings” (Article 13 para 6) can be complained of only in front of the State Committee on Cultus or in the respective public administration organisms (Article 13 para 7).

In this context it might also be mentioned that the time-frame set for appealing the refusal of registration of a religious community is very short (Article 27 para. 8).

**Recommendation: The right to a legal remedy might be guaranteed on the basis of a general clause.**

### ***Data protection***

According to the draft law the State Committee on Cults has the right to ask religious communities to provide “different data and information” (Art. 23 para. 5). This provision is very vague. It is not clear which data can be collected. Furthermore it is not clear how a misuse of such data is prevented. This might interfere with the right not to reveal one’s religious beliefs guaranteed in Article 9 para. 6.

### ***Dissolution of religious organisations***

The draft law contains a very far reaching clause on the dissolution of a religious organisation. It shall be barred from the register “if it goes against the Constitution and the internal laws or does not exercise the activity for which it has been registered.” That means that every single violation of whatever law might be – at least theoretically – a reason for dissolution. (Article 30 para. 2). Even if the procedure has to be started by the District Prosecutor and the decision has to be taken by a court, this regulation seems to undermine the privileged position of religious organisations based on freedom of religion. It might be suggested that dissolution is only possible in the case of grave and repeated violations endangering the public order and only as a last means, if no other sanctions can be applied. Otherwise the principle of proportionality would be violated.

The consequences of the termination of a religious community are very serious. According to the draft law the assets and other rights are given to the persons specified in the statute. If they are not defined, they are given to the state (Art. 36 para. 4). This provision might interfere with the prohibition of expropriation (Article 1 of the First Protocol).

**Recommendation: The regulation on the dissolution of religious organisations should be redrafted in view of the principle of proportionality applied to restrictions on the freedom of religious and the right to property.**

### ***Agreements***

The agreements proposed repeat many of the provisions contained in the draft law. It is not clear why it is deemed to be necessary for the State and the religious communities to commit themselves by means of an agreement to ensure the freedom of opinion, consciousness (that is probably a mistake of translation; it should read “conscience”) and religion (cf. Article 3 of all the three agreements), as the Constitution and the law have binding force themselves.

It may be mentioned that contrary to the draft law it is explicitly stated that objects of cult cannot “be expropriated, alienated or taken in any other way” (cf. Article 24 of the Agreement with the Muslim Community). Article 23 of the Agreement with the Autocephaly Orthodox Church and Article 23 of the Agreement with the Bektashi World Community is worded in a similar, but not in the same way. In these agreements the right to property is recognized, but no guarantee is given against expropriation.

### **General Conclusion**

It is to be highly welcomed that the Republic of Albania has decided to regulate the difficult issues concerning the freedom of religion and the status of religious organisation in a special law. It might be recommended to review the terminology concerning “religion” and “belief”, to elaborate on the differences between “religious organisations” and “religious communities” and to clarify vague and inconsistent provisions that might be interpreted as limiting the freedom of religion are disproportionate.