



Research Article

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The Fictitious Constitution of People's Republic of Albania (1946)

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Abstract

In 1946, in Albania, the Constitution of the People's Republic came into force (reworked in 1950). This Constitution recognized a series of rights and freedoms, such as that of expression, of the press, of assembly, of association, the right to publicly express one's thoughts, freedom of religion, of conscience, etc. Despite the explicit provisions on religion and conscience, the communist regime began a real ideological battle to repress religious sentiment. The State adopted persecutory policies against religions. Persecutions which they pursued in the light of the Fundamental Charter with the aim of eradicating religions from the souls of Albanians. Without taking into consideration that beyond the feelings rooted in each person, beliefs were part of customs and customs. For this reason, anti-religious policy begins with the weakening of the clergy and then proceeds with state atheism. This was only the beginning of the Albanian nightmare, against religion and consequently against all religious communities located in the country.

Keywords: Albanian Constitution, secular state, freedom of religion, communism, state atheism

1. Introduction

1.1 The religious phenomenon in the 1946 Constitution and the interpretative problem

The Constitution of the People's Republic of Albania of 1946 (reworked in 1950), provided in the art. 18 both freedom of conscience and religious freedom. It also proclaimed a strange principle of separation between orders, because it stated that "*The Church is separate from the State*", when in reality the Christian clergy constituted a minority in the country. (See DAMMACCO, 1994, p. 657)

A part of the doctrine considers it as an interpretative problem, highlighting that the term "Church" is nothing more than a synonym of religion. In the wake of this consideration we can state that art. 176 of the Organic Statute of 1914 expressed itself in these terms, providing that "*The regulation of relations between the existing churches in Albania and their superior spiritual leaders will be the subject of specific agreements to be established between the Albanian government and these leaders*". Also in this case the word "Church" was translated "religious confessions".

On the contrary, others believe that art. 18 is aimed solely at the Christian community (See DAMMACCO, 1994, p. 657), which may also be true since Lenin himself had criticized the ancient doctrine and with a decree of 1918 had expressed himself with the same formula as that contained in

the art. 18 of the Albanian Constitution¹. (See also BOCIURKIW, 1968)

Furthermore, the art. 18 provided that “*Religious communities are free in their religious matters as well as the exercise and practice of worship outdoors. It is forbidden for the Church or religion to be abused for political purposes. Furthermore, religiously based political organizations are prohibited. The State can materially help religious communities*”. The principle of separation between orders emerges from this article (Cf. CIMBALO, 2016, p. 31). Even if the last paragraph provides for support from the State. Thus, in light of the new Constitution, cooperation between the State and religious confessions is not only formal but substantial. (Cf. AJANI, 1996; CIMBALO, 2008, pp. 6 and ss.)

It is also clear that the interpretative problem continues to perpetuate, as both the words “religious community” and “Church” are used, thus giving the impression that it is not an inaccurate grammatical expression of the legislator.

But, apart from the interpretative problem, it should be underlined that this article constituted the legal support to justify the persecution of religious; on the basis of this rule they were often accused of being involved in political life and of having planned coups d'état.

Furthermore, the art. 15 sanctioned the principle of equality and non-discrimination for all citizens without distinction of nationality, race or creed, also underlining that anyone who uses religion to provoke or sow hatred and discord between different nationalities, races and religions is punished, as well as to this, it provided for legal sanctions for those who used religion to limit or privilege a subject.

The principle of non-discrimination is strengthened in the art. 16, first paragraph, which in establishing the right to vote also provided for non-discrimination for religious reasons, as all citizens without distinction “*have the right to elect and be elected in all bodies of the executive power*”.

Freedom of religion is also guaranteed in the field of civil law, in fact the second paragraph of the art. 19 affirmed the right to contract religious marriage following the celebration of a legal marriage, but with a reservation of state jurisdiction for all other matters inherent to the union.

Furthermore, this Constitution recognized a series of civil rights, but although the fundamental socialist Charter presents itself as guarantor and liberal from a formal point of view, today it is considered as a fictitious Constitution, as it did not really reflect the guarantees contained.

Thus, despite the explicit provisions on religion and conscience, the communist regime begins a real ideological battle against all religious communities located in the country (See Tokrri, Tafani, Shkempi, 2021). The first to be attacked were the Catholic clergy (BASSI, 2015, pp. 3-24; Cf. BEQJA, 1973)², considered perhaps also the most dangerous not only because they are anti-communist and due to their connection with the Vatican but also because of their intellectual preparation (Cf. IPPOLITO, 2014)³. In fact, it was the Catholic ecclesiastics who constructed the first ideas of the so-called Albanism and always being fought for their ideals against the different regimes.

Without neglecting the accusations made by Marx against Christianity, which believed that the principles of secular doctrine “*they justified ancient slavery, exalt medieval serfdom and declare themselves willing to defend the oppression of the proletariat. (...) The social principles of Christianity preach the need for a dominant class and an oppressed one and ultimately have only the pious desire that the former wants to be charitable. The social principles of Christianity transfer the compensation for all infamies to heaven, as the consistorial counselors understand it, and thus justify the*

¹ In particular it provided that “*The church is separate from the state*”. Thus the art. 1 of the Lenin Decree of 23 January 1918, www.homolaicus.com.

² In particular J. BASSI recalls that “*Catholic institutions – and their clergy – were opposed right from the start, accused of collaboration and espionage; towards Islam there was, at least initially, a substantial neutrality, while Orthodox Catholicism was seen, at first, as an instrument for establishing diplomatic relations with the communist (and Orthodox) bloc of Eastern Europe.*” (p. 8).

³ The Author notes that “*Hoxha asked the country's high Catholic prelates to abandon all ties with the Vatican and create a patriotic church, detached from the Roman Pope. The bishops responded united and indignant: theirs was a firm “no”. “I will never separate my flock from the Holy See” Monsignor Frano Gjini replied to Hoxha, who, precisely for this refusal, would be killed in 1948. He was heavily tortured, but he did not change his mind*”.

continuation of these infamies on earth. The social principles of Christianity declare that all the atrocities committed by the oppressors against the oppressed are either just punishments for original sin and other sins, or tests that the Lord imposes on the redeemed in his infinite wisdom." (Citata in MINOIS, 2003 p. 516)

In his anti-religious crusade Hoxha does not spare even the confession he belongs to, namely the Muslim one, criticizing it as not being the original religion of the Albanians, but imported from outside, for this reason he accused him of a lack of patriotic sentiment and of having transfused elements into the Albanian traditions foreigners. (Cf. DAMMACCO, 2000; RICCARDI, 2000)

1.2 The absurd recognition of the legal personality of religious confessions

If the first step of the anti-religious campaign was the confiscation of ecclesiastical property, the second was the nationalization of education. From this perspective, to make the principle of separation effective, their nationalization was important, as the State, as also provided for in the Constitution, was the only body to raise the cultural level of the country (See SHILEGU, 1985, pp. 174-175). The legal basis was art. 31 which provided that the school was separated from the Church - that is from religion - there was nothing left but to close confessional schools and prohibit religious teaching. (Cf. MacEÓIN, 1951, p. 168)

However, the clergy continued to teach religion privately, so the government prohibited it through a ministerial circular in 1947.

This was only the beginning of the Albanian nightmare, as the regime did not limit itself to repressing religious sentiment and freedom of conscience, but used harsher persecutory policies, for example show trials, forced labor camps, torture of religious people/ and and executions were the order of the day. (See RICCARDI, 2000)

The new national religion was no longer that of the majority or Albanianism, but Marxism-Leninism.

The authoritative voice and illustrious pen of the Franciscans and Jesuits was suppressed, every means of religious communication was prohibited, censorship on freedom of the press had taken over and any religious book held in libraries and museums was seized. Priests and imams were considered traitors and were dressed as clowns, the Bible and the Koran became forbidden books, and all this in a country where the Constitution guaranteed freedom of religion and conscience and prohibited any limitation on such freedoms, for this reason is today considered a fictitious Constitution.

Thus, the unconstitutional religious persecutions continued in the light of the Fundamental Charter with the aim of eradicating religions from the souls of the Albanians, without taking into consideration that beyond the feelings rooted in each person, the beliefs were part of the customs and customs, for this reason the anti-religious policy began with the weakening of the clergy and then proceeded with state atheism. (Cf. QESARI, 2004, p. 264)

In the wake of this "method", in 1949, on the government's proposal, the Presidium of the National Assembly issued law decree no. 743 bearing "*On the recognition of the legal personality of religious confessions*"⁴. This provision had a strong communist imprint and introduced notable changes regarding the legal personality of religious confessions.

First of all, the decree law provided that religious communities had to present a statute compliant with the new Constitution and the decree. But, this was very bizarre because the decree was not in harmony with the fundamental Charter, as in the art. 12 provided that religious communities had to support the communist program and "*with their activity they must develop in the faithful the feeling of loyalty towards the power of the people and the People's Republic of Albania, as well as strengthen national unity*". In essence, in developing religious sentiment, the confessions also had to reinforce patriotism in citizens. In this way religion becomes politically exploited in support of

⁴ AQSH, Fund. n. 890, 1946, fasc. 459.

the anti-religious government.⁵

Undoubtedly, at that time no one could dare to dissent, as this was a privilege of the masses, let alone express the unconstitutionality of this article, which conflicted not only with the art. 3 of the same decree but also with art. 18 of the Constitution, the latter explicitly provided that *"It is forbidden for the Church or religion to be abused for political purposes"*. (Cf. JACQUES, 1995, p. 503)

Furthermore, the same article 3 of the decree law in reaffirming the principle of non-interference of the Church in political matters did not refer to the art. 18 of the Constitution but art. 16 which in truth did not provide for the principle of non-interference, but the right to vote.

The decree on religious confessions, at first glance, reaffirms all the guarantees provided for in the art. 16 contained therein, and recalls the constitutional guarantees regarding religion. (See SADIKAJ, 1972, pp. 480 and ss; CIMBALO, pp. 31 and ss; U. SHEME, 2001, pp. 5 and ss; BEDULLI, 1992; NOGAJ, 1999; HYSI, 2006, pp. 145 – 168; SHAHU, 2000, p. 202).

But, on the other hand, it subjects the entire internal organization of the communities to the control of the State, starting with the stamps, the budget which must be approved by the Council of Ministers and finally the choice of the spiritual leaders, who after being elected or appointed by the competent religious bodies must be approved by the Council of Ministers.

In this way the government imposes on the confessions located in the country, with an unconstitutional decree law, to harmonize their statutes with the decree in question and with the Constitution, with a deadline of three months. Ultimately the Council of Ministers had to monitor compliance by approving the statutes, with which the communities could acquire legal personality and be recognized in the State.

Furthermore, it was the Council's responsibility to decide on publications and any other aspect that could conflict with public order and morality. (Cf. TOBIAS, 1956, p. 381; PEARSON, 2006, pp. 387-388; AKGÖNÜL, 2005; MacEÓIN, 1951; MOROZZO DELLA ROCCA, 2012; VOGEL, 1978, pp. 149-164)

As Cimbalo highlights, it appears clear that the State *"could not allow these to constitute separate areas in the social organization, removed from its control, especially as in the case of the Catholic Church considered prejudicially opposed to the project of creating a socialist society"*. (CIMBALO, 2016, p. 9)

The first to present the statutes were the Orthodox clergy (Cf. DALIPAJ, 1992, pp. 36-37) and Muslim (Sunni and Bektashi) (Cf. REXHPI, 1999, p. 368; HYSI, 2006, pp. 145 – 168), instead the Catholic one presented it last. But, the Vatican had a surprise after the approval by the Presidium of the People's Assembly, as the Statute had been unilaterally modified and the new version envisaged an independent Catholic Church of Albania. (Cf. SIMONI, 1998, p. 168)

In particular, the art. 1 announced that the Albanian Catholic Church *"does not maintain any organizational, economic or political relationship with the Pope"*.⁶

2. Final Considerations

In conclusion of this first phase of "preparation" towards atheism, we find a state that is not very scrupulous in respecting the constitution and the legal system. In fact, violations of the rights of religious freedom emerge and, despite their provision in the Constitution. The principles remained only on paper as the anti-religious campaign had begun and the State *"posed itself as the sole subject of the life of the country, inaugurating its socialist program"*. (CIMBALO, 2016, p. 39)

⁵ The Statute of the Autocephalous Orthodox Church of Albania also provided in the art. 4 that *"In developing religious sentiment, the autocephalous Orthodox Church of Albania will ensure the confident disposition of the faithful regarding the power of the people and the secular democracy of Albania; in the same way it will strengthen patriotism and work for the national community. Consequently, all ministers of religion and ecclesiastical personnel must possess Albanian nationality, be irreproachable, respectful towards the people and the homeland and enjoy all civil rights"*.

⁶See also Archive of the Ministry of Internal Affairs, AMPB, Fund n. 783.

Although the fundamental socialist Charter presented itself as a guarantor and liberal from a formal point of view, today we can consider it as a fictitious Constitution, as it did not really reflect the guarantees contained. The failure to respect the applicability of the constitution resulted in unconstitutional religious persecutions which continued in the light of the fundamental charter, with the aim of eradicating religions from the soul of Albanians, without taking into consideration that beyond the feelings rooted in each person, the beliefs they were part of the customs and habits, for this reason the anti-religious policy began with the weakening of the clergy and then proceeded with state atheism.

The unconstitutional experience of the Albanian State in those years teaches us the weakness and fickleness of the constitution compared to the strength of totalitarianism. For this reason the defense of the fundamental charter must also be a priori. Every legal initiative that may appear unconstitutional must be analyzed with extreme care and alert not only the legislative branch and the constitutional bodies but the entire society. The latter must react forcefully to avoid the risk of being gradually dragged into a dictatorial state.

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