

Freedom and the Constitutional Court of the Republic of Albania

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President Dedja, President Bratza, International and National Judicial Leaders, Honored
Guests Guests, and friends:

Introduction

First, I would like to thank Rustem Gjata, Fehmi Abdui, Gjergi Sauli, Vladimir Kristo and
now Bashkim Dedja who have led this court through its important and formative years.

Today, I will discuss the crucial role of the Constitutional Court to preserve, protect and
guaranty the freedoms guaranteed by the Albanian Constitution, considering the principle of
Separation of Powers. This analysis offers some surprising results. As a developing
democracy, Albania can select its principles of governance from a wide range of options and
pick the ones which will work best for its citizens.

Separation of Powers

The concept of Separation of Powers was studied and developed by the 18th Century French
political philosopher Montesquieu. He found that where a country spread powers amongst
its legislative, executive and judicial branches, it was more stable and its citizens enjoyed
greater prosperity and liberties. Montesquieu observed that England, at that time, offered
the best example of a nation giving significant rights to its citizens through Separation of
Powers. He called this the “beautiful system” and advocated its advancement.

Montesquieu’s principles along with those of John Locke greatly influenced America’s
Founding Fathers. Concerned that the English King had assumed Legislative and Judicial
powers constituting tyranny, in the year 1776, 56 prominent American Colonists signed
their names to a Declaration of Independence. The Founding Fathers pledged their lives,
their fortunes, and their sacred honor to these principles. Many thought they had signed
their death warrant. Benjamin Franklin quipped, “We must all hang together or assuredly
we will all hang separately”. What was it, then, that caused these men to challenge the
world's greatest power at the risk of their lives and fortunes, everything?

The answer is found in the Declaration itself which has stood for over 200 years, as perhaps the most eloquent statement of human rights ever written in a political document. It provides, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. To secure these rights, governments are instituted among men deriving their just powers from the consent of the governed." Thirteen years later, these principles were incorporated into the US Constitution, "To establish justice and secure the blessings of liberty." The U.S. Constitution established Constitutional Government with three (3) separate but equal branches dividing power among the Executive, Legislative, and Judicial departments advancing Montesquieu's principles as never before articulated.

The principles of Separation of Powers are designed to prevent one branch of Government from becoming too strong. Montesquieu stated "when the Legislative and Executive Powers are combined in one person there can be no Liberty".

James Madison, who wrote many of the Federalist Papers, a set of treatises explaining the basis of the Constitution, explained the concept of Separation of Powers clearly when he said in Federalist 47 "the accumulation of all Powers, Legislative, Executive, and Judicial in the same hands, whether by one or a few, or in many, whether hereditary, self-appointed or elective may justly be pronounced the very definition of tyranny". He also warned of the gradual concentration of powers in the same branch of government, not necessarily one person, as another form of tyranny.

Morality and Religion

The American founding fathers recognized that morality, virtue and its Christian religion were essential ingredients for the success of this new form of governance. Benjamin Franklin, one of our Founders, said that only a virtuous people are capable of freedom. George Washington, in his farewell address, said "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable". Thomas Jefferson wrote, "Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are a gift from God?" Adams, Madison and many others concurred.

When we deny this source, then the conclusion that these rights come from governments, or parliaments or wise and strong leaders, cannot be avoided. When the people accept this rationale then these putative philosopher-kings, as Plato designated them, rationalize the need to take away those rights for "the good of the people". Dostoyevsky, in Brothers Karamazov captured this despotic tendency when he said, if there is no God, "everything is

permitted." The dictators of the 20th Century and their tragic and horrific actions are a legacy of these warnings.

Interestingly, two Europeans who studied the American experiment came to the same conclusions. In 1835 Francis Grund, the son of a German Baron educated in Vienna, published a two volume appraisal of the American system. He observed that religious devotion and a high respect for morality were essential to its success. Similarly, the Frenchman, Alexis Tocqueville, in his classic study Democracy in America wrote after commenting that while religion takes no direct role in government, "(Americans) , hold it to be indispensable to the maintenance of republican institutions... .The Americans combine the notions of Christianity and liberty so intimately in their minds that it is impossible to make them conceive the one without the other."

Highlights of Western Political Philosophy

Today's democracies share a heritage which has developed over the past 3500 years. Some highlights of this development are instructive.

In about 1500 B.C. Moses brought the Ten Commandments to his wandering people and developed principles which were revolutionary at the time: do not oppress foreigners; give justice to the poor; do not accept bribes; be truthful; respect others' property.

Plato defined human rights and the concept of a social contract between the government and the people, laying a foundation for a constitutional democracy. He called for "philosopher kings" who had the wisdom to put the needs of their state above their own. Another very interesting aspect of Plato's work was to elevate the role of women. At a time when women were unable to speak for themselves in a political context, he included them in activities quite similar to the activities of men: including rigorous discipline and intellectual development in which they became free persons, often vested with management responsibilities.

Jesus Christ's teachings were filled with political philosophy: render to Caesar that which is Caesar's and to God that which is God's; and the universal foundation for regular process and human rights: treat others the way you want to be treated.

Saint Paul advocated submission to government and respect for the Rule of Law.

These virtues have played a significant role to keep us grounded. But tension between good and evil is constant and democracies are only for the vigilant. When he emerged from the last session of the Constitutional Convention, a woman asked Benjamin Franklin what kind

of government he had given the country. He replied, "A republic, Mam, if you can keep it." We have been trying for over 200 years now, but still face issues we should have solved decades ago and repeatedly confront the same ones as we forget history.

Albanian Virtues

Forgive me for dwelling on the American experience for so long, but because after 20 years and many visits to Albania, I see virtues, strength and a morality in the Albanian people, which in many ways parallel the positive aspects of our system and gives me hope for Albania. Albania has a moral Code, called the Code of Lek Dukagjin. Included in its requirements is a concept called, "Besa." It is, among other things a duty, and part of one's honor to carry out promises, accept responsibilities and care for family and friends to whom you are entrusted.

I was the beneficiary of Besa one evening. As midnight approached, with a friend and his wife we finished dinner at the Piazza restaurant. My friend had no vehicle, and we were unable to find a taxi. He and his wife insisted on walking me back to the Rogner Hotel after midnight which was perhaps a distance of more than a kilometer. They then had to walk more than twice that back to their apartment. They walked me to the lobby of the hotel. He said that Besa required him to ensure I arrived at the hotel safely.

Albanians genuinely care for family and close friends. Relationships are important and valued. This emphasis is conducive to strong families, the building blocks of society.

In 1993, I had the privilege of meeting Father Zef Pelumbi, a Franciscan Priest who spent twenty-five years in prison because he would not renounce his faith. Having known that he had suffered greatly during his imprisonment, I asked him a question "what about good and evil". His answer was instructive of the Albanian mentality. Father Zef said, "Overcome evil with good." Then like every other great teacher, he gave an example.

He, with other prisoners, was resurfacing a roof at the top of an apartment building in Tirana during the summer. It was hot, and a guard who had been particularly mean to him climbed a ladder to bring the prisoners down from the roof at the end of the day. As the guard climbed the ladder it started to fall back from the top of the building. Father Zef was standing near the top of the ladder and every man would have understood had he not reached out to save the guard from falling four stories to his sure death, but Father Zef extended his hand and pulled the guard back to safety. He then reported that the guard was never mean to him again, and restated "overcome evil with good".

The values of Albania and its people show an admirable respect for the values and beliefs of others. For instance, in 1991, in Shkodra while it was still technically a criminal offense to practice religious beliefs, Muslims, Catholics, and Orthodox, joined together to rebuild each other's places of worship. This act of religious tolerance is a tremendous example that Albania has given to the rest of the world. I know of no instance in this country in the last twenty years where there has been strife between religious groups. This story needs to be told and is typical of Albania's virtue.

Time and time again, I have seen the virtues of industriousness, toleration, honesty, marriage, and family, revisited in what is the true Albanian mentality.

Like the U.S. Founding Fathers beliefs, the Albanian Constitution begins with this statement of beliefs, "We, the people of Albania, proud and aware of our history, with responsibility for the future, and with faith in God and/or other universal values." Similarly, Article 7 provides that Albania's government is based on the separation and balancing of legislative, executive and judicial powers. I do not think it was an accident that these provisions appear in your Constitution.

Warnings

In this quest, first, I caution the Judges of the Constitutional Court of Albania to Beware of politicians who seek to concentrate power in one branch of Government and in particular weaken the other branches, especially the Judiciary. Montesquieu warned when powers are united in the same person, or body, there can be no Liberty.

Beware of those who engage in bribery and corruption and of those who use threats, fear and intimidation to achieve goals and lust for power or wealth. Such persons are robbing the country of hope and driving good people to leave.

Beware of any official, regulation or policy which seeks to limit the freedoms of the people in the name of some cause. The cause will fade but the loss of liberty will not easily be restored.

Conclusions

After over 200 years of this experiment in the United States, we constantly struggle to maintain these values and principles. The tensions between the Legislative, Executive, and Judicial branches never stop. Those who would elevate politics over the good of the country always seem to be present. Greed and corruption often seem to prevail. But at the

heart of our system we have many people of virtue and a judiciary with a strong moral fiber. Our Faith has sustained us.

The Liberty provisions of the Albanian Constitution are sound and well stated. They guarantee rights not because they are granted by any constitution or law, or written document, but because we are human beings endowed with those rights. No Government or Legislature, or Parliament, or Court can or should be able to take away those rights from the people except with the due process of the law. Albania has joined the family of nations and is obligated to follow the human rights protected by the European and International Human Rights principles.

Not only is it the duty of the Constitutional Court to interpret the Constitution, but do so, in the words of the Preamble, ". . . Aware of your history, with responsibility for the future, and with faith in God and other universal values." It is simple to say that the Constitution means whatever five of the nine Justices on the Constitutional Court says it means. But it is their duty and almost sacred responsibility to decide cases in a way that breathes life into those words. It is from these perspectives, case by case and issue by issue, that you, the Judges of the Constitutional Court are building the human rights structure for Albania.

A few years ago, an Albanian trial court judge who had suffered much under the old regime, made a simple but profound statement. He said, "The Law is my friend." Is the law your friend? If it is, then treat it like one, follow Besa and deliver your friend to the next generation, safe and sound. This is not always easy. It takes strength and courage. It takes persistence. If you do, the words of your Constitution will become meaningful, Albania will prosper and its people will enjoy the blessings of liberty.

The Challenge

Based on your history and heritage, I challenge the Judges of the Albanian Constitutional Court to:

1. Decide cases base on principles after setting aside personal or political considerations.
2. Ensure that rights and freedoms of the poor and those who cannot speak for themselves are protected. Treat others the way you want to be treated.
3. Overcome evil with good.

I count it a high privilege to be able to speak with you today. It is my sincere hope and prayer that each of you, by your actions as judges, both individually and together, can extend, and with our fellow citizens, enjoy the blessings of liberty.