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Institute on Religion and Public Policy

**Analysis of the Law on Freedom of Religion in Kosovo
Adopted by the Assembly of Kosovo
By the
Institute on Religion and Public Policy
Expert Panel on Religious Legislation and Implementation**

Introduction

In May of 2006, the Expert Panel on Religious Legislation and Implementation of the Institute on Religion and Public Policy provided an analysis of the Draft Law on Religion then under consideration by the Provisional Authorities of Kosovo. That analysis concluded that the duration and population requirements necessary to achieve special status under the draft law contravened European Human Rights Convention (ECHR), OSCE and United Nations human rights standards regarding the right to freedom of religion or belief.

Since that time, the draft legislation has been substantially revised prior to being adopted by the Assembly of Kosovo in July 2006. The United Nations Mission in Kosovo (UNMIK) promulgated the Law on Freedom of Religion in Kosovo (“Law”) on 24 August 2006¹ Herein the Expert Panel provides an analysis of the Law and a suggested approach to enforcement of the law in order to ensure that its implementation complies with international human rights norms.

Analysis

A. Overview

There have been significant improvements in the final law that make it more consistent with international human rights standards. The Law includes strong statements regarding adherence to international human rights standards that form the foundation of religious freedom. These principles are articulated in Article 1 (Freedom of Religion), Article 2 (Protection from Discrimination), Article 3 (Religious Equality), Article 5 (Religious Neutrality), Article 7 (Self-Determination and Self-Regulation) and Article 8 (Places of

¹ The promulgation was not made public by UNMIK until 20 September 2006.

Worship). These are noteworthy provisions and the drafters of the Law should be commended for their efforts.

However, the law fails to address one vital aspect of religious freedom and certain other matters need to be clarified with implementation. These matters are addressed below.

B. Legal Entity Status

It is disappointing that the Assembly determined not to address a critical aspect underlying freedom of religion: namely, the right of religious communities to acquire legal personality and attain access to legal entity status in order to carry out the full range and panoply of their legitimate religious activities. This was the most contentious issue included in the Draft Law that fell far short of minimal human rights standards by requiring that a religious organization meet exclusionary population and duration hurdles in order to achieve special status.

The failure to undertake a comprehensive approach to the subject in order to include this vital aspect of religion in the Religious Freedom Law is troubling. The impact of the Law on Religious Freedom in Kosovo cannot be truly assessed until the issue of registration and legal entity status is clarified in legislation and regulations. The lofty language regarding the principles of religious freedom, freedom from discrimination and equality articulated in the Law would be rendered meaningless if a separate registration law revives problematic and exclusionary provisions such as the population and duration requirements that existed in the Draft Law.

Without entity status, religious communities can only function on the most basic level. Religious communities will encounter discriminatory legal obstacles to acquiring or renting a place to worship, financially supporting clergy and other religious personnel, entering into contracts necessary to carry out religious activities, and protecting their rights in a legal forum. As the OSCE stated in the document entitled *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities*:

[H]istory has provided all too many examples of States that have utilized registration laws to monitor and repress religious life. Both the mundane needs and the specter of more extreme abuses underscore the need for protection provided by OSCE commitments that assure that religious communities will be able to exercise their religious freedom rights through legal entities.²

In order to effectuate the religious freedom principles articulated in the Religious Freedom Law, the Assembly should promptly undertake to address the issue of acquiring legal entity status so that all religious organizations may equally obtain such status and that the process be free from discrimination and not subject to any exclusionary measures.

2. OSCE Review Conference, September 1999.

C. Amendment to the Law

The United Nations Mission in Kosovo (UNMIK) proffered an amendment to Article 5.4 to specify by name five of the religious communities in Kosovo when it promulgated the Law on Freedom of Religion in Kosovo (“Law”) on 24 August 2006. Article 5.4 had previously stated that “Religious Communities in Kosovo enjoy all the rights with this Law.” The amendment revised Article 5.4 to read as follows:

All religions and their communities in Kosovo including the Islamic Community of Kosovo, the Serbian Orthodox Church, the Roman Catholic Church, the Jewish Religious Community and the Evangelical Church shall be afforded every protection and enjoyment of the rights and freedoms provided by this Law.

In the opinion of the Panel, it would have been preferable not to have specified these five faith traditions, or any others, in the amendment. The amendment has raised concern by leaders of unnamed religious communities in Kosovo that their religions will not be treated equally under the Law.³ These concerns are legitimate.

International human rights standards require that all religions be treated equally under the law. The most important finding by the United Nations on religion is Human Rights Committee General Comment No. 22 on Article 18 of the Covenant, which guarantees freedom of thought, conscience and religion. This General Comment provides the Human Rights Committee’s definitive interpretation of the right to freedom of religion. The Human Rights Committee has found that:

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. *The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.* (Para. 2) (Emphasis supplied).

Likewise, the European Court of Human Rights has emphasized “the need to secure true religious pluralism, an inherent feature of the notion of a democratic society.”⁴

The Panel strongly recommends a further amendment of Article 5.4 as follows: omit all words between “Kosovo” and “shall” so that the amendment reads: “All religions and their communities in Kosovo shall be afforded every protection and enjoyment of the rights and freedoms provided by this Law”. Alternatively, in order to make this ambiguous language unequivocal, UNMIK implementation guidelines should delineate that all religions are entitled to equally enjoy the rights and freedoms detailed in the Law, and that Article 5.4 does not accord the five religions listed any special status above other

3. See, e.g., comments of Nikola Aslimovski, a Seventh-day Adventist pastor in Pristina who heads the church in Kosovo, as reported by Forum 18 in its story regarding the Law dated 20 September 2006.

4. *Manoussakis Others v. Greece*, (59/1995/565/651) (26 September 1996), paragraph 44.

religious communities. This is necessary to ensure that pluralism is respected and that discrimination does not occur.

D. Vague Language

There are a few provisions in the Law that are vague and therefore raise the danger that they may be interpreted in a way that could significantly undermine the protected rights of freedom of religion and belief. Implementing regulations should ensure that these terms are better defined so that officials are not vested with excessive discretion over matters relating to religious freedom, as such discretion inevitably leads to discrimination or arbitrary application of the law. These provisions are discussed below.

i. Protection by Penal Law

Article 4.1 states that "The right to manifest one's religion or belief may not be abused by inciting, provoking or stimulating, religious or racial intolerance or hatred, by impairing the right to life, the right to physical or mental health, the rights to children or the right to respect for private and family integrity." No definitions for these terms are included in the law.

Religions are not above the law. A state may, of course, permissibly sanction actions or words that provoke violence or persecution. Indeed, the Institute's President, in testimony before the United States Congress and the United States Helsinki Commission, has condemned incitements to violence, especially directed against the Serbian Orthodox Community in Kosovo.⁵

However, penal sanctions should not be misused to interfere with legitimate exercise of the rights to freedom of religion, which includes the right to manifest religious belief, to disagree peacefully about religion and beliefs, and to attempt peacefully to persuade others of the truth of one's beliefs. While harsh rhetoric intended to incite violence against another religion may be subject to penal sanctions, the law should not be used to criminalize the profession of beliefs or the engagement of other religions in dialogue regarding beliefs.

In order to ensure that legitimate and protected manifestations of religious expression are not sanctioned, the Panel recommends that rules or regulations implementing the law clarify the terms used in Article 4.1 by use of qualifying language to emphasize that sanctions only apply to words or actions that provoke violence against others based on their religion or race and do not include statements regarding religious beliefs which simply express such beliefs, evidence disagreement with the beliefs of others, or are designed to engage other religious communities in discussion about religious matters.

5. See, e.g., Testimony of Joseph K. Grieboski, Hearing on Status of Human Rights, Democracy and Integration in South Central Europe Before the United States Commission on Security and Cooperation in Europe (June 2006) ; Testimony of Joseph K. Grieboski at Hearing on Kosovo: Present and Future Status Before the International Relations Committee of the United States House of Representatives, May 2005.

ii. Religious Autonomy

Article 6.2 states that “The formation of a religious association which, by name or statute, purports to be officially linked to or recognized by a specific religious community is prohibited without the consent of the said community.” While this provision has some merit in prohibiting a religious community from falsely representing itself, for example, as part of an ecclesiastical hierarchy when it is not, Article 6.2 must not be interpreted arbitrarily to deny a legitimate religious community the right to operate. Moreover, this provision must be interpreted consistently with the right to religious autonomy articulated in Article 7 of the Law.

In *Metropolitan Church v. Moldova*, attempts by Moldova to refuse registration to the Metropolitan Church of Bessarabia, a Church that had broken away from the Russian Orthodox Church of Moscow, were unequivocally rejected by the European Human Rights Court. The Court stated that:

The right to freedom of religion for the purposes of the Convention excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed. State measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, would also constitute an infringement of the freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership. Similarly, where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorisation of a recognised ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Article 9.⁶

As it is implemented this provision should be interpreted to ensure a reasonable right to autonomy for all religious communities. Questions of heresy and schism, or whether a particular community is or is not legitimately part of a larger religious tradition, have no place in civil or criminal law.

iii. Education

Article 9.5 states: “The religious education and upbringing of a minor may not impair his or her physical or mental health or development.” It is not clear why this provision was included in the Law. Members of religious communities are already subject to civil and criminal laws that concern violations of the rights of children. While the state may, of course, take steps to ensure that students are not being incited to commit violence, engage in illegal activities, or are being mistreated, the state should be cautious in interfering in matters that are purely religious or theological.

6. *Metropolitan Church v. Moldova* (44701/99) (13 December 2001), paragraph 117.

The best guarantor of the rights of children are the parents of children and the family. Human rights standards protect the right of parents or legal guardians to “ensure the religious and moral education of their children in conformity with their own convictions.”⁷ Indeed, the right of parents to ensure the religious and moral education of their children is recognized in Article 9.4 of the Law. The UN Human Rights Committee has stressed the need to ensure that this right to religious education is respected:

The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.⁸

The state cannot and should not be the arbiter of the “physical or mental health or development” of a minor except in cases where civil or criminal laws are broken. The most effective protection for a minor’s well-being are those who are responsible for his religious education: parents. Accordingly, the Panel recommends a legislative amendment deleting Article 9.5. Alternatively, if this is not feasible, UNMIK implementing guidelines should ensure that its provisions only apply in the narrowest sense, i.e., when existing laws are broken. In no case should the article be interpreted to interfere with the rights and responsibilities of parents.

Conclusion

The Law on Freedom of Religion in Kosovo contains many laudable provisions that reflect the highest standards articulated in international human rights instruments regarding freedom of religion or belief. However, the failure of the Law to address religious entity status is disappointing and leaves a gaping hole in religious freedom standards in Kosovo. This should be promptly remedied by a new provision that provides for legal entity status for all religions without discrimination. Finally, implementation should ensure that vague terms in the Law and identified in this analysis not be interpreted to allow arbitrary or discriminatory infringement of religious freedom rights.

7. Article 18.4, UN International Covenant on Civil and Political Rights.

8. UN Human Rights Committee General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) (Para. 8).