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KOSOVO: Changes to draft Religion Law continue

By Felix Corley, Forum 18 (<https://www.forum18.org>)

Amid pressure from the international community to adopt a religion law ahead of talks on Kosovo's final status, changes continue to be made to drafts of the Law, Forum 18 News Service has learnt. Discussion of the Prime Minister's draft and two other drafts has been postponed until a meeting now due to take place on Wednesday 21 June, when they are planned to be considered as amendments. "I am concerned that there are so many changes each time," Artur Krasniqi, a Protestant representing a coalition of Protestant Churches, told Forum 18. "We fear there will be pressure to insert new discriminatory provisions on registration." Alfons Lentze, a legal advisor to the Assembly, told Forum 18 that "This has been a very difficult issue. We want to see a religious freedom law as soon as possible in accordance with the Plan on Standards."

There is growing pressure from the international community to adopt a religion law as a "priority" ahead of talks on Kosovo's final status. Today (19 June), the Legislative Committee of the Assembly agreed to consider further on 21 June the draft law submitted to it by the Prime Minister's Office on 16 June, Forum 18 News Service has learnt.

However, two other sets of amendments – one of them insisting that the thorny issue of registration of religious communities must be in this law rather than be deferred until later – will also be considered when discussion resumes on Wednesday 21 June. "I am concerned that there are so many changes each time," Artur Krasniqi, a Prishtina-based Protestant pastor who represents a coalition of Protestant Churches in discussion of the law, told Forum 18 News Service from Prishtina on 19 June. "Although we have some concerns over the draft from the Prime Minister's Office, we fear there will be pressure to insert new discriminatory provisions on registration."

The Assembly's Legislative Committee – chaired by Sadudin Berisha in the absence of its chairman, Hydajet Hyseni - began consideration on 19 June of the latest version. "This is a wonderful version which is very consistent with international norms," Vedat Gashi, the Prime Minister's Chief Legal Advisor, told Forum 18 from Prishtina on 16 June, shortly after the Prime Minister had approved the latest version and sent it back to the Legislative Committee.

At the 19 June meeting, the Committee agreed to regard the Prime Minister's Office version as amendments to the draft approved in first reading in May 2005, rather than a whole new text, which would require it to be presented afresh to the Assembly in plenary session.

But one Committee member, Ramadan Kelmendi, repeatedly interjected that registration must be included, despite being reminded of a 12 June Committee decision that this issue should be deferred, one observer at the meeting told Forum 18. However, his amendments, together with those proposed by another deputy, Ferid Agani, are also due to be considered on 21 June.

The international community has set a deadline of October 2006 for a law on religious to be adopted by the Assembly in line with Council of Europe standards. Like all other Kosovo laws at present, this law is to be promulgated by the head of the United Nations Mission in Kosovo (UNMIK). But many provisions of the latest version are unclear or violate international human rights standards.

Although the Prime Minister's Office version clearly sets out the right of all to religious freedom, with some limitations consistent with international human rights standards, some provisions impose extra limitations on religious freedom. Article 4.2, for example, 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." It does not state how these terms are defined.

Article 4.2 punishes "the assault of any religious official, the destruction or damage of any religious sites or facilities" and "activities or acts aimed at the instigation, provocation or stimulation of religious hatred," but does not define what "religious hatred" legally is. Violence against places of worship and religious leaders, particularly of the Serbian Orthodox Church, has been rife in recent years, but it remains unclear if this provision would also allow the prosecution of those who set out why they believe other people's religious or non-religious views are wrong.

Article 6.2 bans the formation of a religious community "which, by name or statute, purports to be officially linked to or recognised

by a specific religious community or church" without that community's approval. A similar prohibition is repeated in Article 7.3. Especially in faiths which are generally not hierarchical (such as Islam or Protestant Christianity), it remains unclear if this would arbitrarily deny a legitimate community the right to designate itself as it sees fit, even if its name might be similar to that of an existing community. Both provisions apparently contradict article 7.1, which states that "religious communities and churches are free in the determination of their religious identity."

Some provisions of the draft are unclear (such as Article 8.2 which appears to allow religious travellers and guests unimpeded travel around Kosovo) or unnecessary. Article 9.5 declares that the "religious education and upbringing of a minor may not impair his or her physical or mental health or development", though there is no reason to believe that members of religious groups are exempt from normal laws that cover violations of children's rights.

One curious feature of the draft is that it repeatedly refers to "religious communities and churches" without either stating why "churches" are not religious communities, or explicitly stating that religious communities that do not have registration enjoy the same rights as those that do.

Articles which do not consistently link "religious communities and churches" affect finances, such as article 12.1 stating that tax and similar issues for religious communities "shall be governed by the applicable law." Article 13.1 states that "the clergy of religious communities enjoy the right to pension, health insurance and other rights based on the applicable law." It is unclear whether or not the omissions are significant.

Another provision being contemplated for Article 8 but not in the final text being considered by the committee specifies that the "public authorities shall cooperate with religious communities and churches in determining locations for the erection of new religious objects, in accordance with the religious needs of the population and urban planning regulations". Were this to be reinstated, it could allow officials to ban the building of a new place of worship if they believed there was no "religious need" for it and restrict the freedom of individual religious communities to choose themselves when they "need" a new place of worship.

Gashi of the Prime Minister's Legal Office explained that those preparing the law had decided that it would be "overambitious" to cover both the principles of religious freedom and definitions of legal status in one law, so the proposed law was divided into two. "Subsidiary legislation will follow," he told Forum 18.

He pointed out that the latest version – which he drafted – includes a specific declaration that there is no state religion and makes no mention of any "traditional" religions. "All religions are equal before the law," he insisted. "Distinctions between and ordering of religions is not desirable." He maintained that religious communities have been consulted during the whole drafting process.

Equally proud of their work was Avni Arifi, the Standards Coordinator for the government who was also involved in the drafting process. "I believe the draft is based on the best international practice and we can expect approval very soon," he told Forum 18 from Prishtina on 16 June. "This area of law is not controversial, but it is sensitive – just as it is anywhere else in the world. Everyone must be cautious."

Hyseni told Forum 18 there was "consensus" among his committee members, religious communities and international officials at a 12 June meeting over the decision to cover only the general rights to religious freedom in a first law. "Covering the legal position of religious communities is premature and too controversial," he told Forum 18 on 16 June. "We don't have the support of the religious communities on how to tackle this – it is an extremely political issue. This will be dealt with later once final status has been agreed."

However, it remains unclear if the views of Hyseni – who was away in Greece on 19 June and unable to participate in the Legislative Committee meeting – will prevail. Pastor Krasniqi told Forum 18 that the Protestant Churches he represents would prefer a slimmed-down law which just covers the rights of all to religious freedom.

Discussions on a proposed religion law in Kosovo have dragged on for several years, with several varying drafts. When the current law (in a much longer version) was approved by the Assembly in May 2005 in the first reading, it was widely criticised for many controversial provisions (see F18News 15 February 2006 http://www.forum18.org/Archive.php?article_id=726 and http://www.forum18.org/Archive.php?article_id=727).

"This has been a very difficult issue," Alfons Lentze, a legal advisor in a European Union (EU) funded project to support the Assembly, run by the European Agency for Reconstruction, told Forum 18 from Prishtina on 19 June. "We want to see a religious freedom law as soon as possible in accordance with the Plan on Standards."

The UN has laid down "Standards for Kosovo" that must be achieved before final status talks can be completed. They support progress to achieve the EU's "Copenhagen Criteria," which require that a state have the institutions to preserve democratic governance and human rights, a functioning market economy, and that the state accept the obligations and intent of the EU. (END)

For a personal commentary by a KFOR military chaplain on the future of Kosovo, see http://www.forum18.org/Archive.php?article_id=449

For a personal commentary by an Austrian lawyer arguing (in relation to Serbia) that Austria's system of dividing religious communities into different categories with differing legal rights should not be followed, see F18News
http://www.forum18.org/Archive.php?article_id=403

A printer-friendly map of Kosovo & Serbia (map title Serbia and Montenegro) is available at
<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=yugosl>. The map follows international legal usage in indicating the boundaries of territories. Kosovo is in international law part of Serbia & Montenegro, although administered by the UN.

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