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Religious Freedom in Kosovo: Prenatal Care to a New Nation

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Religious Freedom in Kosovo: Prenatal Care to a New Nation

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I. INTRODUCTION

As a nation of uncertain status, Kosovo faces many singular challenges unique to an emerging nation. Serbia claims it as a part of territorial Serbian lands, yet the local Albanian population claims that the region is independent and has passed its own official declaration of independence. Other countries of the world are divided on whether to accept Kosovo as independent, or to regard it as a Serbian territory or a UN protectorate.

In the wake of hostilities in the late twentieth and early twenty-first centuries, the United Nations attempted a compromise on the issue of independence, which still remains in force; it established a provisional self-government in Kosovo and implemented strict standards that the province must meet before independence can be considered. While other republics of the former Yugoslavia have successfully seceded from their former union, either through bloody civil war (as in the case of Croatia and Bosnia-Herzegovina) or through peaceful democratic vote (as in the recent case of Montenegro), Kosovo only recently declared its independence from Serbia. Since Kosovo's unilateral February 17, 2008 declaration of independence is of uncertain legality, the region remains stuck in the political and bureaucratic quagmire of the United Nations.

This is not to say that Kosovo has no independence at all—much the contrary. Under the United Nations' guidance, Kosovo has developed a constitution and a government, held elections, and has begun regulating its own internal affairs. While frustrating politically, the UN guidance has helped Kosovo develop into one of the most human-rights-friendly “nations” of the world. It is supremely ironic that a small region that was the site of some of the worst humanitarian disasters in recent history now has a constitution and laws in place that ensure some of the most sweeping protections of human rights and fundamental freedoms that exist in the world today.

Kosovo's protection of religious freedoms is of particular interest. In theory, Kosovo's current legal structure makes it one of the most inviting religious climates in the world. The Kosovar Constitution and, in particular, the 2006 Law on Religious Freedom offer more protection and freedom than is found in any other Balkan nation—arguably more than in most Western nations. However, there are certain problems with the Religious Freedom Law which make the issue of religious freedom in Kosovo a troubling one. Furthermore,

the uncertain status of Kosovo makes the future of religious freedom within Kosovo an unanswered question.

Kosovo's unique track toward independence has allowed the world to watch the nation's development before independence is officially recognized. As such, the country's religious freedom provisions can be assessed and changed before problems develop. In many ways, this is similar to the prenatal care given to a fetus during the stages of its development: up until now, there has been an opportunity to monitor Kosovo's development and take measures to ensure a healthy birth. The aggressive steps Kosovo has taken in moving toward independence show that the birthing process has begun and the fruits of the prenatal care are likely to be apparent soon.

This Comment will discuss the issue of Kosovar religious freedom. First, it will present a brief history of Kosovo. Part II will examine the religious freedom provisions of the Kosovar Constitution. Part III will discuss and compare the religious law with the provisions of the constitution and other international obligations of Kosovo; the law's strengths and weaknesses will also be discussed. This Comment will conclude by examining the religious liberty provisions of neighboring Balkan countries in an attempt to show Balkan trends and to predict the future of religious freedom in Kosovo.

A. Geography of Kosovo

Kosovo¹ is a landlocked region of the former Yugoslavia somewhat smaller than the state of Connecticut. It is a mountainous and hilly region, particularly along the borders with Montenegro, Albania, and Serbia. The capital of Kosovo is Pristina.

The population of Kosovo is approximately two million, composed primarily of Kosovar Albanians (almost ninety percent of the population), Serbs (six percent), and a scattering of other minority groups.² The Albanian part of the population is

1. "Kosovo" is used here because it is the most common English name and the official English spelling. "Kosova" or "Kosovë" are the Albanian spellings used by Albanian Kosovars. However, Kosovo remains the official and recognized English spelling.

2. UNITED NATIONS INTERIM ADMINISTRATION, FACT SHEET KOSOVO (2003), http://www.unmikonline.org/eu/index_fs.pdf.

predominantly Muslim with a Catholic minority. The Serb population is almost entirely Serbian Orthodox.

Ancient and modern conflicts in Kosovo have resulted in tense relations between the Serbian and Albanian populations. Places of worship continue to experience vandalism and attacks by rival ethnic groups. Though more stable now, the turbulent history of the region has left both groups resenting the presence of the other.

B. Brief History of Kosovo

The history of the region now known as Kosovo is fraught with intense war, conflict, and foreign domination.³ Though not the only ethnic groups that populate the region, the largest players in both ancient and modern Kosovo by far are the Serbs and the Albanians.

Both Serbs and Albanians were Christianized by about the eighth century AD. In the Great Schism between the Catholic and Orthodox Churches, the Serbs sided with the Eastern Orthodox Church, while Albanians sided with the Western Catholic Church. Because the region was controlled by the Byzantine Empire, the Serbs gained power due to their affiliation with the Orthodox Church. The region remained largely under Byzantine influence until the battle of Marica in 1371, when the Ottoman Turks began conquering the region. The decisive battle for Ottoman control of Kosovo was the Battle of Kosovo Polje in 1389.⁴

The Battle of Kosovo Polje has become a legend in Balkan history, and is a crucial point in understanding the Serb-Albanian conflict. Serbian nationalists hold it out as the historical moment when the Serbs were expelled and the Albanians took power. The territorial claims of modern Serbs to Kosovo stem back to the time of this battle. Modern Serbs have justified the ethnic cleansing that has occurred in recent years in light of the "ethnic cleansing" tactics that Turkish conquerors used in the late fourteenth century; the Serbs hold that they are merely reclaiming what is rightfully theirs. Sorting fact from fiction and reality from legend is not the subject of this paper. It suffices for present purposes to say that it is an

3. This paper will not attempt to present a comprehensive history of Kosovo or the Balkans. For a more detailed account of the history of the region, see NOEL MALCOLM, *KOSOVO, A SHORT HISTORY* 496 (2002).

4. *Id.* at 58.

undisputed fact that from the Battle of Kosovo Polje onward, Kosovo was populated mostly by Albanians.⁵

Under Turkish rule, tax incentives induced the primarily Albanian populations to convert to Islam.⁶ However, Catholic traditions remained strong, and it was not uncommon for the head of the family to convert to Islam nominally, while his wife and children practiced Catholicism.⁷ This “mixed” family “crypto-Christian”⁸ religious heritage has existed for hundreds of years. Traditional religious dualism has led to a largely harmonious existence between Muslim and Catholic Albanians.

This peaceful coexistence of Christian and Muslim Albanians is evidence of the non-religious nature of the ethnic conflicts in the region. Albanians have always considered Serbs outsiders and Serbian Orthodoxy competition. Serbian invasions and Turkish reciprocity led to violence and ethnic cleansing movements throughout the Turkish occupation: Albanians were forced to relocate; Serbian conquerors would take possession of their homes and farms; then the Turks would re-conquer, and Albanians would reclaim these same lands.⁹ These ancient disputes mirror modern trends and modern hostilities.

During the Russo-Turkish War of 1828–1829, Serbia was supported by Russia¹⁰ and Serbia became a Russian protectorate under Turkish rule. Serbia continued to gain more territory (including Kosovo) through Russian influence, culminating in Serbia’s control of the Kingdom of Serbs, Croats and Slovenes (also known as “First Yugoslavia”) which emerged following World War I. The Serbian Karađorđević monarchy then officially controlled Kosovo. However, during World War II, German-backed Albanian leaders in Kosovo gained power and attempted to drive Serbs out of the territory.

5. *Id.*; see generally FERDINAND SCHEVILL, *A HISTORY OF THE BALKANS* (1991).

6. See MALCOLM, *supra* note 3, at 100, 117–18, 167–68; see also Hugh Poulton & Miranda Vickers, *The Kosovo Albanians: Ethnic Confrontation with the Slav State*, in *MUSLIM IDENTITY AND THE BALKAN STATE* 139, 140 (1997).

7. MALCOLM, *supra* note 3, at 131–32.

8. *Id.* at 100.

9. *Id.* at 56, 178–79, 229–30.

10. This is an early instance of Russian pan-Slavist policy. The Russian support of Serbia and opposition to Kosovo’s independence is a modern incarnation of this policy.

When Josip Broz Tito took power and formed the socialist "Second Yugoslavia," Kosovo fell back under Serbian control.¹¹ During Tito's time, the province was recognized as autonomous, but once Slobodan Milošević came to power, Kosovo's "autonomous" status was lost. Angered at the loss of their autonomy, Kosovar Albanians formed the Kosovo Liberation Army ("KLA") and engaged in violent pogroms against Serbs within Kosovo.¹² The Serbian army reacted forcefully to eradicate the KLA, particularly in the wake of the 1990s Balkan conflict. When Albanian nationalists attacked Serbian Orthodox religious sites, the Serbian army invaded Kosovo. Milošević's ethnic cleansing policies forced the Kosovar Albanian civilian population to flee to Albania. Serbian invaders destroyed Albanian homes and took over Albanian lands.

When U.S.-led NATO intervention forced Serbia to surrender and sue for peace, Albanians began to return and repopulate Kosovo. The United Nations then assumed responsibility for protecting and governing Kosovo.

The future of Kosovo is uncertain. Despite its declaration of independence, the province is still under UN oversight, and Serbia still considers the province to belong to territorial Serbia. Kosovar Albanians have officially voiced their desire for independence, but Serbia (supported by Russia) is balking.

From this brief history, one can see that intense conflict has plagued Kosovo for centuries. Serbs and Albanians lay claim to the territory, both citing multiple historical expulsions and ethnic cleansings as evidence of their claims. The turbulent history of Kosovo, particularly the conflicts between Serbs and Albanians, is useful in understanding the pseudo-religious conflict that exists today: religious differences between ethnic groups readily facilitate division within a country along religious lines. As such, religious sites in Kosovo are prime targets for ethnic tension. This has led to religious repression and intolerance, albeit for ethnic reasons.

In light of the ethnically motivated intolerance for religious sites, practices, and freedoms of others, it is pleasantly surprising that the current Albanian Kosovar government has chosen to pass a law on

11. MALCOLM, *supra* note 3, at 315-16.

12. *Id.* at 355; *see also* WOLFGANG PETRITSCH, KARL KASER & ROBERT PICHLER, KOSOVO KOSOVA: MYTHEN, DATEN, FAKTEN 174-77 (1999).

religious freedom. Against this backdrop, these modern trends toward Kosovar religious freedom are quite promising.

II. UNMIK AND THE KOSOVAR CONSTITUTION

On June 10, 1999, the United Nations finally decided to intervene in the Balkan conflict and passed Security Council Resolution 1244.¹³ This resolution allowed the Secretary General to institute an interim civilian government in Kosovo,¹⁴ which came to be called UNMIK: the United Nations Interim Administration Mission in Kosovo.

The UNMIK government was tasked to assist Kosovo in developing autonomy. Specifically, UNMIK's mission was to set in motion the political processes necessary to make Kosovo independent from foreign assistance and able to fully govern itself. This task includes, among other things, promoting human rights and maintaining law and order within the country.¹⁵ UNMIK is headed by a Special Representative of the Secretary General for Kosovo (SRK), an international officer responsible for overseeing the successful development of Kosovo.¹⁶

Under the guidance of the UNMIK government and the SRK, Kosovo developed the *Kornizë Kushtetuese për Vetëqeverisje të Përkohshme në Kosovë*.¹⁷ The document sets up the executive, legislative, and judicial branches of the government, but preserves the authority of the SRK to oversee and approve the government of Kosovo.¹⁸

Particularly notable about the Kosovar Constitution is its explicit acceptance of international human rights norms. It proclaims that “[a]ll persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental

13. S.C. Res. 1244, U.N. Doc. S/RES/1244 (June 10, 1999), available at <http://www.unmikonline.org/misc/N9917289.pdf>.

14. *Id.* § 10.

15. *Id.* § 11.

16. *Id.* § 6.

17. CONSTITUTIONAL FRAMEWORK FOR PROVISIONAL SELF GOVERNMENT [CS] [hereinafter KOSOVAR CONSTITUTION], available at http://www.unmikonline.org/pub/misc/FrameworkPocket_ALB_Dec2002.pdf.

18. KOSOVAR CONSTITUTION, UNMIK Reg. 2001/9, preamble (Kosovo). All references to the Kosovar Constitution are to the original Albanian text; all quotations are taken from the official English translation.

freedoms.”¹⁹ All governmental institutions in Kosovo are required to follow internationally recognized human rights documents. This ensures for all people in Kosovo the fundamental freedoms set forth in such documents as the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and other influential human rights instruments.²⁰ All these freedoms, rights, and protections are explicitly incorporated by reference as a part of the Kosovar Constitution, though a specific procedure to pursue these rights in Kosovar courts has not yet been created.²¹

Looking at the sweeping incorporation of human rights protections within the Kosovar Constitution, it is evident that the SRK (and by extension UNMIK) places high value on these rights and freedoms. In keeping with this, it is not surprising to find sweeping religious rights guaranteed by the Kosovar Constitution.

There are essentially two types of rights and freedoms enumerated in the Kosovar Constitution. The first type encompasses those rights and freedoms incorporated by reference from various international human rights instruments. The second type encompasses specific rights for religions and religious organizations outlined in the Kosovar Constitution itself. As both types of constitutional protection are important in understanding the Kosovar Religious Freedom Law and the religious-freedom climate of Kosovo, both shall be considered in turn.

19. *Id.* art. 3.1.

20. *Id.* art. 3.2.

21. At present, the only constitutional remedy is for aggrieved persons to complain to an ombudsperson, who can “receive and investigate complaints, monitor, take preventive steps, make recommendations and advise on any such matters.” *Id.* art. 10.2. The extent to which the ombudsperson will be an effective means of redressing grievances has yet to be seen. Interestingly, the Rambouillet Accords, a unilateral peace agreement and predecessor to the Kosovar Constitution, had a specific provision allowing the Constitutional Court to hear cases at least on government violations of human rights. See INTERIM AGREEMENT FOR PEACE AND SELF-GOVERNMENT IN KOSOVO (Rambouillet, Feb. 23, 1999) art. 7 in PETRITSCH, *supra* note 12, app. at X. This provision was left out of the Kosovar Constitution.

A. Provisions Incorporated from International Human Rights Instruments

The Kosovar Constitution incorporates the Universal Declaration on Human Rights.²² Article 18 of the Universal Declaration provides the following: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."²³

This provision is further augmented by the incorporation of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms²⁴ (European Convention), which states:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.²⁵

In addition to these important guarantees, the other incorporated documents provide several more specific religious protections. Specifically, the Convention on the Rights of the Child extends the right to freedom of thought, conscience, and religion to children, taking into account their evolving maturity.²⁶ Additionally, the Council of Europe's Framework Convention for the Protection of National Minorities extends freedom of assembly, freedom of

22. KOSOVAR CONSTITUTION, art. 3.2.

23. Universal Declaration of Human Rights, G.A. Res. 217A/III, 72 (Dec. 10, 1948).

24. KOSOVAR CONSTITUTION, art. 3.2.

25. European Convention for the Protection of Human Rights and Fundamental Freedoms, COE 1953, art. 9.

26. Convention on the Rights of the Child, G.A. Res. 44/25, § 14, art. 14, U.N. Doc. A/RES/44/25 (Nov. 20, 1989).

association, freedom of expression, and freedom of thought, conscience and religion to members of national minorities.²⁷

While it is clear from these incorporated constitutional provisions that religious freedom is guaranteed to all, subject only to reasonable limitations protecting the rights and freedoms of others, the drafters of the Kosovar Constitution saw fit to include several more specific provisions in the constitutional framework as well.

B. Specific Provisions of the Kosovar Constitution

Article 4 of the Kosovar Constitution defines the specific rights of communities and their members. A community is defined as "inhabitants belonging to the same ethnic or religious or linguistic group."²⁸ While the rights of communities are not limited to religious groups alone, religious communities' rights are certainly contemplated under Article 4. Chief among these rights is the right of individuals to declare or to decline to declare membership in a religious community without disadvantage or discrimination.²⁹

In addition to the right to identify with a religious group without discrimination, religious communities and their members enjoy the rights to use their own language, to access information in their own language, to nondiscrimination as regards public sector employment, to unhindered contact with members of the community abroad and in Kosovo, to display symbols publicly, to establish and maintain their own media, and to establish educational organizations which have the right to public funding.³⁰

Religious communities are also permitted to preserve religious sites with governmental cooperation, to provide humanitarian services, and to use public media.³¹ Furthermore, they may establish and participate in associations without government interference.³² They may operate religious institutions, and may finance their activities by donations both within Kosovo and abroad.³³

27. The Council of Europe's Framework Convention for the Protection of National Minorities, COE 1995, art. 7.

28. KOSOVAR CONSTITUTION, art. 4.1.

29. *Id.* art. 4.2.

30. *Id.* art. 4.4.

31. *Id.*

32. *Id.*

33. *Id.*

The Constitution provides that the government shall ensure that these rights are available to all communities and their members.³⁴ If necessary, the SRK may intervene to protect these rights.³⁵

III. THE RELIGIOUS FREEDOM LAW

On July 16, 2006, after some debate,³⁶ the Kosovo Assembly approved Kosovo Assembly Law 02-L31 "On Freedom of Religion in Kosovo." The SRK approved the law, though he made one amendment, and implemented the amended law with UNMIK Regulation 2006/48 on August 24, 2006 (the amended, final version is hereinafter referred to as the "Religious Freedom Law"³⁷).

While the Religious Freedom Law certainly goes a long way toward establishing religious freedom,³⁸ it does have several inherent problems. To understand these, this Article first summarizes the important provisions of the Religious Freedom Law, then compares it with the Kosovar Constitution, and finally discusses areas of concern.

A. Provisions of the Religious Freedom Law

In the face of the wide-ranging religious freedom provisions of the Kosovar Constitution, the Religious Freedom Law seeks to outline specific provisions applicable specifically to religious organizations. Article 1 states:

The right of freedom, religion or belief shall include, *inter alia*, the following freedoms:

- a. To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- b. To establish and govern charitable or humanitarian institutions;

34. *Id.* art. 4.5.

35. *Id.* art. 4.6.

36. Some of the debated provisions will be discussed later in this article. See *infra* Part III.C.2.

37. The entire English language text of the Religious Freedom Law is attached in the Appendix of the regulation. The original Albanian version is available at <http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2006regs/A2006regs.htm> (last visited Aug. 15, 2008). All quotations from the Religious Freedom Law are taken from the official English translation.

38. This is particularly true for the Balkans, where it has historically been typical for one official national church to dominate and others to be repressed.

- c. To make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief;
- d. To write, issue and disseminate relevant publications in these areas;
- e. To teach a religion or belief in places dedicated for these purposes;
- f. To solicit and receive financial contributions and other voluntary contributions from individuals and institutions;
- g. To train, appoint, elect or designate by succession their leaders called for by the requirements and standards of any religion or belief;
- h. To respect days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; *and*
- i. To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.³⁹

After reciting this litany of rights, the Religious Freedom Law then reiterates the anti-discriminatory provisions of the constitution.⁴⁰ Additionally, a protection from being compelled to participate in religious rites is added.⁴¹ Furthermore, equal treatment before the law is promised to all, regardless of religious affiliation.⁴²

An important provision regarding Kosovo's religious neutrality comes into the Religious Freedom Law in Article 5, stating that "[t]here shall be no official religion,"⁴³ and that "[r]eligious communities shall be separated from public authorities."⁴⁴ Unfortunately, while the religious freedoms of the Religious Freedom Law are applicable to all religions, certain religious groups are mentioned specifically.⁴⁵

39. Kosovo Assembly Law 02-L31 "On Freedom of Religion in Kosovo" as implemented and amended by UNMIK Reg. 2006/48 (Aug. 24, 2006) § 1.2. [hereinafter Religious Freedom Law]; *cf.* Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or belief, G.A. Res. 36/55, art. 6 (Nov. 25, 1981).

40. Religious Freedom Law, § 2.1; *cf.* KOSOVAR CONSTITUTION, art. 4.2.

41. Religious Freedom Law, § 2.1.

42. *Id.* § 3.

43. *Id.* § 5.1.

44. *Id.* § 5.2.

45. *Id.* § 5.4. For further discussion on this issue, see "Non-neutral neutrality" *infra* Part III.C.2.

While freedom of association for religious purposes is permitted,⁴⁶ no actual procedure or registry is prescribed. Religious communities also have the right to prevent other groups from identifying with them without consent.⁴⁷ This could be particularly problematic because the existing organizations could use this provision as a tool to hinder new groups from forming or operating.

Another gap in the law deals with the issue of contracts. Interestingly, religious communities are granted explicit permission to enter into contracts only with ministers and other employees.⁴⁸ Though there is no prohibition on other contracts, these are the only ones explicitly mentioned as authorized by the law.

The Religious Freedom Law also makes provision for religious self-determination⁴⁹ and self-governance of internal affairs.⁵⁰ This includes appointing and training ministers,⁵¹ who are able to provide spiritual counseling (including in hospitals and prisons) and are afforded a type of priest-penitent privilege.⁵² Religious organizations are also permitted to establish schools, though these are regulated in the same manner as other private schools.⁵³

The law provides that a religious community may communicate with an international parent religious organization.⁵⁴ Additionally, religious communities are expressly allowed to utilize all public media.⁵⁵ The law does not, however, expressly state that a religious community may produce periodicals, leaflets, and other publications, although this can be implied from certain constitutional provisions⁵⁶ and from an express requirement that any publications of a religious society expressly state that society's name.⁵⁷

The law affords special status and specific rights to places of worship. Chief among these rights is the ability to control access to a

46. Religious Freedom Law, § 6.1.

47. *Id.* § 6.2.

48. *Id.* § 13.2.

49. *Id.* § 7.1.

50. *Id.* § 7.2.

51. *Id.* § 1.2(g).

52. *Id.* §§ 11.1-11.2.

53. *Id.* § 9.3.

54. *Id.* § 7.3.

55. *Id.* § 10.3.

56. KOSOVAR CONSTITUTION, art. 4.4 (i).

57. Religious Freedom Law, § 10.2.

site. Under the law, a religious community has complete control to exclude anyone, including the government, absent special circumstances.⁵⁸ At the same time, the members of the communities are promised unobstructed access to their religious sites.⁵⁹

The Constitution provides that a religious community may be financed through donations. The Religious Freedom Law defines certain related tax exemptions. Specifically, religious organizations are not required to pay taxes on income related to places of worship and other properties or activities that relate directly to the religious or charitable objectives of the community, as well as from seminaries and training institutions for ministers.⁶⁰ However, the taxability of other donations is uncertain under the law.⁶¹

B. Constitutional Comparison

In general, the Religious Freedom Law tends to offer as many freedoms as those specified in the Kosovar Constitution, if not more. However, there are certain provisions specified in the Constitution and its incorporated documents that curiously do not find their way into the Religious Freedom Law.

One of these is the right for religious communities to use their own language. The Constitution promises that religious organizations are guaranteed the right to have access to information in their own language, and to use their own language freely in the courts, agencies, and other public bodies of Kosovo.⁶² The Religious Freedom Law makes no reference to the use of language or its applicability to religious organizations. At present, the majority of Kosovar citizens speak Albanian, though it is clear from Balkan history that religion is frequently associated with a particular ethnic group. In particular, the Serbs tend to identify with the Serbian

58. *Id.* §§ 8.1, 8.3.

59. *Id.* § 8.2.

60. *Id.* § 12.2.

61. It is unclear whether Kosovo regards the receipt of gifts as income. A provision on point in the tax code would perhaps clear up the issue entirely. Under certain NGO structures, however, money received from donations would certainly be exempt, and those making donations could claim a tax deduction of up to five percent of their total income. See UNMIK Reg. 2004/52 On Personal Income Tax, § 16.1 (Dec. 4, 2004); UNMIK Reg. 2004/51 On Corporate Income Tax, § 6(a) (Dec. 4, 2004); UNMIK Reg. 1999/22 On the Registration and Operation of Non-Governmental Organizations in Kosovo, § 10.5 (Nov. 15, 1999).

62. KOSOVAR CONSTITUTION, art. 4.4.

Orthodox Church and speak Serbian both in public and in private. Furthermore, the large Muslim population could attract Middle Eastern or Turkish Muslims desiring to reside in an Islamic-friendly environment in Europe. These groups could theoretically call on the constitutional linguistic freedom provisions to demand the ability to use their language in public proceedings. The Constitution appears to assure linguistic autonomy to religious and ethnic groups alike.⁶³ However, the fact that this right is left out of the Religious Freedom Law could eventually call its applicability to various religious organizations into question.

A related issue involves the right of religious groups to receive education in their own language.⁶⁴ While religious education is properly the responsibility of the religious organization,⁶⁵ the constitutional guarantee is not limited to religious education, but rather appears to extend to all education. The fact that the Religious Freedom Law makes no mention of who is responsible for ensuring education in the language of the religious group is cause for concern. As mentioned above, groups from other ethnicities and linguistic backgrounds could conceivably emigrate to Kosovo and demand, on the basis of their linguistic and religious ties, to have education in their language. This applies equally to the freedom of information clause of the Constitution.⁶⁶ A provision specifying that religious groups may provide education in their traditional language at their own expense would effectively resolve this ambiguity.

A second inconsistency between the Constitution and the Religious Freedom Law regards the duty to identify one's religious affiliation. The Constitution states that no one shall be required to declare his religious affiliation.⁶⁷ But this provision is conspicuously absent from Article 3 of the Religious Freedom Law—the "Religious Equality" section.⁶⁸ Furthermore, a religious organization is expressly required to declare its religious affiliation on any publication, periodical, or public announcement. This requirement seems contrary to the freedom not to declare affiliation. Though the constitutional provision may be interpreted to apply only to private

63. *Id.* art. 4.1.

64. *Id.* art. 4.4(b).

65. Religious Freedom Law, § 9.

66. KOSOVAR CONSTITUTION, art. 4.4(c).

67. *Id.* art. 4.2.

68. Religious Freedom Law, § 3.

individuals and the Religious Freedom Law requirement to apply to organizations as a whole, this appears opposed to the declaration in the Equality Clause that natural persons and legal entities are entitled to equal protection. Furthermore, requiring declaration of religious affiliation on public announcements is tantamount to requiring a declaration of the religious affiliation of the individual making the announcement. Ultimately, this requirement may not be a problem, particularly due to the ethnic pride that is typically associated with religion. Indeed, there may also be significant social policies in favor of requiring religious legal entities to declare their religious affiliation on public announcements. Nonetheless, this is a constitutional conflict that may need resolution.

The Constitution also promises religious communities the right to display religious symbols publicly.⁶⁹ The Religious Freedom Law, ironically, is silent on this issue. Although there is no contrary provision in the law, it is nonetheless curious that this particular right was omitted.

Another curious inconsistency involves the right to form religious associations. In order to have a legal presence in a country, religious groups need to form some sort of organization or association, which then enters contracts, owns property, opens bank accounts, and otherwise manages the day-to-day business of the religious group. The Constitution promises that religious organizations have the right to form associations to support their interests.⁷⁰ However, the Religious Freedom Law makes no mention of the ability of a religious organization to form an association.⁷¹ A similar curious omission from the Religious Freedom Law is the constitutional right to operate religious institutions.⁷² Though religious institutions are not defined in the Constitution, the fact that the right is not repeated in the Religious Freedom Law stands out as a surprising gap in the law. Certain other gaps affecting the qualifying and forming of religious institutions will be discussed later in this comment.⁷³

69. KOSOVAR CONSTITUTION, art. 4.4(f).

70. *Id.* art. 4.4(g).

71. The law does hint at the possibility in several places, though it never explicitly specifies that the organization has this right or outlines a procedure for exercising it. *See* Religious Freedom Law, §§ 5.5, 6.2, 7.3.

72. KOSOVAR CONSTITUTION, art. 4.4(n).

73. *See infra* Part III.C.1.

The subject of funding by donations is another area of inconsistency and ambiguity between the Religious Freedom Law and the Constitution. The Constitution specifically provides that a religious organization may receive funding from organizations outside of Kosovo.⁷⁴ However, the Religious Freedom Law makes no mention of the ability of a religious organization to obtain funding from abroad. The law seems to intimate that a donation can be solicited from any individual or organization,⁷⁵ whereas the Constitution only guarantees the ability of the organization to receive funding from its members.⁷⁶ Furthermore, the religious organizations are granted the right to solicit donations, not just to receive them,⁷⁷ a right not mentioned in the Constitution. However, neither the Constitution nor the Religious Freedom Law addresses the tax consequences of a voluntary donation for the religious organization.⁷⁸

The preceding discussion highlights areas where the Religious Freedom Law seems either inconsistent with or in actual conflict to constitutional provisions. However, there are many areas where the law is more detailed than the Constitution. One interesting example of this is that the religious equality provision is far broader in the Religious Freedom Law than it is in the Constitution. The only equality provisions of the Constitution apply to non-discrimination with regard to the government and to public-sector jobs.⁷⁹ On the other hand, the Religious Freedom Law grants freedom from discrimination and equality before the law with regard to all aspects of political, social, economic, civil, and cultural life.⁸⁰

The Religious Freedom Law broadens and clarifies many other rights and freedoms. However, as it is expected that a particular piece of legislation can have broader coverage or set higher standards than a Constitution, these specific instances will not be discussed here.

74. KOSOVAR CONSTITUTION, art. 4.4(p).

75. Religious Freedom Law, § 1.2(f).

76. KOSOVAR CONSTITUTION, art. 4.4(p).

77. Religious Freedom Law, § 1.2(f).

78. For further discussion on this issue, see *infra* Part III.C.3.

79. KOSOVAR CONSTITUTION, art. 4.4(d).

80. Religious Freedom Law, § 3.

C. Other Problems with the Religious Freedom Law

The Religious Freedom Law is a positive step toward ensuring a fundamental human right in an area of the world where this right has historically been ignored. However, while the Religious Freedom Law appears to be fairly inclusive, there are several important issues that it fails to address, as well as some problems actually created by the wording and structure of the law.

1. Legal status uncertain

One of the most troubling omissions from the Religious Freedom Law is the issue of the legal status of religions. At present, there is no procedure in Kosovar law for establishing, registering, creating, or designating a religious organization.

Many countries have a ministry of religious affairs or some comparable government office in charge of regulating and registering religious organizations. At present, there is no such government office in Kosovo. Indeed, the Islamic community in Kosovo has requested the establishment of such an office.⁸¹ However, it is not clear whether the neutrality provisions of the Religious Freedom Law would bar the existence or effectiveness of such a ministry.⁸² Certainly, if such a ministry were formed, it would have to be limited in its authority and impartial in its actions.⁸³ In a region where religion has been a pretext for ethnic-based discrimination and violence, it is quite possible that such a government ministry may become a vehicle of discrimination.

The passage of the Religious Freedom Law would have afforded a good opportunity to address the issue of religious organization creation and registration. Indeed, early drafts of the Religious Freedom Law attempted to regulate this issue. One proposal is reported to have required a minimum membership of 500 for a

81. Felix Corley & Drasko Djenovic, *Kosovo: Religion Law Fails to Tackle Contentious Legal Status Question*, FORUM 18, Sept. 20, 2006, http://www.forum18.org/Archive.php?article_id=843. (last visited Aug. 15, 2008).

82. Religious Freedom Law, § 5.2 (“Religious communities shall be separated from public authorities.”).

83. In particular, substantive review of clerical appointments or of internal religious matters would be inconsistent with international norms. See OSCE/ODIHR Advisory Panel, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, § II(F), adopted by the Venice Commission, June 18–19, 2004 [hereinafter OSCE Religious Legislation Guidelines].

religious community to be registered as a religion, while other suggestions were as low as thirty members.⁸⁴ Either way, such a restriction may prove a violation of religious liberty.⁸⁵ Furthermore, some proposed early drafts would have afforded special status to larger religions (those with one member per 1000 residents of Kosovo).⁸⁶ Early proposals also had provisions requiring ten years of legal status before benefits would be afforded the religion.⁸⁷

Fortunately, none of these restrictive provisions were included in the final draft of the Religious Freedom Law. Instead, the issue of legal entity status has been left untouched until Kosovo's final political status is decided.⁸⁸ Unfortunately, this leaves smaller religious groups unsure of their status and their rights. This is particularly troubling in view of their constitutional right to form associations.⁸⁹

In the absence of an officially sanctioned procedure for forming a religious organization, one option that religions have implemented to gain legal status in Kosovo is registering as non-governmental organizations ("NGOs") and requesting public benefit designation.

The procedure for doing so is governed by the Law on the Registration and Operation of Non-Governmental Organizations in Kosovo.⁹⁰ Under this framework, there are essentially two steps. First, a religious organization has to obtain NGO status, and then the NGO must obtain a public benefit designation.

84. Felix Corley & John Kinahan, *Kosovo: Controversial Provisions in Latest Religion Law Draft*, FORUM 18, Feb. 15, 2006, http://www.forum18.org/Archive.php?article_id=727 (last visited Aug. 15, 2008).

85. See OSCE Religious Legislation Guidelines, § II.F ("High minimum membership requirements should not be allowed with respect to obtaining legal personality."). Indeed, a requirement of 50 members was struck down in Macedonia by the Supreme Court of Macedonia on grounds that they were restrictions on religious liberty. See Constitutional Court of Macedonia, Decision 223/97, Службен Весник на Република Македонија, No. 64, 3322 (Dec. 23–24, 1998).

86. Corley & Djenovic, *supra* note 81.

87. Corley & Kinahan, *supra* note 84. This may also be contrary to international guidelines as well. See OSCE Religious Legislation Guidelines, § II.F.

88. However, the Montenegrin experience shows that it may be some time even after independence is gained before the question of legal status for religious entities is determined. See *infra* Part IV.D for a discussion of the Montenegrin Religious Freedom Law.

89. KOSOVAR CONSTITUTION, art. 4.4(g).

90. UNMIK Reg. No. 1999/22 On the Registration and Operation of Non-Governmental Organizations in Kosovo, § 2 (Nov. 15, 1999) [hereinafter NGO Regulation]. All quotations taken from the official English translation.

To register as an NGO, the religious organization has two options: it may either create a new NGO under Kosovar law, or it may register an existing foreign NGO. To create a domestic NGO in Kosovo, the participation of at least one person or entity residing in Kosovo is required.⁹¹ Two other “members” are required, but they need not have residence or seat in Kosovo, and they need not be natural persons.⁹² The local residency requirement does not extend to the registration of a foreign NGO,⁹³ though the foreign NGO must provide for an authorized legal agent and a place of business within Kosovo.⁹⁴ There are no differences between the functions and abilities of a registered foreign NGO and a domestic NGO.⁹⁵ Upon the completion of the registration process, both foreign and domestic NGOs are authorized to operate as legal persons in Kosovo.⁹⁶ However, NGOs are subject to some restrictions on their activities, such as endorsing or raising funds for candidates or political parties.⁹⁷

At present, there is no specific designation of “religious NGO,” and consequently a religious NGO desiring any benefits applicable to religious organizations must then register for public benefit designation. In order to qualify as a public benefit NGO, the organization must provide documentation showing that its principal activities include humanitarian assistance and relief, charity, providing education or health care free of charge (or at least below market value) to the underprivileged, culture, economic reconstruction, environment conservation or protection, the promotion of democratic values and civil society, the promotion of gender equality, or any other activity that serves the public benefit.⁹⁸ Religious organizations can qualify as public benefit NGOs under the heading of “other activity that serves the public benefit,”⁹⁹

91. *Id.* § 2.2.

92. *Id.*

93. *Id.* § 3.1.

94. *Id.* § 4.3.

95. *Id.* § 6.

96. *Id.*

97. *Id.* § 8.

98. *Id.* §§ 10.1-10.2.

99. *Id.* § 10.1.

because the Religious Freedom Law expressly recognizes that religious societies contribute to society.¹⁰⁰

Once the government has determined that a religious organization's NGO qualifies as a public benefit NGO, the organization receives exemptions from customs duties, sales tax, and other taxes.¹⁰¹ The designation as a public benefit NGO may be made either at the time of registration or at a later date.¹⁰²

Though the public benefit NGO allows religious groups not enumerated in the Religious Freedom Law to operate in Kosovo and enjoy many of the benefits of Kosovo's permissive religious legal climate, the fact remains that legally these are NGOs with religious activities, not actual religious organizations.¹⁰³ As such, they do not enjoy certain intangible benefits that come from official state recognition.¹⁰⁴ Furthermore, when and if a religious registration procedure is established, these religious NGOs have no guarantee that they will be recognized, which may require them to re-register even after years of continuous operations in Kosovo. Despite being able to operate legally, there is a danger that a future, multi-tiered system of religious recognition may by-pass smaller religions operating under this model.¹⁰⁵

Additional problems arising from uncertain status include the recognition of clergy. Though religious organizations presently seem to be allowed considerable autonomy in selecting their leaders,¹⁰⁶ this is not expressly guaranteed by the statute. Furthermore, with their status uncertain, their ability to contract with religious leaders may be limited, and the government may be able to regulate whether foreigners may lead congregations.¹⁰⁷

100. Religious Freedom Law, § 5.5.

101. NGO Regulation, § 10.5.

102. *Id.* § 10.3.

103. *Cf. infra* Part III.C.2.

104. This has led religious leaders of smaller religious groups to lobby for special "Religious NGO" status. U.S. STATE DEP'T, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2007, APPENDIX ON KOSOVO, available at <http://www.state.gov/g/drl/rls/irf/2007/90198.htm#kosovo> (last visited Aug. 15, 2008).

105. If new registration provisions operate retroactively, forcing religious communities to re-register under new criteria or taking vested rights from existing organizations on grounds of failure to re-register may be against international standards. See OSCE Religious Legislation Guidelines, § II F.

106. Religious Freedom Law, § 7.2.

107. This is not yet a problem, but may develop into one. This is the case in Macedonia, where criminal penalties may be issued for foreigners performing religious rites without

If the Religious Freedom Law were more explicit in outlining what constituted a religious legal entity, stating explicit, neutrally applicable provisions, many of these questions would be answered. The drafting of this law would have seemed an ideal time to answer these questions. However, as the legislature chose not to do so, religious organizations will have to operate under the constant danger that a lobby from larger churches may someday succeed in establishing a discriminatory, multi-tiered registration system. This proverbial Sword of Damocles may discourage smaller religious groups from operating under the NGO model until the question is finally resolved. While certainly better than a highly-structured tiered recognition system, the lack of a guarantee that all religions may register and operate equally is a flaw. This is particularly problematic in light of the "special recognition" of some larger churches that was added into the Religious Freedom Law by the SRK.

2. *Non-neutral neutrality*

The European Court of Human Rights has ruled that, "in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial."¹⁰⁸ In light of this standard, another defect in the Religious Freedom Law is found in the text of the "Religious Neutrality" provision of Article 5. After proclaiming that Kosovo has no official religion¹⁰⁹ and that the government must be separate from religious institutions,¹¹⁰ the Religious Freedom Law provides 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.¹¹¹

government consent. See Law on Religious Communities and Religious Groups, Official Bulletin of the Republic of Macedonia, 1997-07-23, art. 29.

108. *Metro. Church of Bessarabia v. Moldova*, Eur. Ct. H.R. § 116 (2001).

109. Religious Freedom Law, § 5.1.

110. *Id.* § 5.2.

111. *Id.* § 5.4.

As originally drafted, this provision did not mention any religions, but rather simply stated that all communities were equal.¹¹² Ironically, the change came from the SRK, and was added into the law without the consent of the Kosovar legislature.¹¹³

While the neutrality provision does indeed extend to all, there are a number of problems with a neutrality provision structured in this way. First, such a neutrality provision seems conspicuously non-neutral. Indeed, five specific religions are mentioned by name and guaranteed all the rights and freedoms of the Religious Freedom Law. This has been an area of particular concern to the Seventh Day Adventist community in Kosovo. Nikola Aslimovski, the leader of that community in Kosovo, said that he felt that either all religions should be mentioned, or none should.¹¹⁴ Obviously, naming every religion would be impractical; however, Aslimovski feels the “enshrined in law status” some religions receive is merely a reflection of the religious leanings of those who amended the provision.¹¹⁵

UNMIK leaders, however, have promised that the catalogue of religions in the neutrality provision is not an exclusive list. The five faiths listed are included not to receive a special status, but rather to underscore the importance of pluralism to Kosovar society.¹¹⁶ They are quick to point out the “inclusive” nature of the provision, showing that it is not limited to those five religions, but includes all others.¹¹⁷

Yet, even if it is true that no specific legal status or benefits are afforded the five major religions mentioned in the law—or denied those not mentioned—there are certain intangible benefits that the inclusion of these religions by name will create. The government’s naming only some religions, while not naming others, carries with it at least a perceived state preference toward those religions named; it is likely that Kosovar citizens will see these five religions as “official”

112. On Freedom of Religion in Kosovo, Kosovo Assembly Law 02-L31 (July 16, 2006), http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_48_ALE02_L31.pdf.

113. UNMIK Reg. 2006/48 On the Promulgation of the Law on Freedom of Religion in Kosovo Adopted by the Assembly of Kosovo, § B (Aug. 24, 2006), http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_48.pdf.

114. Corley & Djenovic, *supra* note 81.

115. *Id.*

116. *Id.*

117. *Id.*

or state-sanctioned. This creates a fallacious, though real, perceived notion that other “non-official” religions are not sanctioned by the state, and therefore suspect. Even barring this, there is an obvious prestige boost for these five religions.

The best solution would be for Kosovo to remove the mention of those five religions. If it decides not to do so, it will be extremely important that efforts be made to ensure that “official mention” of a church not be the basis for any sort of discrimination. Otherwise, it will be more difficult for smaller religions not named in the law to thrive, as Kosovar citizens will likely view these religions as cults.

3. Financial uncertainty

The Religious Freedom Law set out to outline important financial considerations for religious organizations. Indeed, Article 12 of the Law provides specific tax exemptions for activities specifically related to the religious convictions and purposes of the organization.¹¹⁸ However, the specific mention of donations in section 12.3 of the Law raises the question as to whether voluntary donations to the religious organization are indeed tax-exempt.

Registering the religious organization as a public benefit NGO would answer this question. Whereas the undefined “religious association” has no promise of tax exemption, a public benefit NGO is exempt from “customs duties, sales tax and other taxes.”¹¹⁹ The corporate income-tax law states conclusively that all income related to the purposes of the NGO is exempt from taxes.¹²⁰ However, if a religious organization uses a different structure, these benefits are not guaranteed.

Another area of uncertainty in the financial provisions of the religious law concerns donations made for the support of priests, missionaries, and other religious workers. This is not adequately addressed anywhere in Kosovo law, though the confusion could have been avoided by a simple provision in the Religious Freedom Law, and then elaborated in the tax code.

118. Religious Freedom Law, § 12.2(b).

119. NGO Regulation, § 10.5.

120. UNMIK Reg. No. 2004/51 On Corporate Income Tax in Kosovo, § 6 (Dec. 4, 2004); NGO Regulation.

Until legislation is passed to answer these questions, religious communities may find it difficult to comply with the tax laws of Kosovo, as they are unsure of the exact nature of their obligations.

4. Rights not specified

Many other rights are not specified in the Religious Freedom Law; this absence could lead to confusion and conflict in the future. It may be useful to examine these briefly.

a. *Sites of worship.* Both the Constitution and the Religious Freedom Law exhibit a curious omission regarding the right to maintain sites of worship. The Constitution provides that a religious organization has the right to maintain and preserve such sites.¹²¹ The Religious Freedom law provides that religious teachings may be taught in a place dedicated for worship,¹²² that access to places of worship may be controlled by the religious organization,¹²³ and that the vandalizing of religious sites is punishable by the criminal laws.¹²⁴ However, neither document expressly allows a religious association to purchase property or to create sites and places of worship; the only right promised is the right to maintain them. Though to a Western reader this may not seem problematic, in a society where fighting over shrines and sites has been going on for centuries, the lack of a specific right to acquire, create, or designate places of worship holds potential for conflict. Also, looking at Kosovo's tumultuous history with ethno-religious groups being forced to migrate, confusion may arise regarding which group actually owns or may access a religious site.

An examination of Article 8 of the Religious Freedom Law raises a concern with regard to traditional places of worship. While property belonging to a religious community is inviolable and cannot be entered by the government absent a showing of danger or of illegal activity,¹²⁵ there is uncertainty regarding the right of worshipers to access the site. In fact, the law directs that pilgrims have unobstructed access to religious sites.¹²⁶ For instance, in the

121. KOSOVAR CONSTITUTION, art. 4.4(l).

122. Religious Freedom Law, § 1.2(c).

123. *Id.* § 8.1.

124. *Id.* § 4.2.

125. *Id.* § 8.1.

126. *Id.* § 8.2.

event that a site controlled by the Serbian Orthodox community is an important "pilgrimage" spot for members of the Islamic community, the law could potentially be read to require that Muslim pilgrims be unobstructed in accessing and worshipping the site.

Furthermore, for a new religious group not traditionally associated with a particular ethnic group, the law makes no mention as to how a particular property may be designated as a place of worship. While the Religious Freedom Law may not be an appropriate place to outline the procedure, establishing the right to do so would be appropriate. A provision in Kosovo real estate law states that, for tax exemption purposes, a religious community must register with the tax administration that its property is used for religious purposes.¹²⁷ This is the only provision of Kosovar law that mentions an option or a requirement to register a property as a religious site, but no instructions are provided, no procedure outlined, and no recourse for a denial of the registration are detailed.

b. Military service. The Religious Freedom Law makes no mention of military matters. There is also no mention of whether the freedom of conscience and religion may be used as grounds to object to military service.¹²⁸ Similarly, there is no mention of whether a religious service ministry, either temporary or permanent, can waive or defer military obligations. As Kosovo presently has no law specifically requiring or regulating military service, it may be the case that these issues were not considered in drafting the law. However, it is entirely possible that such a service obligation may be instituted in the future, and it is inevitable that such conflicts will arise at some point. As such, it is unfortunate that the legislature failed to mention how military service objections will be resolved. Additionally, military chaplains and the rights of those serving in the military to access clergy and attend religious services are notably absent from the law.¹²⁹ While it is uncertain whether this is an intentional omission, it

127. UNMIK Reg. 2003/29 On Taxes on Immovable Property in Kosovo, § 7.1(f) (Sept. 5, 2003).

128. While there is no controlling international standard on this issue, the OSCE/ODIHR Advisory Panel states that penalties for refusing to serve on religious grounds should not be unduly severe. *See* OSCE Religious Legislation Guidelines, § II L. Either way, Kosovo should state its position clearly and apply its standard neutrally and without discrimination.

129. *See* Religious Freedom Law, § 11.1. While clergymen are promised access to parishioners in prisons and in hospitals, no mention is made of the military. The OSCE/ODIHR Advisory Panel considers it advisable to permit reasonable access to spiritual

may generate conflict, particularly if the person requesting a clergy visit is of a minority religion.

c. Authority of clergy. Ironically, the Religious Freedom Law makes no mention of the rights or abilities of clergymen to perform religious rites, rituals, ceremonies, or ordinances. This right must be inferred from Article 1, promising the right to “make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief.”¹³⁰ Though there is little potential conflict on this issue, especially in light of Kosovo’s proclaimed neutrality,¹³¹ it is again strange that such a basic provision should be left out of the law. Perhaps the legislature considered the issue unimportant, believing that religious rites and rituals have no legal significance, or perhaps the assumption is that such acts which are not forbidden are allowed. The issue of performing marriages, however, is of legal significance and ought to have been mentioned in the Religious Freedom Law.¹³²

d. Rights to contract. As mentioned earlier, the Religious Freedom Law promises that religious communities may contract with clergymen and other workers for the performance of religious functions.¹³³ However, the fact that this is specifically mentioned calls into question the ability of religious communities to enter into contracts with other parties and for other purposes. While an NGO is clearly entitled to enter into contracts as legal persons in Kosovo,¹³⁴ a religious organization that tries to register some other framework could conceivably be limited in its ability to enter contracts. This gap could seriously hinder the ability of a religious organization registered under a different scheme to perform many essential functions.¹³⁵

books and spiritual counseling, as well as to allow reasonable leeway to wear religious clothing. See OSCE Religious Legislation Guidelines, § II K.

130. Religious Freedom Law, § 1.2(c).

131. See *id.* § 5.

132. One must look to Kosovo family law to find the procedure for a religious wedding ceremony. Essentially, a religious marriage ceremony may only be performed after a civil marriage before a marriage registrar, who issues a certificate of religious marriage. UNMIK Reg. 2006/7 Family Law of Kosovo, §§ 36, 38 (Feb. 16, 2006).

133. Religious Freedom Law, § 13.2.

134. NGO Regulation, § 6.

135. Forbidding a legal entity to contract on religious grounds would be a violation of international standards. See OSCE Religious Legislation Guidelines, § II F2.

e. Immigration issues. Both the Constitution and the Religious Freedom Law promise that religious societies are permitted to maintain contact with members of their community outside of Kosovo.¹³⁶ While this is obviously in recognition of the fact that many religious communities will be in substantial contact with international persons or entities, neither the Constitution nor the Religious Freedom Law makes any reference to the subject of the immigration of foreign clergymen and religious workers into Kosovo. As such, there is no guarantee that a religious organization will be able to sponsor the temporary or permanent immigration of international members.

This is particularly troubling in light of the uncertain provisions of the immigration law of Kosovo. As Kosovo is not yet an independent country, it cannot issue visas as such. This notwithstanding, UNMIK Regulation 2005/16 outlines some procedures for foreigners entering and residing in Kosovo.¹³⁷ Those seeking to enter must apply at the border, and border police then determine if a person meets the qualifications for a temporary stay in Kosovo, including employment or business in Kosovo.¹³⁸ Authorization to stay in Kosovo lasts for ninety days, and may be extended by application at the border or at an UNMIK police station.¹³⁹ The application must be presented at least fifteen days before the previous authorization expires.¹⁴⁰ A decision to extend authorization lasts for ninety days, and it may be renewed.¹⁴¹

Essentially, unless special arrangements are made with the government, any foreign religious workers would have to reapply every three months for residency permits, and the law contains no guarantees that these will be granted. Particularly if the religious community is not registered, there is a danger that necessary foreign workers and volunteers may not be able to reside legally in Kosovo to perform their religious duties. Obviously, creating an exclusion category based on religious belief would be contrary to international

136. KOSOVAR CONSTITUTION, art. 4.4(e). Cf. Religious Freedom Law, §§ 1.2(i), 7.3.

137. See UNMIK Reg. 2005/16, On the Movement of Persons into and out of Kosovo (Apr. 8, 2005).

138. *Id.*

139. *Id.* § 7.1.

140. *Id.*

141. *Id.* § 7.3.

standards.¹⁴² However, in light of the nationalistic association between ethnicity and religion, it is possible that such *de facto* practices of denying residency permits to minority religions could develop unless the right to bring in foreign ministers is guaranteed.

Although the Religious Freedom Law does not mention visa sponsoring or the right to immigrate from abroad for religious purposes, the tax law clearly does contemplate foreign workers entering Kosovo as part of a public benefit NGO.¹⁴³ While this is not a guarantee of the ability of these persons to enter Kosovo, it is evidence that such activities are contemplated. It is unfortunate this issue is not addressed in the Religious Freedom Law, as conflicts are likely to develop as Kosovo itself develops as a nation.

f. Rights of change and objection. Though the Religious Freedom Law includes the right to change one's religion,¹⁴⁴ this may prove to be insufficient. Religion in Kosovo has more to do with ethnicity than with actual belief, and Kosovars tend to be religious more out of tradition than out of conviction. As such, it is not unlikely that one attempting to accept a new religion may face repercussions, even violence, from the family members and community he is leaving. There ought to be a specific recourse enshrined in law that the religious convert can call upon, and protection through the justice system should be provided for such people, at least in matters of employment, housing, public accommodations, and other essential areas of life. If this is not the case, the right to change religion may lose its meaning and become mere rhetoric.¹⁴⁵

Furthermore, there is some ambiguity regarding the religious rights of children. The Religious Freedom Law states that parents may determine the religious or ethical education of children, "in accordance with *their own* convictions or beliefs."¹⁴⁶ It is unclear as to whether the parents' convictions and beliefs or the child's should be honored.¹⁴⁷ This is, however, a difficult issue to legislate, as

142. OSCE Religious Legislation Guidelines, § II H.

143. UNMIK Reg. 2004/52 On Personal Income Tax, § 7(b) (Dec. 4, 2004).

144. Religious Freedom Law, § 1.1.

145. The right to "effective remedies" is an international standard of human rights. See European Convention for the Protection of Human Rights and Fundamental Freedoms, COE 1953 art. 13 [hereinafter COE 1953]; OSCE Religious Legislation Guidelines, § II B9.

146. Religious Freedom Law, § 9.4 (emphasis added).

147. The same antecedent ambiguity of "their own" is not unique to the English version. The Albanian, Serbian, and Bosnian translations each contain the same ambiguity, despite their more strongly inflected pronouns. Albanian: "Prindërit ose kujdestarët e tjerë ligjorë janë të

children's rights change as the child matures, and there are valid policy arguments in favor of either interpretation.¹⁴⁸

5. *No actual protection*

One final problem with the Religious Freedom Law is that it contains no provisions for enforcement. While certain freedoms are promised, small religious groups may actually have a difficult time ensuring these rights for themselves. The only actual protections promised by the Religious Freedom Law are those of the criminal justice system for acts of hate and violence.¹⁴⁹ Especially with regard to media access,¹⁵⁰ there may be little that a smaller religious group can do to realize this right.

Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms proclaims that everyone whose rights are violated, "shall have an effective remedy before a national authority."¹⁵¹ The fact that the Religious Freedom Law provides no mechanism for enforcement of the rights promised is contrary to international and Kosovar Constitutional standards.¹⁵²

Without specific provisions for enforcement, there is danger that illegal discrimination may exist. Indeed, it has already been reported that smaller Protestant groups are complaining of discrimination in accessing the public media,¹⁵³ in spite of constitutional and statutory guarantees. Other groups have reported being denied building permits for churches, with negative local reaction being cited as grounds.¹⁵⁴

chiturr t'i përcaktojnë udhëzimet fetare dhe etike për fëmijët e tyre sipas bindjeve ose besimeve të tyre." Serbian: "Родитељи или остали законски старатељи су позвани да одређују верска и етичка упутства за своју децу према својим убеђењима и веровањима." Bosnian: "Roditelji ili ostali zakonski staratelji su pozvani da odredeju verska i etička uputstva za svoju decu prema svojim ubeđenjima i verovanjima." *Id.* (emphasis added to show the ambiguous terms).

148. *See, e.g.*, General Comment 22, art. 18.6; ECHR Protocol 2, art. 2; OSCE Religious Legislation Guidelines, § II C.

149. Religious Freedom Law, § 4.2.

150. *Id.* § 10.3.

151. COE 1953, art. 13.

152. As mentioned earlier, the European Convention has been incorporated by reference into the Kosovar Constitution. KOSOVAR CONSTITUTION, art. 3.2(b).

153. U.S. STATE DEPT., INTERNATIONAL RELIGIOUS FREEDOM REPORT 2007, APPENDIX ON KOSOVO, <http://www.state.gov/g/drl/rls/irf/2007/90198.htm#kosovo> (last visited Aug. 15, 2008).

154. *Id.*

If religious freedom and equality are indeed principles that Kosovo wishes to espouse for its citizens, some stronger, more enforceable guarantees must be made. Procedures ought to be established and codified allowing religious groups experiencing discrimination to enforce their rights. Any other case would make the religious freedom guarantees mere platitudes, as any religious group seeking to enforce its rights would be forced to undergo costly litigation or lobbying.

IV. COMPARATIVE BALKAN RELIGIOUS FREEDOM

There is an additional problem regarding Kosovar religious freedom that needs to be addressed: What happens when the UN leaves? Although UN oversight has created a sense of self-governance, Kosovo's future is as uncertain now as it has ever been. It is uncertain whether it will return to Serbian control, though maintaining some sense of autonomy, or whether it will be severed from Serbia and become Europe's newest independent nation. Despite the fact that Kosovo has declared its independence, it remains under UN control and has yet to pass a new constitution or any new religion law. As such, the future of Kosovo is a story yet to be told.

Additionally, in either case, once UNMIK and the SRK have withdrawn from the Kosovar government, there are no guarantees that Kosovo will keep its laws, its constitution, or its stable governmental structures in place. Indeed, the title of the Kosovar Constitution specifically states that it is a temporary constitution.¹⁵⁵ If Kosovo were to leave all things untouched, as discussed above,¹⁵⁶ it would provide for a favorable environment conducive to religious freedom, in spite of certain failings. However, there are no guarantees that this will continue.

In an attempt to predict the future of religious freedom in Kosovo, this Article examines religious freedom provisions and issues from neighboring countries to see which trends Kosovo may

155. KOSOVAR CONSTITUTION. This is not obvious from the English title, but the official Albanian (Kornizën Kushtetuese të Vetëqeverisjes së Përkohshme në Kosovë), Bosnian (О Уставном Оквиру за Привремену Самуправу на Косову), and Serbian (О Уставним Оквиру за Привремену Самуправу на Косову) titles of the Kosovar Constitution contain explicit wording that it is a temporary document. *Id.* (emphasis added).

156. See *supra* part III.

eventually follow. The first, most obvious choice for a prediction of future Kosovo law is Serbia, the state that, in spite of Kosovo's assertions to the contrary, still holds territorial dominion over Kosovo. Regardless of how the final status of Kosovo's independence is resolved, the region's centuries-long legal ties to Serbia make it highly likely that Serbian law will be influential in Kosovo.¹⁵⁷ Next, Macedonia is an example of a former Yugoslav state which separated from Yugoslavia at about the same time. Albania is linked ethnically and culturally to the people of Kosovo. Finally, Montenegro (which gained independence in 2006) is the most recent break away from Serbia, and is perhaps the best indication of the types of changes Kosovo will experience in the immediate future. A brief examination of the religious freedom issues of these countries may prove a good indicator of what the future holds for Kosovar religious freedom, whatever the outcome of Kosovo's independence bid.¹⁵⁸

A. Serbia

Kosovo is still legally and territorially a part of Serbia, and if Kosovo is not granted independence, Kosovo will remain a province of Serbia subject to Serbian law. Examining the religious freedom status of Serbia is useful to show one potential model of how Kosovo's religious freedom stance could change if it is denied independence. Additionally, Kosovo is required under the current United Nations "Standards Before Status" program to engage in dialogue with the Serbian government.¹⁵⁹ As a result of this dialogue, politicians in Kosovo will likely be influenced by Serbian law and practice, no matter what the result of the independence question may be.

Serbia's law and history regarding freedom of religion is complex and controversial. However, only the present Serbian constitution and its religious laws will be examined here.

157. Indeed, one of the standards the United Nations has passed regarding Kosovo's independence is that there be open communication between the Kosovar and Serbian governments. Standards for Kosovo, *infra* note 209, § VII.

158. Croatia, Slovenia, and Greece may not be useful for purposes of comparison, as they have few cultural ties to Kosovo. Bosnia-Herzegovina, which shares similar history and culture with Kosovo, will not be considered, as its ethnically divided, consociationalist regime is unique, and it is unlikely that Kosovo would ever be afforded independence if it showed a tendency to such a singular, racially driven governmental structure.

159. See *supra* note 157 and accompanying text.

In reaction to Montenegro's vote to secede from Serbia in 2006, the Serbian legislature adopted the New Constitution of the Republic of Serbia in September 2006. The legislature took care to incorporate several important points regarding religious freedom in its new constitution. First among these is the brief neutrality statement of Article 11: "The Republic of Serbia is a secular state. Churches and religious communities are separate from the state. No religion may hold itself out as an obligatory or state religion."¹⁶⁰ As the population of Serbia is almost entirely Serbian Orthodox, and the Serbian Orthodox Church plays a major role in public life, it is strangely fortunate that its position is not enshrined in the constitution as an official state religion.

Article 18 of the ICCPR is also incorporated into Article 43 of the new Serbian Constitution, though in a slightly modified form:

Freedom of thought, conscience, conviction, and religion are guaranteed, as is the right to hold to one's own convictions or religious persuasions, or to change them according to personal choice. No one is obligated to declare his religious or other convictions. Everyone is free to practice his faith or religious persuasion, to participate in religious rituals, to attend religious services or classes, either alone or in community with others, and to declare his religious convictions in public and in private. The freedom to proclaim religion or other convictions may be restricted by law only if it is necessary in democratic society, for the protection of the life and health of the people, the morals of democratic society, the constitutionally guaranteed freedoms and rights of citizens, or of public security and order, or for the purpose of preventing outbreaks of religious, national, or racial hatred. Parents or legal guardians have the right to educate their children religiously and morally according to their convictions.¹⁶¹

Furthermore, religious autonomy is provided for in Article 44 of the Constitution:

Churches and religious communities are equal and free to regulate their internal organizations and religious affairs independently, to perform religious rites publicly, to found and direct religious schools and social or welfare institutions, in accordance with the

160. НОВИ УСТАВ РЕПУБЛИКЕ СРБИЈЕ [Constitution] art. 11 (Serb.). All translations from the Serbian Constitution are the work of the author.

161. *Id.* art. 43.

law. The Constitutional Court can forbid a religious community only if the community's actions endanger the right to life, the right to psychological and physical health, the rights of children, the right to personal and familial integrity, the right to property, public security and order, or if it stirs up religious, national, or racial intolerance.¹⁶²

In April 2006, however, Serbia passed a new "Law on Churches and Religious Communities in the Republic of Serbia." In light of the strong constitutional policy in favor of religious freedom, tolerance, and equality, Serbia's new religious law is an unpleasant surprise.

Whereas the Constitution seems to proclaim equality to all religious communities, the Religious Communities Law affords special status to seven "Traditional Churches," in recognition of their centuries of existence. These seven special religious groups are the Serbian Orthodox Church, the Roman Catholic Church, the Slovakian Evangelical Church, the Christian Reformist Church, the Evangelical Christian Church, the Islamic Religious Community, and the Jewish Religious Community.¹⁶³ Furthermore, the law reaffirms the "legal subjectivity" granted to these churches as early as 1836,¹⁶⁴ and recognizes the ongoing, "highly significant historic, nation-building and civilization-building role in forming, preserving and developing of the Serbian national identity."¹⁶⁵

After reciting these special rights afforded to this select group of religions, the law then lists a second class of religious organizations, referred to as "confessional communities."¹⁶⁶ This group includes the "Christian Baptist Church, Christian Adventist Church, the Evangelist Methodist Church, the Pentecost Church, Evangelical Christian Churches, and other religious organizations registered [according to the laws of the former Yugoslavia]."¹⁶⁷

Finally, the law makes a provision about registration. First, the seven traditional churches, and those confessional communities, are

162. *Id.* art. 44.

163. Law on Churches and Religious Communities in the Republic of Serbia, art. 11 (Apr. 2006), available at [http://www.venice.coe.int/docs/2006/CDL\(2006\)029-e.pdf](http://www.venice.coe.int/docs/2006/CDL(2006)029-e.pdf) (last visited Aug. 15, 2008).

164. *Id.* art. 11-16.

165. *Id.* art. 12.

166. *Id.* art. 17.

167. *Id.*

registered upon submitting minimal documentation (the name of the organization, the name of the local representative, and a copy of the seal).¹⁶⁸ Any other religious community, however, must go through a complicated registration procedure in order to be recognized. In addition to the basic information required of the traditional churches and confessional communities, they must submit information on teachings, sources of income, and religious rites. The religious organization must further submit the names, identification numbers, and the endorsement signatures of at least 0.001% of the population of Serbia. Though this is ultimately between seventy-five and one hundred citizens,¹⁶⁹ it is still a large hurdle for a new religion to overcome in order to gain legal status. The ultimate decision on whether to register a religious organization rests with the Ministry of Religion,¹⁷⁰ and only upon registration does a religious organization gain legal status.¹⁷¹ Without legal status, organizations may be unable to rent property, enter contracts, hold bank accounts, and to otherwise function in Serbia.

This registry provision has several problems, not least of which being that it requires individuals to waive their constitutional right not to declare their religion by signing an endorsement of the religious community.¹⁷² It may also violate international standards, by placing significant hurdles to organization and by requiring already-registered religions to re-register under new terms to preserve their rights.¹⁷³ Furthermore, it puts different religions on decidedly unequal footing, allowing almost immediate registration of certain communities, while requiring others to go through a complicated and uncertain registration procedure. This inequality is particularly offensive in light of the constitutional declaration of their equality.¹⁷⁴

168. *Id.* art. 19.

169. *Id.* art. 20.

170. *Id.* art. 22.

171. *Id.*

172. НОВИ УСТАВ РЕПУБЛИКЕ СРБИЈЕ, art. 43.

173. See OSCE Religious Legislation Guidelines, § II.F.1. The European Commission for Democracy through Law has criticized the fact that the new law makes registration a requirement for religious freedom. See Counsel of Europe, European Comm'n for Democracy through Law, Venice Commission, *Comments on the Draft Law on Churches and Religious Organisations of the Republic of Serbia*, ¶¶ 1–7, Opinion No. 379 (Apr. 27, 2006) (prepared by Louis-Leon Christians).

174. НОВИ УСТАВ РЕПУБЛИКЕ СРБИЈЕ, art. 44.

As a prediction for Kosovo's future religious freedom, the registry provisions are frightening. If Kosovo is influenced by the Serbian law (and the current inclusion of five specific religions in the Religious Freedom Law shows a decided leaning in that direction), Kosovo could turn from a state where religious freedom abounds to a state where certain religions are favored and others are denied legal status due to an inability to achieve the minimum requirements, or due to arbitrary decisions by a government ministry. The ability of a ministry official to deny registration based on a subjective determination that it would be "contrary to . . . public order"¹⁷⁵ is particularly troubling in a society where religion and ethnicity are so closely connected. Particularly in light of recent events in Kosovo, where building permits have been denied to minority religious groups by citing negative public reaction as a rationale,¹⁷⁶ a registry scheme like Serbia has espoused could potentially turn registry into a vehicle of discrimination.

B. Macedonia

The Republic of Macedonia (formerly known as the "Former Yugoslav Republic of Macedonia or "FYOM") gained its independence from Yugoslavia in 1991.¹⁷⁷ As such, it has had more than fifteen years to develop its government and legal system. Since it borders Kosovo and has a significant Albanian population, Macedonia may prove to be influential to an independent Kosovo.

The Constitution of the Republic of Macedonia contains many provisions relating to religious freedom. First among these is Article 9, which states, "[c]itizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of . . . religious beliefs . . . [a]ll citizens are equal before the Constitution and law."¹⁷⁸ However, special attention is given to the Macedonian Orthodox Church in the Constitution: "The Macedonian Orthodox Church and other

175. Law on Churches and Religious Communities in the Republic of Serbia, art. 22 (Apr. 2006), available at [http://www.venice.coe.int/does/2006/CDL\(2006\)029-e.pdf](http://www.venice.coe.int/does/2006/CDL(2006)029-e.pdf) (last visited Aug. 15, 2008).

176. INTERNATIONAL RELIGIOUS FREEDOM REPORT 2007, *supra* note 104, at § II.

177. CIA World Factbook (Macedonia), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/mk.html>.

178. УСТАВ НА РЕПУБЛИКА МАКЕДОНИЈА [Constitution] art. 9 (Maced.), available at <http://www.jorm.org.mk/ang/ustav.shtml> (last visited Aug. 15, 2008). All translations from the Macedonian Constitution are the work of the author.

religious communities and groups are separate from the state and equal before the law. The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.”¹⁷⁹

The mention of the Macedonian church is different from the Serbian inclusion of special status for its traditional churches, in that it is a mention of exclusion; the Constitution specifically denies the Macedonian Orthodox Church any special status. It is, however, troubling that the Macedonian Constitution limits the equality to citizens, as human rights apply to all, regardless of citizenship and nationality.

A general guarantee of religious freedom is also included in the Constitution: “[t]he freedom of religious confession is guaranteed. The right to express one’s faith freely and publicly, individually or with others is guaranteed.”¹⁸⁰ Furthermore, the primacy of religious freedom is further highlighted by Article 54, which deals with the suspension of personal civil rights. After discussing situations under which rights and liberties may be restricted, the Constitution then specifies that “[t]he restriction of freedoms and rights cannot be applied . . . to the freedom of personal conviction, conscience, thought and religious confession.”¹⁸¹ Further, it provides that a decision to suspend civil rights cannot be based on religion.¹⁸²

As religious organizations are not regulated by the Constitution, Macedonia has also adopted a law on religious organizations. On first glance, the law seems to grant broad equality, similar in its scope to the Kosovar and Serbian laws. However, much like the Serbian religious organizations law, the Macedonian law as originally passed seems surprisingly contrary to the provisions of equality and freedom espoused by the Constitution. Specifically, the Macedonian law contained restrictions that “only a registered religious community or group can perform religious activities and rituals,”¹⁸³ and “[a] religious group . . . must be established by at least 50 adults, citizens

179. *Id.* art. 19.

180. *Id.*

181. *Id.* art. 54.

182. *Id.*

183. Службен весник на Република Македонија [Law on Religious Communities and Religious Groups], art. 3 (Official Bulletin of RM No.35/97 of July 23, 1997) (Maced.), available at <http://www.kovz.gov.mk/ZAKONSKI/1.htm>.

of the Republic of Macedonia, permanently residing in the Republic of Macedonia.”¹⁸⁴ Furthermore, the law required advanced permission from the ministry of religious affairs for rites and ceremonies to be performed in public¹⁸⁵ or for building or purchasing a religious building.¹⁸⁶ Violation of any of these provisions is punishable by criminal fines.¹⁸⁷

With such restrictions in place, the law was in danger of becoming a vehicle for discrimination on the basis of religion. However, unlike Kosovo, which has no actual promise of enforcement of religious freedom rights, the Macedonian Constitution contains a specific promise of judicial protection:

The Constitutional Court of the Republic of Macedonia . . . protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought . . . as well as the prohibition of discrimination among citizens on the ground of . . . religion.¹⁸⁸

Thus, the Constitutional Court has the ability to strike down provisions of laws that violate the religious freedom and religious equality provisions of the Constitution. The court used this power to remove many discriminatory provisions from the Macedonian Law.¹⁸⁹

As the Constitution contains no autonomy provision, some discriminatory provisions were left intact—for instance, the rule that foreign citizens require permission from the ministry of religious affairs to perform religious services and rituals.¹⁹⁰ However, the active role the Constitutional Court has played in regulating legislation to keep it in harmony with the Constitution is promising. Kosovo would do well to adopt a similar system of judicial review of infringements to religious freedom and other vital human rights.

184. *Id.* art. 10.

185. *Id.* art. 19.

186. *Id.* art. 22.

187. *Id.* arts. 28–34.

188. УСТАВ НА РЕПУБЛИКА МАКЕДОНИЈА, art. 110.

189. Службен Весник на Република Македонија [Constitutional Court], Decision 223/97, No. 64, 3322 (Dec. 23–24, 1998) (Maced.).

190. Law on Religious Communities and Religious Groups, *supra* note 183, art. 3.

C. Albania

Though never a part of the former Yugoslavia, the Republic of Albania shares significant ethnic, cultural, and historical ties to the Albanian majority in Kosovo. A common language in particular will make Albanian law more accessible to future Kosovar political leaders.

The present Constitution of the Republic of Albania was enacted in 1998.¹⁹¹ In comparison to the constitutions of other Balkan countries that may influence Kosovo, the Albanian Constitution is similar, but contains some additional rights. Article 10, for instance, states that “[r]elations between the state and religious communities are regulated on the basis of agreements entered into between their representatives and the Council of Ministers. These agreements are ratified by the Assembly.”¹⁹²

The ability to enter into special relationships with the government is interesting, particularly when it follows declarations of equality. Furthermore, the ability for a religious community to regulate itself is limited by the infringement on the interests of third parties, a much lower standard than other Balkan constitutions.

The only other article of the Albanian Constitution that deals with religious freedom is Article 24. It guarantees freedom of religion, then states that “[e]veryone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals.”¹⁹³

Perhaps the most intriguing feature of the Albanian Constitution is that, in addition to permitting one to change religions, it specifically accepts the right of people to participate in cults. This is unique among Balkan constitutions, and it resolves a number of issues concerning the rights of small religious groups to exist and practice.

Despite being a neutral state and the promises of equality, Albania grants certain privileges to the Muslim, Bektashi, Orthodox, and Catholic religions due to their traditional status. For instance,

191. CIA World Factbook (Albania), *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/al.html>.

192. KUSHTETUTA E SHQIPËRIË [Constitution] art. 10 (Alb.). All translations from the Albanian Constitution are the work of the author.

193. *Id.* art. 24.

the religious holidays of these communities are recognized as national holidays.¹⁹⁴ However, this is likely in response to agreements entered into with the government, as per Article 10.

Since adopting the current constitution, Albania has not passed a law requiring the registration of religious groups. At present, the State Committee of Cults cooperates with and registers those religious communities that file requests.¹⁹⁵ However, there is no provision for registering as an actual religious organization, and thus religions must register as non-profit organizations.¹⁹⁶ Registered as such, religious groups are not granted tax exemptions.¹⁹⁷

The legislature of Albania, however, is currently drafting a new Law on Freedom of Religion, Religious Organizations and Mutual Relations with the State of Albania.¹⁹⁸ The current draft of the new law contains a tiered system of legal recognition.¹⁹⁹ Indeed, the Venice Advisory Commission of the Council of Europe has criticized the draft law for lack of clarity on the various tiers of recognition, and for its potential for discrimination.²⁰⁰

In comparison to Serbia and other Balkan countries, Albanian religious policy seems more permissive, at least at present. Rather than specifying a variety of rights, the government allows organizations to operate privately, leaving it to the religions themselves to approach the government on an individual basis to make special arrangements for their own specific needs. The obvious problem is that the process of making agreements with the government could be discriminatory, costly, and slow. The new draft law has more specific provisions and procedures for making such

194. U.S. INT'L RELIGIOUS FREEDOM REPORT FOR ALBANIA, § 2, available at <http://www.state.gov/g/drl/rls/irf/2007/90160.htm> (last visited Aug. 15, 2008).

195. *Id.*

196. *Id.*

197. *Id.*

198. For a draft of the law, see Council of Europe, European Comm'n for Democracy through Law, Venice Commission, *Draft Law on Freedom of Religion, Religions Organisations and Mutual Relations with the State of Albania*, Opinion No. 429 (Nov. 26, 2007), available at [http://www.venice.coe.int/docs/2007/CDL\(2007\)106-e.asp](http://www.venice.coe.int/docs/2007/CDL(2007)106-e.asp) (last visited Aug. 15, 2008) [hereinafter *Draft Law on Freedom of Religion*].

199. *Id.* art. 2.3.

200. Council of Europe, European Comm'n for Democracy through Law, Venice Commission, *Opinion on the Draft Law on Freedom of Religion, Religions Organisations and Mutual Relations with the State of Albania*, Opinion No. 429, ¶¶ 29-40 (Nov. 26, 2007), available at [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)041-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)041-e.asp) (last visited Aug. 15, 2008) [hereinafter Venice Commission Opinion].

agreements.²⁰¹ The Venice Commission has also criticized this approach, as the agreements frequently reiterate general provisions, and sometimes make arrangements that may contradict other laws.²⁰²

Though pending legislation may make it more complicated, the Albanian approach at present allows perhaps the greatest degree of permissive secularism compared to Kosovo's other neighbor nations.

D. Montenegro

The Republic of Montenegro is the most recent of the former Yugoslav states to achieve independence, holding its referendum in May of 2006. As such, it is perhaps the best indicator of how Kosovo will progress if granted independence.

Until October 2007, more than a year after gaining independence, Montenegro had not yet adopted a new constitution, but had continued to use the Constitution of the Republic of Montenegro, as ratified in October 1992. Article 11 of this document outlined the constitutional provisions regarding religious freedom:

The Orthodox Church, the Islamic Community, the Roman Catholic Church, and other religious communities are separate from the state. Religious communities are equal and free in the performance of their rituals and religious works. Religious communities shall regulate their internal organizational and religious matters within the bounds of the law. The state shall support religious communities materially.²⁰³

Similar to the Macedonian Constitution, the treatment of the three religious communities mentioned here was a provision of exclusion, reaffirming the fact that each of the major religions of Montenegro is entirely separate from the government. Another interesting aspect of mentioning the specific churches is not apparent at first glance: the exact Orthodox denomination is not specified (Montenegrin Orthodox or Serbian Orthodox).

On October 19, 2007, the legislature passed the new 2007 Constitution of the Republic of Montenegro. Though similar to the

201. *Draft Law on Freedom of Religion*, ch. 3.

202. Venice Commission Opinion, ¶ 65.

203. USTAV REPUBLIKE CRNE GORE [Constitution] art. 11 (Mont.) (Oct. 12, 1992), available at <http://www.mediaclub.cg.yu/Ustav/> (last visited Aug. 15, 2008). All translations from the old Montenegrin Constitution are the work of the author.

1992 Constitution in many ways, the 2007 Constitution contains some different and new provisions regarding religious freedom in Montenegro.

First among these is an article similar to Article 11 of the 1992 Constitution. The new Article 14 states: "Religious organizations are separate from the state. Religious organizations are equal and free in the performance of religious rituals and religious works."²⁰⁴ Note how this new constitution removes the specific references to majority religions. This underscores the declaration that religions are separate from the state, removing any remnants of an official sanction of the Orthodox, Catholic, and Islamic religions.

The next revised provision on religious rights is an expanded version of Article 34 (the Freedom of Conscience provision) of the 1992 Constitution. The new Article 46 expands and clarifies these rights, stating:

The freedom of thought, conscience, and religion are guaranteed to all, as are the right to change religions or convictions and the freedom, both in public and in private, to express that belief in prayer, preaching, customs, or rituals. No one is obligated to declare his religious and other convictions. The right to express religious conviction may only be restricted if it is necessary for the protection of the life and health of people, of public order, or of other constitutionally guaranteed rights.²⁰⁵

The biggest change made by this new Constitution as compared with its 1992 predecessor is that the new version specifies that freedom of religion includes the right to change religion and to practice and preach publicly.

Additionally, the 2007 Constitution contains a "conscientious objection" right to refrain from military service for religious reasons.²⁰⁶ Furthermore, the 2007 Constitution provides that freedom of religion may never be suspended, even when other rights are suspended due to national crisis.²⁰⁷

Other than these articles of the 2007 Constitution, Montenegro has not passed further laws or regulations regarding religion or

204. 2007 USTAV REPUBLIKE CRNE GORE [Constitution] art. 14 (Mont.) (Oct. 28, 2007). All translations from the 2007 Montenegrin Constitution are the work of the author.

205. *Id.* art. 46.

206. *Id.* art. 48.

207. *Id.* art. 25.

religious organizations. However, it is promising that the new nation has seen fit to strengthen and clarify some specific rights in its new Constitution.

In considering Kosovo's future, it may also be useful to look at the time that was required for Montenegro to pass its new Constitution. The official decision on independence occurred on May 21, 2006,²⁰⁸ yet it took nearly a year and a half for a new Constitution to be drafted. Up until that time, the government had to rely on the older constitution. More than a year and a half after the decision on independence, there has been no law passed regulating or clarifying the status of religious organizations. This may indicate the priority of such a law to a newly formed government. Also, it is useful to notice that while the provisions were expanded and clarified somewhat, no radical changes occurred.

Along the same lines, it is conceivable that Kosovo may take a year and a half or more before any decision on amending the Religious Freedom Law can be made. In light of the controversy surrounding Kosovo's 2008 declaration of independence, the time period may be longer still. This means that problems may continue for two years or more, until the issue of religion becomes a high-enough priority for the legislature to address it.

E. Predictions

With Kosovo's independence officially but unilaterally declared, Kosovo's status is still as unsure as before. Most Western countries (including the United States, the United Kingdom, and France) have officially recognized Kosovar independence, but several Eastern countries (including Russia and China) have declared it to be in violation of international law. However, the fact that Croatia, Hungary, and Bulgaria—three countries that border Serbia—recently recognized Kosovo²⁰⁹ shows a trend in favor of Kosovar independence, even in Balkan countries. Although general international recognition of Kosovo may take awhile, there is a definite trend toward recognizing Kosovo. This hints that full, legal independence may not be too far off.

208. *Id.* preamble.

209. Associated Press, *Croatia, Bulgaria, Hungary to Recognize Kosovo*, INT'L HERALD TRIB., Mar. 19, 2008, available at <http://www.ihf.com/articles/ap/2008/03/19/europe/EU-GEN-Bulgaria-Kosovo-Recognition.php>.

Religion laws in a Serb-controlled Kosovo would be the same as in Serbia. Essentially, specific religions would be granted special status, while others would be forced to comply with difficult and potentially arbitrary registration requirements. It is possible that some semblance of federalist principles may also allow Kosovo to retain some control over how individual cases are handled in Kosovo. However, such a system would also condemn smaller religious groups to operate as "second-class" citizens indefinitely, a situation decidedly disfavored for purposes of religious freedom and equality.

The more likely outcome will be that Kosovo obtains its independence.²¹⁰ While it will already have a functioning legal system, it is quite likely that modifications will be made both to the Kosovar Constitution and to the laws of Kosovo. However, the Montenegrin example shows that it may be years before any final decisions are made on this matter.

Looking at the four Balkan Constitutions, as well as the Kosovar Religious Freedom Law and Constitution, a future Kosovar Constitution will likely include some recitation of Article 9 of the European Declaration. Hopefully, it will be expanded upon so that specific rights are clear and incontrovertible, such as the right to participate in cults, as in Albania. It would be fortunate if the new Constitution or the new religion law also contained a right to enforce these rights, which would serve as a protection against future encroachments into religious freedom, as in Macedonia. Hopefully, any future religion law or constitution Kosovo may develop will exclude any reference to traditional churches. If indeed such needs to be mentioned, it would be best if it were done in the manner of the 1992 Montenegrin Constitution or the Macedonian Constitution—in a manner of exclusion.

Due to cultural, linguistic, and historical sympathies, it is most likely that Kosovo will follow to some extent the Albanian model if granted independence. The present hostility toward Serbia may make the Serbian model less intriguing, which is not altogether an unfortunate result. The Albanian total secularism approach to religion likely will not be wholly endorsed by Kosovo; Kosovo more likely will establish a middle-ground approach to religious freedom.

210. While it is likely in the long-run that, for purposes of stability, Kosovo will gain independence, this may take several more years than are currently foreseen.

This would allow religious groups to organize while also allowing them to bargain with the government for special rights.

V. CONCLUSION

Before the United Nations became involved in Kosovar affairs, the region was a human rights disaster. Centuries of fighting, particularly between Serbs and Albanians, had plagued the region. Because each of these groups has defined itself by its strong ethnic and religious ties, true religious freedom has been impossible.

As part of its program of "Standards before Status," the United Nations declared eight standards which Kosovo must achieve before discussions of independence could commence. In this way, the UN encouraged Kosovars to evaluate the importance of various standards, and then pass their own laws which (while still subject to UN oversight) would be tried out in a controlled environment. The hidden agenda was to instill principles of democracy and respect of human rights into Kosovo before allowing it to be totally self-governing.

These specific standards are described in detail in the document "Standards for Kosovo," and include functioning democratic institutions, rule of law, freedom of movement, sustainable returns and the rights of communities and their members, economy, property rights, dialogue with Serbia, and the Kosovo Protection Corps (civilian disaster relief organization).²¹¹ Religious freedom issues fall under the "Freedom of Movement" heading, with the goal being that "[a]ll communities are able freely to exercise rights to social, cultural and religious expression, including attending ceremonies and access to relevant sites."²¹²

It is promising that the current Religious Freedom Law evolved out of such a lackluster standard. Indeed, the present religion law ensures more than just expression and worship to religious communities. Despite certain shortcomings and oversights, the law is extremely permissive and inclusive of the rights of all.

Admittedly, Kosovo may have implemented this law simply as an attempt to placate the international community, and a new

211. UNMIK Standards for Kosovo (Dec. 10, 2003), available at http://www.unmikonline.org/standards/docs/leaflet_stand_eng.pdf (last visited Aug. 15, 2008).

212. *Id.* at 9.

government may decide to institute a restrictive regime. The future is uncertain; instead of neutrality, Kosovo may evolve into a state where minority religions are discriminated against officially or required to fulfill difficult registration requirements. The government may permit *de facto* discrimination, or it may decide to allow equal protection under the law to all groups. The Religious Freedom Law may evolve into a powerful protection of human rights, becoming an example to the world, or it may be a mere toothless tiger, impressive to read and discuss, but with little practical application. Even worse, it is entirely possible that the new Kosovo could slip back into its centuries-old tradition of ethnic tension on religious lines. There are simply no guarantees.

However, the passage of the Religious Freedom Law is evidence of another, more important human rights safeguard: a viable democratic process. Its very existence is evidence of the fact that the citizens of Kosovo are aware of the importance of preserving such fundamental freedoms as the freedom of religion. Although it will be important for Kosovo to fix the various shortcomings, ambiguities, and uncertainties in its religion laws, the fact that the legislature even thought to pass such a document is promising. It is wise for Kosovo to make the important decision now to be a nation where religious freedom abounds, where small religions and traditional churches alike are allowed to flourish, enjoying the full protection of the law, and free from any governmental interference or preference whatsoever. Fixing the problems in the law now, before independence, will set the standard that freedom is important for Kosovo.

The law is a pre-independence peek at what direction Kosovo will take, much as an ultrasound is a prenatal peek at the health and development of a baby. As discussed above, the law is far from a perfect plan, and it does not guarantee a perfect society after independence. However, it does represent a significant step toward achieving religious equality and freedom in an area that has been plagued by religiously affiliated conflict for centuries. Despite the shortcomings, and no matter what the future holds for Kosovo, instilling in the emerging nation a commitment to religious freedom is likely to have positive effects in ensuring at least a consciousness of human rights. This “prenatal” focus on human rights before independence has hopefully set a valuable precedent that will develop

and shape much-needed freedoms long into the future as the new nation continues its struggle toward independence.

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