

2019

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## Recommended Citation

Mehmeti, Jeton (2019) "The Struggle of Kosovo Policymakers to Upgrade the Law on Religious Affairs," *Occasional Papers on Religion in Eastern Europe*: Vol. 39 : Iss. 5 , Article 20.

Available at: <https://digitalcommons.georgefox.edu/ree/vol39/iss5/20>

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# The struggle of Kosovo policymakers to upgrade the law on religious affairs

By Jeton Mehmeti<sup>183</sup>, University of Graz

## Abstract

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Apart from guarantees over freedom of religion, in the last two decades, authorities in Kosovo have made little progress in advancing its legal framework to accommodate the emerging needs of religious communities. The only law that regulates religious affairs in Kosovo is the 2006 Law on Freedom of Religion. The law is framed in very broad terms, and has received a lot of criticism for failing to properly regulate the status of religious communities. Representatives of these communities have consistently asked for changes to legislation that would grant them the status of legal entities. Without legal entity status, religious communities can only function at the most basic level. The government has tried to introduce a new law almost every year since 2011, but every attempt to change the law has failed so far. Why? Part of the answer is to be found in the legal complexities of Kosovo's dealing with religion.

**Keywords:** Kosovo, religious identity, secularism, laicism, freedom of religion

## Introduction

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The Muslim presence in Kosovo goes back to the time of the Ottoman's when Islam spread gradually among Albanians. Although the majority of Kosovo Muslims are Albanian, other ethnic groups like Turks and Bosniaks also constitute a large number of the Muslim population. In addition to the Sunni majority, there are small Sufi orders active in Kosovo. According to the latest national population census organised in Kosovo in 2011, the overwhelming majority of the population declared themselves as Muslims. Out of a population of nearly 1.8 million people, over 95% identified as Muslims, 2.2% as Roman Catholics, and 1.5% as Serbian Orthodox.<sup>184</sup> There are other communities too, like Protestants, Jews, and those who did not declare their religious affiliation.

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<sup>184</sup> Kosovo Serbs are predominantly affiliated with the Orthodox Church. Since the 2011 census was boycotted by most Kosovo Serbs, the exact number of Orthodox Christians living in Kosovo is unknown.

The interreligious harmony that was cultivated for a long time in Kosovo was disrupted during the war of 1998–1999. Religious sites and monuments became a target of war and retaliation. To avoid any religious favouritism, the international community introduced a model of strict separation between state and religion. Kosovo was declared a secular state, with no official religion and with a neutral stance on religious affairs. The Constitution of the Republic of Kosovo incorporates three models of state-religion relations – the American concept of the secular state, the French concept of *laïcité*, and state neutrality towards religious affairs.

Apart from guarantees over freedom of religion, in the last two decades Kosovo's authorities have made little progress in advancing the country's legal framework to accommodate the emerging needs of religious communities. The only law that regulates the status of religious communities in Kosovo is the 2006 Law on Freedom of Religion. This law, in general, speaks about the freedom to express one's religion and freedom of religious association, and while it emphasises that there is no official religion in Kosovo, the law recognises five religious groups in the country, namely the Islamic Community, the Serbian Orthodox Church, the Roman Catholic Church, the Jewish Religious Community and the Protestant Evangelical Church. The law is framed in very broad terms, and has received a lot of criticism for failing to properly regulate the status of religious communities. The law does not address, for example, a critical aspect for the normal operation of religious communities, namely the right of religious communities to acquire legal form and to gain status as legal entities. This is of paramount importance if they are to carry out the full range of their legitimate activities. Without legal entity status, religious communities can only function at the most basic level.

An initiative to modify the law was taken for the first time in 2011, when a new Bill on freedom of religion was approved by the government. However, the government withdrew the Bill on the day that was supposed to be discussed in parliament. The same scenario has been repeated almost every year since then as three different cabinets have tried to modify the religious freedom law. But why do religious communities want a new law, and most importantly why is the government failing to deliver? Part of the answer is to be found in the legal complexities of Kosovo's dealing with religion.

This paper proceeds in three parts. The first part elaborates the principles of the secular state in a liberal democratic tradition. The second part provides an overview of the legal framework on freedom of religion in Kosovo. And the last part consists of an analysis of the struggle of policymakers to accommodate the demands of religious communities in any prospective new law.

## **Secular states within the liberal democratic system**

According to a study by the Pew Research Center, Kosovan Muslims, along with their Bosnian and Albanian neighbours are among the most liberal Muslims in the world.<sup>185</sup> Such studies have shown that Balkan Muslims have been able to embrace modernity without abandoning their religious identity, seeing themselves as fully Muslim and fully

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185 Pew Research Centre, *The World's Muslims: Religion, Politics and Society*, 30 April 2013, <https://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-beliefs-about-sharia/>

European.<sup>186</sup> This explains why the secular model was never contested in the region. In Kosovo, the idea of a secular state was not introduced in 1999 when the country entered a new political era. The origins of the process date back to the early days of communist Yugoslavia, when major integration and modernisation policies were implemented in some Muslim-populated areas, which led to rapid secularisation. This process gave birth to an atheistic political and intellectual elite, as well as to a radical marginalisation of the Islamic clergy. Islam was thus restricted to the private sphere: worshiping practices, annual religious feasts, and traditional ceremonies for weddings and deaths.<sup>187</sup>

However, a secular state within a liberal democratic system is largely different from that in the socialist system. Unlike the socialist regime, which was characterised by enforced separation and an ideological hostility towards religion, in a liberal democratic system the emphasis is more often on the cooperation between the state and religion. To demonstrate this point, we may take the definition of a secular state given by Donald Eugene Smith. According to Smith, the secular state (in a liberal democratic system) is 'a state that guarantees individual and collective freedom of religion, treats individuals as citizens, regardless of their religion, is not constitutionally linked to any religion, and does not attempt to promote or interfere in religion'.<sup>188</sup> From this definition, Smith derives three types of relationships: religion vis-à-vis the individual, the state vis-à-vis the individual, and the state vis-à-vis religion.

The first relationship concerns only religion and the individual, where the principle of freedom of religion is in effect; the individual is free to believe or not to believe in any religion; and where individuals are free to associate in religious groups. The role of the state in this relationship is minimal, only in the sense that it provides legal grounds to guarantee such freedoms. The second concerns the state and the individual, where the principle of citizenship is in effect. In other words, in a secular state, religion becomes completely irrelevant to the definition of civic status and the rights and obligations of citizens are equal. Here citizens are part of the sovereign body, regardless of their beliefs, and together they give legitimacy to the law. The third relationship concerns the state and religion, where the principle of separation is in effect. All religions are separated from the state. Religious groups are autonomous entities; this means they are responsible for their own organisation, they formulate their own beliefs and discipline, establish their own institutions, and finance their own activities.<sup>189</sup> It is this third relationship – 'the separation of state and religion' – which is usually mentioned when defining the secular state, however, Smith argues that the other two are equally important in liberal democratic traditions.

All three relationships can be found in Kosovo's legal framework, as we will see in the next part of this paper. However, one can find ambiguity, if not controversy, as to what constitutional model of state–religion relationship is promoted in Kosovo. Article 8 of the English version of the Constitution of the Republic of Kosovo states that 'the Republic of

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186 R. Asimovic Akyol, 'Want to Cultivate a Liberal European Islam? Look to Bosnia', *The Atlantic*, 13 January 2019, <https://www.theatlantic.com/international/archive/2019/01/bosnia-offers-model-liberal-european-islam/579529/>

187 J. Mehmeti, 'Faith and Politics in Kosovo: The Status of Religious Communities in a Secular Country', in A. Elbasani and O. Roy (eds.), *The Revival of Islam in the Balkans*, (London, 2015), pp. 62–80

188 D. Smith, *India as a Secular State*, (Princeton, 1963)

189 *Ibid.*

Kosovo is a secular state and is neutral in matters of religious beliefs'. While the English version uses the term 'secular state', the Albanian version of the same article uses the term 'shtet laik' (laik is the Albanian for laïcité). So, is it possible for a state to embrace both the secular and the laicist model? Are they the same thing? Despite similarities, some scholars argue that the two models are different. The laicist model is seen as anti-religious – a model that seeks freedom from religion (as illustrated by revolutionary France and Kemalist Turkey after the demise of the Ottoman Empire), whereas the secular state seeks to protect religions from state intervention (such as in the United States).<sup>190</sup>

## **The legal foundations of freedom of religion in Kosovo**

In June 1999, the Security Council of the United Nations adopted Resolution 1244, which became the juridical foundation for the international administration in Kosovo. According to Resolution 1244, the Secretary-General was requested to appoint an international representative who became known as the Special Representative of the Secretary General (SRSG) to Kosovo. He was in charge of a new civil administration in Kosovo, known as United Nation Interim Administration Mission in Kosovo (UNMIK), which became the main international civil authority. The SRSG was given full legislative, executive and legal authority.<sup>191</sup> In the following years, the SRSG would sign UNMIK Regulations, which were legislative provisions; would make executive decisions and would appoint and remove prosecutors, as well as decide when to arrest and take into custody anyone suspected of violating the law.

*One of the most important documents enacted by the head of UNMIK was the Constitutional Framework for Provisional Self-Government in Kosovo, which was signed by Hans Haekkerup, the SRSG, on 15 May 2001. This document guarantees all the basic human rights, including the right to exercise one's religion. Article 3.1 of the Constitutional Framework states that 'all persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms'. Furthermore, Article 4.1 states that 'communities of inhabitants belonging to the same ethnic or religious or linguistic group (Communities) shall have the rights set forth in this Chapter in order to preserve, protect and express their ethnic, cultural, religious, and linguistic identities'. In addition, communities and their members were guaranteed the right to preserve sites of religious importance (Art. 4.4.f) and to operate religious institutions (4.4.n).<sup>192</sup>*

From 2001 to 2008 there was a gradual and smooth transition of competences from UNMIK to Kosovo's new domestic institutions and, on 17 February 2008, Kosovo declared its independence. The Constitution, which was adopted two months later, was based on the Ahtisaari proposal – designed to make Kosovo a multi-ethnic and secular state in which no ethnic or religious group would have supremacy. Therefore, to avoid any religious favouritism, first and foremost, the Ahtisaari proposal demanded that the Constitution

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190 R. Hirschl, 'Comparative Constitutional Law and Religion', in T. Ginsburg and R. Dixon (eds.), *The Research Handbook in Comparative Constitutional Law* (2011)

191 UNMIK REG/1999/1, *On The Authority Of The Interim Administration In Kosovo* (July 25 1999), s.1, [http://www.unmikonline.org/regulations/1999/re99\\_01.pdf](http://www.unmikonline.org/regulations/1999/re99_01.pdf).

192 UNMIK REG/2001/9, *On Constitutional Framework for Provisional Self-Government in Kosovo* (15 May 2001) <http://www.unmikonline.org/regulations/2001/reg09-01.htm>

of Kosovo must affirm that Kosovo has no official religion and that it shall be neutral on questions of religious belief. The Constitution of the Republic of Kosovo, which was ratified on 9 April 2008, prescribes that 'the Republic of Kosovo is a secular state and is neutral in matters of religious beliefs' (Art. 8). Article 38 speaks about the freedom of conscience for individuals, while Article 39 concerns the rights of religious communities to organise their activities:

*Freedom of belief, conscience and religion is guaranteed. Freedom of belief, conscience and religion includes the right to accept and manifest religion, the right to express personal beliefs and the right to accept or refuse membership in a religious community or group. No one shall be required to practice or be prevented from practicing religion nor shall anyone be required to make his/her opinions and beliefs public. Freedom of manifesting religion, beliefs and conscience may be limited by law if it is necessary to protect public safety and order or the health or rights of other persons. (Article 38)<sup>193</sup>*

*The Republic of Kosovo ensures and protects religious autonomy and religious monuments within its territory. Religious denominations are free to independently regulate their internal organization, religious activities and religious ceremonies. Religious denominations have the right to establish religious schools and charity institutions in accordance with this Constitution and the law. (Article 39)<sup>194</sup>*

Unlike the Constitution, which does not mention any religions by name, the only law that speaks about religious communities in Kosovo is Law 02/L-31 on Religious Freedom in Kosovo that was prepared by UNMIK administration in 2006.<sup>195</sup> Article 1 concerns freedom of religion:

*Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to have, not to have, to retain or to change one's religion or belief and the freedom, either alone or in community with others, in public or private, to manifest one's religion or belief, in worship, teaching, practice and observance.<sup>196</sup>*

The law reemphasises that there is no official religion in Kosovo, however the law recognises five religious groups in Kosovo. Article 5 states that:

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193 The Constitution of the Republic of Kosovo, 15 June 2008, Art. 38, available at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

194 Ibid. Art. 39.

195 Republic of Kosovo Official Gazeta, Law No. 02/L-31 on Religious Freedom in Kosovo, 24 August 2006, available at: [http://www.gazetazyrtare.com/e-gov/index.php?option=com\\_content&task=view&id=64&Itemid=28&lang=en](http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=64&Itemid=28&lang=en)

196 Ibid. Art. 1



*To all religions and their communes in Kosovo including Islamic Community of Kosovo, Serbian Orthodox Church, Catholic Church, Hebrew Belief Community, and Evangelist Church, shall be offered any kind of protection and opportunity in order to have rights and freedom foreseen by this law.<sup>197</sup>*

Furthermore, the law stipulates that religious communities shall independently regulate and administer their internal organisation (Art. 7.2).

Looking at the content of the Law on Freedom of Religion, one can come to the conclusion that the primary goal of the UNMIK administration was to acknowledge the existence of various religions in Kosovo rather than to accommodate their needs and interests. It fails to regulate even the most basic need of religious communities – the status of a legal person. A religious community without the status of a legal entity may not exercise its rights, such as owning or leasing property, maintaining bank accounts, employing workers, or providing legal protection to the community, its members and its assets.<sup>198</sup>

Three different governments have tried to upgrade the law so far. The first attempt was in November 2011, when the government of Kosovo approved a new draft law on freedom of religion. On the day that the Bill was expected to be discussed in parliament, the government, as sponsor of this law, requested that it be withdrawn for further consultations. A new version was again approved by the government in 2012. When it was eventually brought to parliament, it failed to receive the necessary votes.<sup>199</sup> In 2016, the government approved yet another draft Bill,<sup>200</sup> which was never submitted to parliament for discussion and voting. A more serious attempt was made by the current government, which submitted another draft to parliament in late 2017. Eventually, in November 2018, the Kosovan parliament approved in principle the draft law. However, the process has stagnated since, and to the day this paper was written, the draft law has not been brought for final approval.

But this is no ordinary law. Under the Constitution of the Republic of Kosovo this law falls under the category of ‘legislation of vital interest’.<sup>201</sup> Firstly, laws of vital interest cannot be submitted to a referendum, according to the Constitution. And secondly, the Constitution states that such laws shall require for their adoption, amendment or repeal both a majority

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197 Ibid. Art. 5.

198 OSCE Institute on Religion and Public Policy, ‘Analysis of the Law on Freedom of Religion in Kosovo’, 10 October 2006, available at: <http://www.osce.org/odhr/21529>

199 ‘Projektligji për Liritë Fetare Kritikohet dhe nuk Kalon’, Kallxo, 30 November 2015, <http://kallxo.com/projektligji-per-lirite-fetare-kritikohet-dhe-nuk-kalon/>

200 Republic of Kosovo Assembly, ‘Draft Law On Amendment And Supplementation Of Law No.02/L-31 On Freedom Of Religion In Kosovo’, [http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001\\_pCErUBna5B.pdf](http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001_pCErUBna5B.pdf)

201 According to Article 81 of the Constitution, legislation of vital interest includes: Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in intermunicipal and cross-border relations; Laws implementing the rights of Communities and their members, other than those set forth in the Constitution; Laws on the use of language; Laws on local elections; Laws on protection of cultural heritage; Laws on religious freedom or on agreements with religious communities; Laws on education; Laws on the use of symbols, including Community symbols and on public holidays.

of the Assembly deputies present and voting and a majority of the Assembly deputies who hold seats which are reserved or guaranteed for representatives of Communities that are not in the majority. In other words, any changes require a majority of votes from both the Albanian majority and the non-Albanian minorities represented in parliament. The Kosovo Assembly has 120 seats, of which 20 are guaranteed for representatives of minority communities. Of these guaranteed seats, 10 are guaranteed for the Kosovo Serbs, and 10 for the rest of the minorities. Practically speaking therefore, the minorities can block the amendment of this law.

## **How have religious communities reacted to the current draft law?**

The repeated government attempts to modify the law demonstrates that the law, as contained in the 2006 UNMIK regulation, is at best vague and at worst ineffective and as such it needs to be changed. Although different drafts have been prepared since 2011, here we will only focus in the content of the current draft law that is awaiting a final approval by parliament. This draft law aims to regulate, first and foremost, the legal status of religious communities. According to the current draft, a new state agency will be established for the registration of religious communities as legal persons. It also regulates the manner and conditions for the registration of a new religious community in Kosovo. The condition is that the religious community has to have at least 50 members on the date of its registration who are adult citizens of the Republic of Kosovo.<sup>202</sup>

The new draft law recognizes one more religious community in addition to the five religious communities that are recognised under the UNMIK version – the Tarikat Community of Kosovo. According to the explanatory memorandum of the law, the Tarikat Community has about 60,000 people and has existed for 350 years in Kosovo.<sup>203</sup>

The draft law also regulates the issue of cemeteries and rites of burial. Cemetery places shall be assigned on a neutral and non-discriminatory basis by public authorities without the intervention of other religious communities and religious rites are to be performed in accordance with the wish of the deceased or, in the case of a lack of his/her desire, to be made in accordance with the desire of families/relatives of the deceased unless it is not contrary to public order. Burials and burial rites in cemeteries are also to be organised in a neutral way, and persons belonging to a religious or confessional minority should not depend on persons belonging to a majority religious community for matters related to aspects of their burial. For which the government foresees the need to issue supplementary legislation.<sup>204</sup>

With regard to funding, the draft law says that the government shall not finance any of these

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202 Republic of Kosovo Assembly, 'Draft law on amendment and supplementation of Law no.02/L-31 on Freedom of Religion in Kosovo', Art. 7, 10 October 2016 [http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001\\_pCErUBna5B.pdf](http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001_pCErUBna5B.pdf)

203 Government of the Republic of Kosovo, 'Explanatory Memorandum on Amendment And Supplementation of Law No.02/L-31 on Freedom Of Religion In Kosovo', [http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001Memorandumishpjegues\\_meSxXgzWyG.pdf](http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001Memorandumishpjegues_meSxXgzWyG.pdf)

204 Ibid. p. 3



religious communities.<sup>205</sup> However, various tax exemptions for religious communities are also regulated by other laws. For instance, the law on the taxation of immovable property contains an exemption for the properties of religious institutions that are maintained and used for religious purposes. Moreover, the draft law provides that the government may invite religious communities to apply for funds related to the maintenance of cultural/religious monuments which they own. The draft law also obliges religious communities to ensure that all revenue, including via foreign donations, is processed according to the financial legal system.

Despite its innovative approach, religious communities responded to the draft Bill in different ways. The Islamic Community of Kosovo, for example, which is the largest religious community and has often criticised the government for failing to change the law, eventually objected some of the new provisions. To begin with, the Islamic Community was against the new provision which recognises the Tarikat Community of Kosovo as a separate religious community.<sup>206</sup> Traditionally all Sufi orders in Kosovo have operated under the authority of the Islamic Community, meaning that the proposed change will affect the demographics of the Islamic Community, since Sufi Muslims would in the future register as a separate religious community. The Islamic Community also suggested that the number of adherents required for registration as a religious community should be raised to 500 instead of 50. This suggestion was rejected. They also proposed a new article which would prohibit the activities of non-governmental organisations that deal with religious issues without prior permission from the relevant religious community.<sup>207</sup> This suggestion was also rejected as it conflicts with the law on freedom of association.

With regard to funding, the Islamic Community suggested that the government should allocate funds from the state budget to pay the monthly income of the community's employees and that the government should finance religious communities on a proportional basis according to the number of believers.<sup>208</sup> This request was not taken into account either. Furthermore, the Islamic Community also requested that secondary education include religious education in the form of elective courses. This was also rejected by the government.

The Catholic Church and the Serbian Orthodox Church proposed that the article that obliges religious communities to submit an annual financial statement to the Kosovo Tax Administration be removed from the draft law. This proposal was accepted and the article has since been deleted. The Serbian Orthodox Church proposed an article which maintains that 'religious communities freely manage their immovable property, dealing to, but not limited to acts of ownership, construction, building additions, repair, and all other work necessary for free religious life to the preservation of religious and existing

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205 Republic of Kosovo Assembly, 'Draft law on amendment and supplementation of Law no.02/L-31 on Freedom of Religion in Kosovo', 10 October 2016, Art. 12, [http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001\\_pCErUBna5B.pdf](http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001_pCErUBna5B.pdf)

206 B. Bislimi, 'Drejt ligjësimit të bashkësive fetare, BIK-u i pakënaqur', Radio Free Europe/Radio Liberty, 1 October 2016, <http://www.evropaelire.org/a/28026050.html>

207 Government of the Republic of Kosovo, 'Explanatory Memorandum on Amendment And Supplementation of Law No.02/L-31 on Freedom Of Religion In Kosovo', p. 11 [http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001Memorandumishpjegues\\_meSxXgzWyG.pdf](http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/06-L-001Memorandumishpjegues_meSxXgzWyG.pdf)

208 Ibid. p. 13

buildings owned by religious communities. For such actions religious communities do not need special permission or approval by the competent body'.<sup>209</sup> This proposal was not taken into account.<sup>210</sup>

## Conclusions

The secular state is not a new concept for Kosovan society, given that Kosovo operated within the secular system of socialist Yugoslavia for more than five decades. However, as this article has shown, there are differences between a secular state under a socialist system, and a secular state under a liberal democratic system. While the former is characterised by separation – with an ideological hostility towards religion, which relegates religious authorities to the background and protects the state from any religious influence – the secular state in a liberal democratic tradition, while also characterised by the separation of church and state, is also about the cooperation between the two. But the cooperation between the state and religion in Kosovo has not developed beyond formal recognitions. Religious communities are regulated by a law is very broadly defined and therefore ineffective. The law currently fails even to grant communities legal personhood. Operating without the status of a legal entity means facing difficulties in property ownership; in maintaining bank accounts; employing workers; and providing legal protection to the community, its members and its assets. The repeated failures of policymakers to upgrade the law shows the complexities involved in regulating religion in Kosovo. The system introduced by the international community may have been appropriate for protecting the rights of religious minorities in a post-conflict era. Today it raises the question of state pragmatism in delivering the needs of its communities, including religious communities.

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209 Ibid. p. 35

210 Ibid. p. 34. No justification was given in the explanatory memorandum for refusing this proposal other than 'the proposal was not taken into account'.

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