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Written statement* submitted by European Centre for Law and Justice, The / Centre Européen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 February 2020]

* Issued as received, in the language(s) of submission only.

REQUESTING THE U.N. TO ASK FOR THE REPEAL OF THE NEW LAW AGAINST THE SERBIAN ORTHODOX CHURCH IN MONTENEGRO

On December 27, 2019, the Parliament of Montenegro adopted a law tabled by the Government on “Freedom of Religion or Beliefs and Legal Status of Religious Communities.” The law was adopted and came into force on January 8, 2020 (Official Gazette of Montenegro, No. 74/2019 of 30 December 2019).

POLITICAL BACKGROUND AND PURPOSE OF THE LAW

In 1920, the Christian Orthodox of Montenegro voluntarily and officially joined the Serbian Orthodox Church, in the context of the foundation of the Kingdom of Yugoslavia. Since that date, almost all the Christian Orthodox in Montenegro have been practicing their faith within the Metropolitanate and three dioceses of Montenegro of the Serbian Orthodox Church. The jurisdiction of this church on those dioceses is recognised by all the Orthodoxy (Constantinople and Moscow).

The real purpose of the law is the nationalisation of the Church in Montenegro. The Prime Minister of Montenegro, on May 16, 2019, affirmed that the law “represents the final step on the historical path of cultural emancipation of Montenegro”.

THE LAW COMPELS THE CHURCH TO APPLY FOR A NEW AND COMPLICATED REGISTRATION

This law requires all religious communities to apply for public registration (art. 18-24) and imposes conditions that are detrimental to the Serbian Orthodox Church (art. 25).

The Serbian Orthodox Church and its dioceses are required to apply for their recognition by the State, although they are already recognised under the previous legal regime (of 1977). This is a violation of European law and standards. The 2014 OSCE/ODHIR Guidelines on the Legal Personality of Religious or Belief Communities specifically emphasized that, when enacting new laws regulating the registration process, “States must take into account the rights of already existing communities” and review any legal provision “that have retroactive effect or do not protect acquired rights, such as those requiring re-registration of religious entities according to the new criteria.” The UN Special Rapporteur on Freedom of Religion or Belief stated in his report of December 22, 2011 that such legal provision were “extremely problematic” and that they often sought to “control a religious community that is believed not to fit into the State’s cultural, religious or political agenda.”

In addition, the law provides that only religious communities having their seat in Montenegro and being a legal person in Montenegro can be registered (Article 25). But the seat of the Serbian Orthodox Church, as well as of two of its dioceses having jurisdiction over part of the Montenegrin territory are not in Montenegro. Therefore, this provision forbids the recognition in Montenegro of the Serbian Orthodox Church and of two of its dioceses.

Article 25

The domain of registration or entry into the Inventory of a religious community in Montenegro shall be within the borders of Montenegro.

The seat of the religious community registered or entered into the Inventory for the territory of Montenegro shall be in Montenegro.

Part of the religious community with the religious center abroad, operating in Montenegro, shall obtain the status of a legal person in Montenegro upon entry into the Registrar or the Inventory.

THE LAW MAY FORBID THE CHURCH TO USE THE NAME “ORTHODOX CHURCH”

According to Article 21 of the law, the name of the religious community applying for recognition “must differ from the names of other religious communities to the extent that allows for avoidance of confusion or mistake in the identification due to resemblance with the name of another registered community. (...) In the event that several religious communities claim to have the right to use the same or similar name (...) the Ministry shall decide”.

This provision allows the State authorities to deprive the Orthodox Church of its name since “the Montenegrin Orthodox Church” is claiming almost the same name.

CONFISCATION AND NATIONALISATION OF ALMOST ALL THE PROPERTIES OF THE CHURCH

Article 62 of the law states:

Religious buildings and land used by the religious communities in the territory of Montenegro which were built or obtained from public revenues of the state or were owned by the state before 1 December 1918, and for which there is no evidence of ownership by the religious communities, shall constitute state property as cultural heritage of Montenegro.

Religious buildings constructed in the territory of Montenegro based on joint investment of the citizens before 1 December 1918, for which there is no evidence of ownership rights, shall constitute state property as cultural heritage of Montenegro.

The existence facts referred to in Paragraphs 1 and 2 of this Article shall be proven by evidence and the rules of evidence set in the Administrative Procedure Act and in absence of such provisions the provisions of the Civil Procedure Code shall apply.

Once registered as a state property, “a State organ” will decide “on the use and disposal of such buildings and land” (Article 64).

This provision has the effect of confiscating most of the properties of the church and religious communities because the Christian Orthodox in Montenegro joined in 1920 the Serbian Orthodox Church. It has to be understood that it was and is still the same and unique Orthodox Church before and after 1920. The law, if applied, would deprive the Christian Orthodox of Montenegro of their historical properties for the benefit of a schismatic State-controlled “church” and of real estate agents.

In addition, the seizure of property creates conditions for massive corruption as it gives hand over these assets to persons who are close to the regime, as evidenced by the high corruption index in Montenegro.

THE LAW PROHIBITS AND HINDERS THE ESTABLISHMENT OF SCHOOLS BY RELIGIOUS COMMUNITIES

According to Article 54 of the Law: “Religious community may establish religious schools at all levels of education, except for primary school, which is compulsory according to the law”. A fine from 2,000 to 20,000 Euros shall be imposed on entities that establish a religious school for primary education (Article 58).

Regarding other religious schools, only a religious community that is recognised may found and run such an establishment. The curricula and contents of the textbooks and manuals of the religious schools are controlled by the public authority responsible for education.

THE LAW HINDERS THE RIGHT OF PARENTS TO EDUCATE THEIR CHILDREN

Article 52 of the law states that “Parents shall have the right to engage in religious teaching of their own child in line with their own religion or beliefs, while respecting the physical and psychological integrity of the child.” The limitation of the right by the reference to the “psychological integrity of the child” is abusive in regard to religious education since it necessarily has a psychological effect. The law also limits the right of the parents until their children are eleven. Once they are twelve or older, parents do not have the right to give a religious teaching to their children without their consent (Article 51). Otherwise, they may be fined up to 2,000 euros (Article 59).

THIS LAW PROVOKED STRONG POPULAR OPPOSITION

The law was passed with brutal force at 3 a.m., after 17 members of the Parliament opposition were arrested and taken to custody. It was adopted without dialogue with churches or religious communities. Since its adoption, massive and peaceful protests have been taking place every week, gathering up to a third of the population.

U.N. AND EUROPEAN INSTITUTIONS EXPRESSED THEIR CONCERN BEFORE THE ADOPTION OF THE LAW

The UN Special Rapporteur on Freedom of Religion or Belief, Mr Ahmed Shaheed, on May 4, 2019 expressed his concern and hope, “that the government of Montenegro, taking into account the concerns raised, and suggestions provided by different stakeholders, will consider revising the draft law so it becomes compatible with international human rights standards promoting the right to freedom of religion or belief.”

The Venice Commission issued an opinion on June 24, 2019 based on the draft law. It identified a number of substantive issues, notably with regard to church property. It emphasized that the authorities should carry out inclusive and efficient consultations with the public, including representatives of religious communities, which is an important condition in order to reach an agreement as broad as possible on the issues dealt with by the law.

None of the substantive recommendations of the Commission were respected, and the law was passed, in practical terms, in complete contradiction with the Commission’s opinion and the ECHR case law.

The EU EEAS issued a declaration on December 12, 2019 declaring that this matter should be dealt with in an inclusive way, bringing together all relevant stakeholders, and in line with relevant international and European human rights standards.

CONCLUSION

The ECLJ respectfully asks the UN to request Montenegro to repeal the provisions that are in contradiction with its international obligations and to restore a peaceful dialogue with the religious communities involved.
