

**APPEAL OF THE ACADEMIC COMMUNITY AND CIVIC ACTIVISTS
REGARDING ADOPTION OF
*THE LAW ON THE FREEDOM OF RELIGION OR BELIEFS
AND ON THE LEGAL POSITION OF RELIGIOUS COMMUNITIES*
IN MONTENEGRO**

Fully conscious of our civic and academic duty to protect public conversation that is based on truth, facts and reason, as well as principles of freedom, democracy, prohibition of discrimination and protection of human rights, we find it necessary to comment on the current crisis caused by the enactment of the *Law on the freedom of religion or belief and the legal position of the religious communities* (hereafter: the Law) by the Parliament of Montenegro on 27 December 2019. We hereby draw public attention to the following points:

- The Law *de facto* and *de jure* creates a legal framework for the nationalisation of property of (traditional) religious communities, which originates from joint investment of citizens of Montenegro and which predates 1 December 1918. The way in which provisions of the Law are formulated demonstrates an intention to enforce them discriminatorily to the property of one religious community only (Serbian Orthodox Church), given that the status of property of other traditional religious communities in the country is regulated either by an interstate contract (between the Holy See and Montenegro, for the Roman Catholic Church) or a fundamental contract between the state and the religious community (for the Islamic Community of Montenegro).
- The Law directly interferes with property rights which are guaranteed by the Constitution of Montenegro and a multitude of international contracts and conventions that are signed and ratified by Montenegro, including the European Convention of Human Rights (Article 1, Protocol 1) and the Stabilisation and Association Agreement between the EU and Montenegro. Provisions of the Law regarding property are also in contradiction with the interpretation and opinions of the European Court of Justice on cases which concern property that predates the creation of modern states. In addition, the Law ignores (or at least does not acknowledge) other rights, such as the right of usucaption that religious communities have acquired by using and maintaining the property for several decades or even several centuries.
- The first draft of the Law was reviewed by the Venice Commission, which expressed reservations in relation to its numerous provisions, and found it necessary to secure an all-encompassing and inclusive public debate, and provide legal guarantees so that the Law does not affect the use of religious premises by communities which have used those premises so far. In addition, the Venice Commission argued that it is necessary to resolve questions of property relations when it comes to specific cases in a court of

justice. The enacted Law mostly ignores these and other recommendations by the Venice Commission.

- Aforementioned problems with the Law indicate that the Montenegrin government is, in this way, directly interfering in determining the status of religious communities and preparing the ground for subduing one religious community (Serbian Orthodox Church) and promoting another (Montenegrin Orthodox Church), by intruding on the property rights of the former. This intention was also publicly indicated by the highest representatives of the Montenegrin government in the preceding months. Such activities are violating the principle of separation of church and state, as one of the founding principles of modern democratic states.
- Apart from substantial objections, many other shortcomings can be observed during the enactment of the Law which are unusual for modern democratic societies, including absence of an inclusive public debate which would take into account the opinion of the largest religious community in the country (also pointed out by the Venice Commission), regulative changes on the most important issues in interim and final versions of the Law, enactment of the Law through an accelerated procedure which implied that both a general and detailed discussion had to be finished within 24 hours, and the parliament vote that took place late at night / early in the morning, with masked members of the security forces being present inside the National Parliament building during the discussion and vote.

Discrepancies between the Law and the basic principles upon which modern democracies function (above all the principle of separation of church and state), the Law's departure from numerous international accords dealing with democracy and human rights, its encroachment of the inviolability of property rights, and its discriminatory character, transgress individual and collective rights of both the Serbian Orthodox Church and citizens of Montenegro. As such, this act of manipulation of religious feelings has a tremendous destabilizing potential, especially in ethnically mixed environments present throughout the Balkans. Therefore, we consider this precedent, which has the potential to spill over to other countries in the region, a threat which can become a permanent source of tensions and conflicts.

Moreover, the enforcement of this Law, which is in contradiction with a large number of basic principles of the EU, could significantly jeopardize Montenegro's (and indirectly other Balkan countries') process of EU accession, given that it would be impossible to close Chapters 23 and 24 which are concerned with the rule of law, when a law which directly and discriminatorily violates human rights and introduces uncertainty into the legal order, is enforced. Finally, although it can be heard publicly that one of the motives for such an action is economic (acquisition of prime real estate), we would like to point out that the enforcement of this Law can in reality create large negative economic consequences for Montenegro in the longer run, because it introduces a state of legal insecurity, and raises the risk of compensation requests which could be demanded through domestic and international courts of justice.

Our intention is to indicate to the international and domestic public the serious risks that the enactment of this Law poses, so that we can contribute to the de-escalation of the situation and search for solutions by peaceful and democratic means. We therefore condemn the enactment of the Law, and the use of force by government agencies of Montenegro with the goal of prohibiting their citizens to express opinions in public gatherings, and issue the following:

A P P E A L

- To commence the process of making amendments to the Law through an inclusive dialogue between the state of Montenegro and representatives of all three traditional religious communities in Montenegro, with support of the Venice Commission and the EU;
- To immediately commence the process of drafting and signing a fundamental contract between the state of Montenegro and the Serbian Orthodox Church, which would permanently settle existing issues related to the functioning of this religious community, in line with the contracts that Montenegro has with the Holy See and the Islamic Community;
- To allow everyone in Montenegro the right to assemble, to peaceful demonstration and public expression of opinion, in spirit of peace and tolerance, without the use of repressive measures and threats of economic, political, legal and security consequences to persons who participate in such activities. Simultaneously, we ask that all participants in such meetings and activities behave in the spirit of affirming peace, tolerance and reconciliation;
- To the officials and representatives of the Republic of Serbia to directly participate in informing the international public, through relevant institutions and forums, about the endangerment of human and property rights and the potential risks which can arise from the ongoing crisis, and to help resolve this problem in bilateral dialogue with the representatives of Montenegro;
- To EU officials to offer direct technical and political support to resolution of these issues;
- To distinguished individuals and representatives of various interest groups in the Republic of Serbia and other countries in the Balkans, to refrain themselves from erroneous interpretations and manipulations of historical, legal and political facts, which can only result in further escalation of conflict and antagonisation in the already deeply divided societies in these countries.

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