

# Defense & Foreign Affairs Special Analysis

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## Special Report

### Adriatic Sleight of Hand

***Montenegro's "religious freedom" law has become part of a pattern of East-West rivalry which includes US and EU attempts to see Moscow's influence in Orthodoxy curtailed.***

**By Dr Branko Mikasinovich, GIS/Defense & Foreign Affairs.**<sup>1</sup> It is probably fair to say that, even within the region — and certainly outside it — there is little real understanding of the nuance of political warfare underway in the Balkans.

Even with the massive focus on the region during the break-up of Yugoslavia and the end of the Cold War there has been little effort to understand the geopolitical centrality of the Balkans to the security of "Western Eurasia": the area from the Urals to the Atlantic. The combination of riverine trade and land access to the Adriatic/Mediterranean to and from the North, and the locus of East-West linkages (including pipelines and people), have made it the nexus of historical activity from Roman times until today.

Traditionally, Belgrade, the capital of Serbia, has been considered a hub of activity for foreign intelligence services in the Balkan region.

In this highly competitive intelligence region, there are five dominant actors: Russia with influence on Serbia and other Orthodox states; Turkey, with influence in Muslim populated countries such as Albania, Northern Macedonia, and Bosnia & Herzegovina (as well as Serbia); the European Union, with influence in the western Balkans, especially in Croatia and Slovenia; the People's Republic of China, with economic and political interests in Serbia and Greece; and the US, with interest in blocking Russian, Turkish, and PRC operations and in sustaining Washington's position in Kosovo.

The Russian and US intelligence services, in particular, have begun a major information war in Serbia, particularly through proxies using aggressive social media operations to build support groups in the country.

Where does this fit with the current turmoil in Montenegro and its recently promulgated, highly controversial Law of Religious Freedom and Beliefs and Legal Status of Religious Communities, enacted on December 27, 2019?

The new law, which is about the exercise of political rather than religious power, had three key objectives:

- *Firstly*, to deprive the Serbian Orthodox Church — which has been the primary faith leader in Montenegro — of its human and religious rights and assets and leave it at the mercy of the Montenegrin Pres. Milo Đukanović, a politician with strong, openly anti-Serb positions.
- *Secondly*, to curtail the regional influence of Serbia; and one of the best ways, to start with, is by crushing the influence of the Serbian Orthodox Church in Montenegro.
- *Thirdly*, from the point of view of regional politics, to unite Montenegrin and Muslim forces against Serbs, and indirectly against Russians and Chinese, under Western perception and influence. It aimed also to covertly unite Croatian Catholics and Bosnian Muslims against Serbs and again supposedly against Russians and the PRC.

Taking advantage of the coronavirus crisis and confusion, the Montenegrin Government has sought to quickly resolve this issue by suppressing the human and religious influence of Montenegro's Serbs and the Serbian Orthodox Church. Representatives of the Serbian Orthodox Church and Serbs began protesting in late 2019 against the new law which was being used as a pretext to uproot Serbs and the Serbian Church in the Adriatic Balkan State. The law allowed the Government to seize the land and buildings of the Serbian Orthodox Church.

Significantly, Montenegro is a member of the North Atlantic Treaty Organization (NATO), and is seen by the US as a key base in the region for Washington to sustain its proxy war against Russian influence in the region. Moreover, the Montenegrin move appeared to have striking parallels with the Ukrainian move, in late 2018, to declare the Orthodox Church in Ukraine to be autocephalous: independent of its traditional relationship to the Moscow Patriarchate of the (Russian) Orthodox Church.

The Ecumenical Patriarch of Constantinople, Bartholomew I, on January 5, 2019, signed the *tomos* (decree) granting and recognizing the autocephaly of the Ukrainian Church.

This was a highly controversial and divisive decision within the Eastern Orthodox communities, and was widely perceived as political in nature, aimed at curbing the influence of Moscow.

The geopolitical implications of the Montenegrin Government in passing this new law, ostensibly about "religious freedom", are becoming clear. The fact that the US Government has supported the Montenegrin Government in Podgorica gives the impression of US support for the move against the interests of Serbia.

Apart from the geo-strategic aspects, the law appears to violate Montenegro's own constitution.

Ms Ilijana Todorović, one of the top 15 foreign attorneys in the US, said that the key issues with the "Freedom of Religion or Beliefs and Legal Status of Religious Communities" were articles 62 and 63 which stated that religious buildings and land were now the "cultural heritage" of Montenegro and were, therefore, property of the State.

Ms Todorović also claimed that every article of the law were legally deficient, including violations of Montenegro's constitutional principle of separation of church and state. If the law was implemented, Ms Todorović believed that the Serbian Orthodox church stood to loose to the State more land and property than other religious communities in the country combined: all via unconstitutional expropriation resulting from illegal retroactivity of the law, without a due process and without a constitutionally-guaranteed right to an appeal.

***BM: What does the 2019 Montenegrin law say about ownership of religious property?***

**IT:** It is first worth noting that, by its very title, this Law deals with the “Freedom of Religion or Beliefs and Legal Status of Religious Communities”. It is mind-boggling how cultural heritage and ownership of religious properties were made part of this law, especially because Montenegro already has the law on the protection of cultural heritage as well as the Law on state property — both of which are, by the way, expressly contradicted by the instant law.

With that said, the most significant problems with respect to ownership of religious buildings (a term that the law does not define) and land are presented in Articles 62 and 63. They, in essence, state that three categories of religious buildings and land are now considered to be “cultural heritage” of Montenegro and are, therefore, owned by the state:

1. Those built or obtained from public revenue;
2. Owned by “Montenegro” prior to December 1, 1918; and
3. Built with joint investments of citizens prior to December 1, 1918.

To make the matters worse, the Law is silent on the issue of who bears the burden of proof to show that the property and land in question in fact fall under any of these three categories.

***According to your legal analysis, what are the major flaws of this Law?***

My analysis shows that not a single article of this law, out of 66 of them, is without some kind of a deficiency. In general terms, the law provides for the expropriation of the religious communities' property and land in violation of other Montenegrin laws, international instruments to which Montenegro is a signatory, as well as the Montenegrin Constitution itself.

Further, given its retroactive application, this law is in practice considered to be a *lex specialis*, but it was not passed following a special procedure that such an *ex post facto* law requires. Instead, the law violates Article 147 of the Montenegrin Constitution which specifically states that “law and other regulations shall have no retroactive effect”.

The law also violates the Montenegro's constitutional principle of separation of church and state.

Given that it provides, as the Montenegrin State officials unknowingly like to point out, that the religious communities will be allowed to continue to use this “state-owned” property, the effect of the law is the unconstitutional de-secularization of Montenegro.

From the legal perspective, the Law lacks provisions dealing with the important legal concepts of burden of proof and legal procedure/due process, and it deprives the aggrieved parties (here, the Serbian Orthodox Church) of a right to an appeal that is guaranteed by Article 20 of the Montenegrin Constitution. Not to mention that it fails to differentiate between the existing *versus* new religious communities and fails to provide clear instructions for their registration procedures.

***If applied as it is now written, how would the law damage the Serbian Orthodox Church in Montenegro?***

It is important to explain that there are three types of law in terms of discrimination. A law which: *firstly*, discriminates on its face; *secondly*, is facially neutral but has a discriminatory motive or intent, it is discriminatory in its application, or has a discriminatory impact; and *thirdly*, does not discriminate.

The Montenegrin law that we are talking about here belongs to the second category. It is a facially neutral law which, by its very terms, applies to all religious communities on the territory of Montenegro. But, while I am in no position to analyze the motive or intent behind it, it is undisputed that the law has the largest discriminatory impact on the Serbian Orthodox Church. This is so because, according to the most recent statistical information, roughly 70 to 75 percent of citizens of Montenegro identify themselves as Orthodox Christians.

That is not surprising considering that the Serbian Orthodox Church was historically intertwined with Montenegro's statehood at the time when Montenegro was a theocratic state.

Thus, the Serbian Orthodox Church has and stands to potentially lose to the State incomparably more land and property than all other religious communities combined: all via unconstitutional expropriation resulting from illegal retroactivity of this law, without any due process, and without a constitutionally guaranteed right to an appeal.

This puts into perspective the reason why the Serbian Orthodox Church and its believers are the loudest in their protest against this law.

***Montenegro has a unique history with respect to the State and the Serbian Orthodox Church prior to 1918. Does the law recognize this uniqueness?***

No.

The law blatantly ignores the complex history of Montenegrin statehood through centuries. For much of the time prior to 1918 to which the Law applies, Montenegro was a host to many different states, such as the independent Duklja state, then Zeta state, and was even a part of the Serbian medieval state.

At times, it was under the occupation of the Ottoman Empire when it had autonomy as a theocratic state ruled by the prince-bishops. It was not until 1878 at the Berlin Congress that Montenegro was recognized as an independent country.

This means that the Law cannot apply as written to just any property owned by "Montenegro" prior to 1918.

Rather, it can only apply to the period from 1878, when Montenegro was recognized as an independent country, until 1918, when it lost its independence by joining the Kingdom of Serbs, Croats, and Slovenes.

**Footnotes:**

1. Dr Branko Mikasinovich, FSS, a former broadcaster of Voice of America, is a noted Slavist and author, and a Senior Fellow of Strategic Studies (FSS) at the International Strategic Studies Association (ISSA), publisher of this journal. A comprehensive talk on the subject by Ms Todorović, referred to in this report, can be found on: [https://www.youtube.com/watch?v=9az9gT\\_ROns](https://www.youtube.com/watch?v=9az9gT_ROns).
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