ORTHODOX METROPOLITANATE OF

MONTENEGRO AND THE LITTORAL

L e g a l C o u n c i l

House of St. George, 19. december St., 81 000 Podgorica, Montenegro

tel. +382-69-550-405, otacvelibor@gmail.com

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GOVERNMENT OF MONTENEGRO

PRIME MINISTER DUŠKO MARKOVIĆ

PODGORICA

R E M A R K S
TO THE PROPOSED LAW ON FREEDOM OF RELIGION OR BELIEF AND LEGAL STATUS OF RELIGIOUS COMMUNITIES IN MONTENEGRO

We submit Remarks with appropriate proposals to the **Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities in Montenegro,** defined by the Government of Montenegro on its 121st session on May 16, 2019.

We point out in particular that competent Ministry of Human and Minority Rights and the Government of Montenegro neither before defining **the Draft Law on Freedom of Religion in 2015**, nor from 2015 until defining **the Proposed Law on Freedom of Religion or Belief and Legal Status of**

Religious Communities in 2019 initiated a public, permanent and institutional dialogue with the Church and religious communities in Montenegro on this very important social issue.

On January 30, February 15 and March 1, 2019 **Deputy Prime Minister and Minister of Justice Zoran Pažin** called for meetings with the representatives of the Metropolitanate of Montenegro and the Littoral and Diocese of Budimlje and Nikšić at the Cetinje Monastery in Cetinje. Upon his request, the meetings were closed and without any information for the public. We were officially informed by the Deputy Prime Minister and Minister of Justice that *"the Government is talking to us only"* and that it was *"an act of good will"*. On January 30, 2019 the meeting was attended by **Minister for Human and Minority Rights, Mr. Mehmed Zenka** and **Director General of Directorate for Relations with Religious Communities, Ms. Žana Filipović,** but, besides official greetings, they did not have special comments on the future law.

At each of these meetings we insisted on adhering to the prescribed procedure for the preparation of laws in Montenegro. We proposed the establishment of a Working Group for the preparation of the Draft Law, which, in addition to government representatives, would include representatives of stakeholders, experts and the non-governmental sector, in accordance with the applicable regulations in Montenegro. This request was not accepted and was persistently rejected. We were officially informed that there was no working group for creation of the law and that the text of the future law was being prepared by various ministries. This was also announced by Minister Zenka on January 6, 2019 on TV "Vijesti"[1].

Having in mind these statements, **we primarily point out that in this case it is about the only law in the field of human rights and freedoms, in the preparation of which representatives of the Church, religious communities and other stakeholders, experts and non-governmental sector did not participate, that is, they were all deprived of their right and thus discriminated against.** For this reason, it can be stated that the Proposed Law is, in fact, a unilateral text of the Government of Montenegro.

In 2015, we pointed out, and even now, we remind that the Ministry of Human and Minority Rights did not prepare and propose, nor did the Government of Montenegro adopt a **Strategy** and **Action Plan for the**

[1] TV Vijesti, January 6, 2019, http://www.vijesti.me/tv/zenka-samo-mcp-ne-ucestvuje-u-pripremi-

protection and manner of exercising the right to freedom of religion or belief, and it was required to do so in the same way as it did in all cases where legal texts were prepared, and in particular in the field of fundamental human rights and freedoms.

To date, we have not received a response from the Ministry of Human and Minority Rights to the **Remarks to the Draft Law on Freedom of Religion**, which we submitted to the Ministry of Human and Minority Rights in a timely manner during the public hearing about the 2015 Draft Law. Our Remarks were not even addressed in **the Report from the Public Hearing,** which, with almost a four-year delay, was only published with the 2019 Proposed Law. The Metropolitanate of Montenegro and the Littoral and Diocese of Budimlje and Nikšić, Zahumlje and Herzegovina and Mileševa were not mentioned in the same Report as entities that participated in the public hearing, despite the fact that they provided written Remarks to the competent Ministry in due time, of which there is evidence.

The Proposed Law was made with severe violation of the procedure for preparation of a law which we pointed out several times. The report from the public hearing contains false information. Namely, the Report states that round tables on the Draft Law were held on September 7, 2015 in Bijelo Polje and September 10, 2015 in Kotor, and that is not correct.

The Draft Law was defined in 2015 and the Proposed Law in 2019. In 2015, about 5000 entities participated in the public hearing, who submitted written remarks, proposals and suggestions to the competent Ministry. The Ministry of Human and Minority Rights was required to respond to all comments, proposals and suggestions from the public hearing in the Report from the public debate, but it was not done so.

Aim and purpose of the Proposed Law

Bearing in mind that the Proposed Law is a unilateral act of the Government of Montenegro, the question arises: **does this act really seek to regulate the way of exercising and protecting the right to freedom of religion or belief? Or is it something else?**

The answer to this question should first be looked for in the public statements of the officials of the Government of Montenegro, because they, due to the fact that it was a unilateral act of the Government, gave their answer.

Other entities (representatives of the Church, religious communities, non-governmental sector and experts) were not allowed to participate in the process in the prescribed manner, as they were discriminated against and unlawfully excluded from the process of drafting the Proposed Law.

Prime Minister of Montenegro Duško Marković, immediately after defining the Proposed Law at the 121st session of the Government on May 16, 2019, stated, inter alia, that the Proposed law "*represents the final step on the historical path of cultural emancipation of Montenegro"*[2] and that "*the state protects property and cultural treasures belonging to all citizens and ensures that the laws of Montenegro are equally applicable to all throughout its territory"*.[3] Judging by the statement of the Prime Minister, the Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities is only a means and way to reach goals that have nothing to do with the way to exercising and protecting the right to freedom of religion or belief. The Prime Minister's statement regarding the establishment of the Proposed Law on May 16, 2019 is not in line with the allegations in **the Government Work Program for 2019,** because it did not mention the property of the Church and religious communities in Montenegro. Instead, it was stated that "*this law will regulate the issue of relations between the state and religious communities in accordance with European standards"*.[4]

The establishment of the Proposed Law of May 16 has little to do with the right to freedom of religion or belief which can be seen from an official statement made on behalf of the Government of Montenegro on the same day by **Žana Filipović**, **Director General of the Directorate for Relations with Religious Communities in the Ministry of Human Rights and Minority Rights.** At an official and regular Government press conference, Ms. Filipović, among other things, stated that "*this is a very significant legal act, which identifies important issues of the cultural identity of the citizens of Montenegro"*.[5]

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[2] Proposed Law of the Government of Montenegro on Freedom of Religion, portal Radio Slobodna Evropa, May 16, 2019, https://www.slobodnaevropa.org/a/29945931.html, May 28, 2019.

[3] Same

[4] Government Work Program for 2019, official website of the Government of Montenegro, http://www.gsv.gov.me/spi/Program_rada_Vlade, May 26, 2019.

[5] The Government established the Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities, official website of the Government of Montenegro, http://www.mmp.gov.me/vijesti/199422/Izjava-generalne-direktorke-Direktorata-za-odnose-sa-vjerskim-zajednicama-u-Ministarstvu-za-ljudska-i-manjinska-prava-zane-Filip.html, May 26, 2019.

Furthermore, the public was informed that "*this law addresses the issue of state property in a clear and transparent manner*"[6] and that by this law "*the state protects property and cultural treasures belonging to all citizens and ensures that the laws of Montenegro apply equally to everyone throughout the territory of our state.*" [7] Other statements by members of the Government also show that the Proposed Law deals primarily with the property of the Church and religious communities, not the right to freedom of religion or belief.[8]

The public statements of the Government representatives from May 16 to the present make it clear that the aim of the law is not to regulate the right to freedom of thought, conscience and religion, but the law on this universal human right is only a means to take away, primarily from the Orthodox Church as the most numerous, all Orthodox temples and immovable church property built and lawfully acquired by 1918. The intention in this case is to seize the property of the Church and religious communities in accordance with the French revolutionary model of the late XVIII century, contrary to all international legal instruments that guarantee and protect all universal human rights, including property rights. This is also evident from the statement by the **Minister of Human and Minority Rights, Mehmed Zenka**, of January 6, 2019, "*a decision is in the process of making, so the state can have the property returned to it, which belonged to the state until 1920*".[9] **Deputy Prime Minister Milutin Simović** said in relation to the Proposed Law that "*the moment had come for the issue of church property to be resolved*"[10], and that the whole undertaking is because of the alleged "*compliance with European legislation*".[11] **Montenegrin President Milo Đukanović**, after defining the Proposed Law by the Government of Montenegro, at a DPS political meeting in Nikšić very specifically stated his view of the function and purpose of the Proposed Law and emphasized that "*the SOC wants to maintain its religious monopoly in Montenegro in order to obstruct the establishment of the rule of law and continue to use what does not belong to it, in accordance with the legal system*

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[6] Same

[7] Same

[8] M. Simovic, ”We will resolve the issue of property”, ”Dan”, May 21 and 22, 2019, p. 8

[9] TV Vijesti, January 6, 2019, http://www.vijesti.me/tv/zenka-samo-mcp-ne-ucestvuje-u-pripremi-nacrta-zakona

[10] Daily newspaper ”Dan”, May 21, 2019, p. 8

[11] Same

of Montenegro." [12] Other entities in the society also recognize this act as a means of resolving property issues rather than the right to freedom of religion or belief.

The issue of state property in Montenegro is regulated by the **Constitution of Montenegro**[13] and the **Law on State Property**. [14] It is not difficult to find the answer to the question whether the Law on Freedom of Religion or Belief and Legal Status of Religious Communities, by violating the Constitution, Law on State Property and ratified international legal agreements, can regulate the issue of state property.

According to the Opinion of the Venice Commission no. 953/2019 of June 24, 2019, (hereinafter: the Opinion), emphasized that there was a need to have all "controversy" over the alleged previous roundtable discussions removed by conducting "*inclusive and effective public consultation with the public, including the representatives of religious communities*". According to the Opinion of the Venice Commission, "*The Government of Montenegro should establish this public dialogue, regardless of possible difficulties, because it is a condition for reaching as much agreement as possible on all issues regulated by this Proposed Law"*.[15]

From one title of the Law to another

The 2015 Draft Law had title – **Draft Law on Freedom of Religion.** The 2019 Proposed Law has title – **Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities.** There is no explanation in the rationale published with the Proposed Law, why and under what circumstances the title of the Proposed Law has changed as compared to the Draft Law.

The Government of Montenegro in its **Work Program for 2019**[16]**,** for the second quartal, announced the Proposed Law on Freedom of Religion, not

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[12] M. Djukanovic, "Announces seizure of property, supports Dedeic", "Dan", electronic issue, June 9, 2019, https://www.dan.co.me/?nivo=3&rubrika=Vijest%20dana&clanak= 699785& datum =2019-06-09

[13] Constitution of Montenegro, "Official Gazette of Montenegro", no. 1/2007

[14] Law on State Property, "Official Gazette of Montenegro", no. 21/2009

[15] Venice Commission, Montenegro - Opinion on the Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities, CDL-AD(2019)010, Strasbourg, 2019, par. 24 and 78

[16] Government Work Program for 2019, official website of the Government of Montenegro, http://www.gsv.gov.me/spi/Program_rada_Vlade, May 26, 2019.

the Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities. There is no explanation by the Government representatives as to why on May 16, 2019, a Proposed Law was adopted whose title does not comply with the Government Work Program for 2019.

In relation to the title of the 2015 Draft Law, the 2019 Proposed Law has been extended to include the right to freedom of belief and legal status of religious communities.

The title of the Proposed Law identifies the shortcomings and problems of the approach, which was presented by the Ministry of Human and Minority Rights by proposing and then by the Government of Montenegro by defining the Proposed Law. Namely, the right to freedom of religion is undoubtedly linked to the legal status of churches and religious communities, and this is not questionable. But what organizations is the right to freedom of opinion associated with, which, judging by the title of the Proposed Law, is presumed to be governed by this legal act, which is at the stage of a proposed law?

It is also clear even to an unskilled person that "*religion*" and "*belief*" are not the same terms, that is, different concepts and different human rights. The right to freedom of religion and the right to freedom of belief are exercised at the individual and collective levels. The right to freedom of religion is collectively exercised through churches, religious communities, religious organizations, confessional organizations and other religious organizations. The right to freedom of belief at the collective level is exercised through all other forms of non-religious organizations or communities of beliefs such as atheistic, agnostic, philosophical and similar organizations that are not religious. In no case can non-religious organizations and religious communities be treated in the same way. Also, non-religious and non-governmental organizations can by no means be identified, and this is exactly how it was done in the Proposed Law.

It is clear from the title of the Proposed Law that the legal status of organizations under the right to freedom of belief is not regulated at all at the collective level. This is confirmed by the content of the Proposed Law.

The Ministry of Human and Minority Rights and the Government of Montenegro have never opened a democratic, public and professional debate regarding the dilemma of whether it is better to have one law regulating the way of exercising the right to freedom of religion and legal status of churches and religious communities, and the other law regulating the right to freedom of belief and legal status of non-religious organizations. The public has no answer to why the Government has decided to regulate these two different issues with one law.

The general public, and not even the professional public, still do not know what the authors of the Proposed Law mean in terms of "*non-religious organizations*" which represent institutional forms in exercise of the right to freedom of belief at the collective level. In any case, these are not non-governmental organizations whose legal status is already regulated by the Law on Non-Government Organizations.[17] The title of the Proposed Law shows that non-religious organizations will not be able to acquire legal personality at all. The same applies to the rights of citizens - members of these organizations. According to the author of the Proposed Law, and judging by the title of the proposed Law, they will not be able to exercise their right to freedom of opinion in the collective aspect. In Montenegro, there is a rough division into governmental and non-governmental sectors, governmental and non-governmental organizations. Churches and religious communities are separate from the state and represent a specific constitutional category. "In depth," their legal status in other laws is not adequately regulated. There is a whole set of laws and by-laws that, more or less, regulate their status, but without dealing with the meaning and importance of churches and religious communities as *sui generis* legal entities that have civil-law subjectivity, that is, they are not public law entities.

It is unknown if there is any non-religious organization in Montenegro that has been established under the right to freedom of belief, such as atheists, agnostics or the like, but that does not mean that they will not be established in the future. On the other hand, churches and religious communities have existed in these areas for centuries, are part of the social reality and are deeply embedded in the personal and collective life of citizens in Montenegro. Churches and religious communities belong to the largest number of Montenegrin citizens, and this is an indisputable fact.

There is no doubt that the right to freedom of religion and the right of conviction to every citizen must also be guaranteed and protected with the utmost commitment, meaning citizens of Montenegro, foreigners with temporary or permanent residence in Montenegro, but also stateless persons. **In legal and technical normative terms, having in mind the social reality in Montenegro, the right to freedom of religion is better regulated by one law and the right to freedom of belief by another law, rather than by the same act, as is attempted by the Proposed Law.** Precisely because of the great difference between churches and religious communities and the so-called non-religious organizations or belief communities existing in the social reality of

[17] Law on Non-Government Organizations, ”Official Gazette of Montenegro”, no. 39/2011, 37/2017

Montenegro.

These shortcomings were also largely noted by the Venice Commission in its Opinion. Namely, the Opinion states that "*a number of the provisions of the Proposed Law in the first chapter dealing with key aspects of organized community life in this area do not explicitly mention "belief communities" or "other organizations based on people's beliefs, but exclusively refer to religious communities"*.[18]

The mere encounter with the title of the Proposed Law clearly shows to any serious lawyer that it is not, in principle, a well-formed title and it has to be changed.

Unchanged systematics and amended content of the law

While the title of the Proposed Law was changed without explanation, its systematics remained the same in relation to the 2015 Draft Law, and it was in this area, among other things, that changes had to be made. The Proposed Law, in addition to its title, consists of six chapters: **basic provisions, registration and database of religious communities, rights of religious communities and their believers, religious instruction and religious schools, penal provisions and transitional and final provisions.**

The systematics of the Proposed Law is not in line with the applicable **legal and technical rules for drafting regulations in Montenegro**[19] which stipulates that, with respect to the systematics of the law being prepared, "*the contents of the law shall be classified by systematizing provisions according to their relevance, according to the following distribution: a) basic provisions; b) central provisions; c) penal provisions; d) transitional provisions; and e) final provisions "*

This is a unique case in drafting regulations in Montenegro that a proposed law, instead of one, has three chapters with central provisions, of which the chapter with penal provisions seems to be the "most central".

For this reason, the Proposed Law must be in line with the legal and technical rules for drafting regulations in Montenegro.

In relation to the 2015 Draft Law, the Proposed Law has 65 members, or 10 members more than the Draft. Most of the provisions of the 2015 Draft Law were found in the 2019 Proposed Law. In doing so, the members of the Draft

[18] Venice Commission, par. 25

[19] Legal and technical rules for drafting regulations, "Official Gazette of Montenegro", no. 2/2010

Law have only changed their place in the Proposed Law, with nothing substantially changed, fixed or improved.

Basic Provisions

The contents of the Proposed Law show that the issue of how to exercise and protect the right to freedom of belief in individual and collective aspects has not been given any attention at all. Term "*belief*" is mentioned 16 times in the title and text of the Proposed Law (Articles 3, 4, 13, 14, 28, 29, 52 and 58 of the Proposed Law). From the text of the Proposed Law it cannot be concluded at all what is meant by belief and the right to freedom of belief. And the Venice Commission, in its Opinion, found that the so-called belief communities are not governed by the Proposed Law.[20] Although it is stated that it is about a law regulating the issue of the right to freedom of belief, organizations formed by citizens on the basis of the right to freedom of belief would have the status of non-governmental organizations (Article 29 of the Proposed Law) under the Law on Non-Governmental Organizations.

In relation to the 2015 Draft Law, the 2019 Proposed Law corrected certain provisions regarding the obligation of religious communities about informing the Government about the election of religious leaders before their election (Article 4, paragraph 3 of the 2015 Draft Law), prohibition of political activities of religious communities and abuse of religious sentiments for political purposes (Article 7 paragraph 3 of the 2015 Draft Law), prohibition of the use of the name of another state and its features in the name of a religious community, obligation to submit all texts on religious teaching to a state authority (referred to in Article 16 of the 2015 Draft Law) and the like.

Numerous provisions in the 2015 Draft Law have been moved to other places in the 2019 Proposed Law in no logical order. Considering the non-transparency of the procedure for drafting the 2019 Proposed Law, it is impossible to avoid the conclusion that the aim of such a procedure is calculated to cause confusion among the entities that will deal with the Proposed Law.

The 2019 Proposed Law made certain stylistic and linguistic changes that did not mean much or almost nothing at all. For example, term "religious worker" in Article 4, paragraph 2, item 2 of the 2015 Draft Law is replaced by term "religious staff" in Article 7, paragraph 3, item 2 of the 2019 Proposed Law. Or, term "territorial configuration of a religious community" in Article 11 of the 2015 Draft Law is replaced by term "area of registration or records of a

[20] Venice Commission, par. 25

religious community" in Article 25 of the 2019 Proposed Law. Term "seat (of a religious communities) abroad" in Article 17 of the 2015 Draft Law has been replaced by term "religious center" in Article 23 of the 2019 Proposed Law. There are other similar examples.

Article 1 of the Proposed Law

Article 1, paragraph 1 of the Proposed Law provides that freedom of thought, conscience and religion is guaranteed by the Constitution and ratified and published international treaties, but exercised in accordance with this law. The general rule in the legal system of Montenegro is that the manner of exercising human rights and freedoms is regulated by law, and, in this sense, this provision indicates that the manner of exercising freedom of religion is regulated precisely by the provisions of the Proposed Law. The question is: is the manner of exercising the right to freedom of religion *exclusively* governed by the provisions of that law or the provisions of other laws regulating other areas of social life that are related to this right and status of the Church and religious communities? It must be borne in mind that the Venice Commission stated in its Opinion that "*the existence of legislation is not a precondition for individuals to enjoy the fundamental rights guaranteed by international human rights treaties and constitutional provisions"*[21] and emphasized that the stated provision should not be understood and applied in the sense that individuals have only and exclusively the specific rights set out in this Proposed Law, as this would enforce the unlawful restriction of constitutional guarantees and provisions of international conventions.

The Proposed Law, from its very first provision, does not fulfill its basic purpose - to enable in a democratic society broad exercise of all aspects of the right to freedom of religion. It should be borne in mind that tolerance and respect are included in the OSCE/ODHIR Guidelines for the Evaluation of Legislation Relating to Religion or Belief, as referred to by the international standards of freedom of religion. In this respect, the legislation should be evaluated, but also in the modern world, mere tolerance is insufficient and it is strived for achieving true respect. Moreover, such an approach in the Proposed Law from the initial provision suggests that there is an intention to legally impose a kind of restriction on the enjoyment of every aspect of the right to freedom of religion whose manner of exercise is not governed by the provisions of this Proposed Law.

[21] Same, par. 26

In view of the above conclusion, the provision of paragraph 2 of the same article, which guarantees unhindered exercise of freedom of religion, is completely unsustainable. Namely, precisely the illicit narrowing of the field of exercise of the right to freedom of religion indicates that the exercise of this human right is not unhindered. On the contrary, a number of provisions of the Proposed Law, for example, explicitly provide for a large number of unacceptable restrictions, thereby creating obstacles to the exercise of the right to freedom of religion.

Article 3 of the Proposed Law

Article 3 of the Proposed Law contains a provision on permissible restrictions on freedom of expression of religion or belief, which must be "*necessary in a democratic society*" and "*in the interests of public safety, protection of public order, health or morals, or protection of the rights and freedoms of others*", where "*a measure of restriction must be commensurate with the legitimate aim*" by not applying a more stringent restriction measure "*if the same objective can be achieved by a lenient measure*". The provision in Article 3 of the Proposed Law is not in line with the 2014 OSCE/ODHIR Guidelines[22], since the restriction on freedom of expression of religion or belief must be stipulated by law. Also, there is no provision in Article 3 of the Proposed Law which states that a restriction must not be introduced for the purpose of discrimination or applied in a discriminatory manner. This is especially important since the Guidelines of 2004[23], repeatedly stated that it is essential that all obligations and special conditions imposed by states on religious communities and their members, especially with regard to registration and the acquisition of legal personality, must comply with a general, legal norm on the restriction of human rights.

Bearing in mind that the Proposed Law does not explicitly designate churches and religious communities as subjects of freedom of religion, in other provisions regulating their activity in principle, the Proposed Law introduces a restriction on their activities that is not in accordance with the permitted grounds and limitations on restrictions on the right to freedom of religion.

[22] The 2014 OSCE/ODIHR Guidelines, First part, par. 5, as well as par. 6, 7, 8 and 9

[23] The 2004 OSCE/ODIHR Guidelines, First and Second Parts - Chapter "G"

Article 4 and 5 of the Proposed Law

The content of the right to freedom of religion is governed by Article 4 paragraph 2 and Article 5 of the Proposed Law. It is important to emphasize that the stated provisions are designed to suggest the intention of listing all aspects of freedom of religion *in a taxative manner*, which excludes from its scope certain important segments, such as, for example, creation and maintenance of certain religious institutions, autonomy of those institutions, observance of holidays, etc.

Article 6 of the Proposed Law

In the provision of Article 6 of the Proposed Law, "*religious community*" is defined as "*a non-profit, voluntary association of persons of the same religion, which is established for the public or private exercise of religion (...)".* The term is used here by which a religious community is "founded", which indicates that belief communities are only those that will be established, and not those that have already been established and have existed in Montenegro for centuries. **Therefore, it is necessary to add that religious communities in the sense of provisions of the law are primarily those "religious communities that exist and are recognized in Montenegro by the day this Law enters into force".** Such a definition of religious communities is also contained in the 2014 OSCE/ODHIR Guidelines, stating that "*religious or belief organizations represent religious or belief communities recognized as independent legal entities in the national legal system"*[24]. The Venice Commission in its Opinion stated that the "non-profit" character of religious communities, as defined in Article 6 of the Proposed Law, should not be understood as a prohibition on (other) "*all income-generating activities, as the functioning of religious communities would thus be jeopardized and the right to freedom of religion restricted"*.[25] Also, the Venice Commission stated that since the forms of "exercise of religion" are defined in detail in Article 4 paragraph 2 of the Proposed Law, term "religious affairs" in Article 6 of the Proposed Law creates confusion and legal uncertainty as to why it should be deleted.[26]

[24] The 2014 OSCE/ODIHR Guidelines, par. 11 and 17

[25] Venice Commission, par. 29

[26] Same

In the provision of Article 6 of the Proposed Law, particular attention is drawn to the defining by which the belief community is "established" for a specific purpose. The use of this word clearly suggests that the Proposed Law does not accept the fact that individual churches and religious communities in Montenegro have a centuries-old continuity of legal subjectivity and activity, that is, according to the decisions of the European Court of Human Rights in Strasbourg, they traditionally exist in the form of organized religious structures. The intention of the proponents of the law is to disclose their legal subjectivity, by adopting the Proposed Law, which is clearly expressed in the provisions on registration and database of religious communities. Therefore, and through that provision, it is clear that *ratio legis* of the Proposed Law is an unjustified restriction on freedom of religion.

Article 7 of the Proposed Law

Article 7, paragraph 1 of the Proposed Law provides that religious communities represent churches, congregations of believers and other institutional forms of religious activity. Only in this provision of the Proposed Law was term "church" used. **It is not acceptable for the Metropolitanate and SOC dioceses in Montenegro, as well as for most other churches, to have such an essential term left out from the name and text of the provisions of the Proposed Law, a term inherent in church self-determination**. The omission of term "church" also clearly suggests lack of tolerance and respect for entities to whom the law will apply. Moreover, the Proposed Law clearly concludes that there is no intention, even terminologically, to appreciate the existence of various forms in which the Church and religious organizations operate. In this way they are depersonalized.

Article 7, paragraph 2 of the Proposed Law states that a religious community is free to perform religious ceremonies and religious affairs. The aforementioned provision of the Proposed Law has not been normatively elaborated in other provisions in accordance with its basic sense, since religious communities are not completely free to perform religious eremonies and religious affairs (obligation to announce religious ceremonies, possibility of seizing property rights over religious facilities and other property of churches and religious communities, government involvement in religious education, etc.).

Article 7, paragraph 3, item 3 of the Proposed Law states that "*the religious community is free to decide on the rights and obligations of its*

believers, provided that it does not interfere with their religious freedom." Term "*interfere with religious freedom*" is not sufficiently precise and can lead to confusion and problems in implementation. This term does not represent the usual *terminus technicus* of jurisprudence. Freedom of religion is not unlimited, and this is especially evident in the context of the right of the religious community to prescribe the rights and obligations of its believers, which they freely accept. **Therefore, it is necessary to replace term "interfering" with term "violating" (religious freedom of believers).**

Article 8 of the Proposed Law

The legal framework for the work of churches and religious communities is governed by the provisions of several articles of the Proposed Law. According to Article 8, paragraph 1 of the Proposed Law, the religious community acts in accordance with the legal system of Montenegro, public order and morals. The stated provision inadmissibly restricts the right to freedom of religion, and the Venice Commission also referred to this in its Opinion. Namely, in the Opinion of the Venice Commission, this provision presupposes that the legal system of Montenegro is in accordance with the right to freedom of religion guaranteed by the Constitution and international human rights treaties, and that, in relation to the restrictions referred to in Article 3, paragraph 1 of the Proposed Law, is too broad, because while public order and morals are legitimate goals for restricting freedom of religion, they are not set out to be necessary in a democratic society.[27] Such an omission is a consequence of the clear intention of the proponents not to designate churches and religious communities as entities of freedom of religion, and is another proof that the basic *ratio* of the Proposed Law, rather than easier exercise, is in fact a kind of restriction on freedom of religion.

Article 8, paragraph 2 of the Proposed Law states that "*the activities of religious communities must not be directed against other religious communities and religions, nor at the expense of other rights and freedoms of believers and citizens.*" In this case too, the phrase is not sufficiently precise: "*it must not be directed against other religious communities and religions*." This is especially important given the context of the doctrinal and dogmatic differences that have undoubtedly existed between different religious communities and denominations for centuries, and which are often referred to in religious activity, but do not cause conflicts. In its Opinion, the Venice Commission

[27] Same, par. 27

stated that, according to Article 9 of the European Convention on Fundamental Rights and Freedoms, "*the right to exercise one's religion implies the right to convince a neighbor of one's own learning and the right to change one's religion or belief*," which is why it recommended that the restriction referred to in Article 8, paragraph 2 of the Proposed Law be limited to "*only the activity of the violent, i.e. aggressive proselytism"*.[28]

This provision should be deleted, as well as the provision from paragraph 1 of the same article which stipulates that "*the religious community acts in accordance with the legal system of Montenegro, public order and morals*", since all entities, including religious communities, are obliged to act in accordance with the legal system of the state in which they are located.

Articles 9 and 10 of the Proposed Law

The relationship between the state and religious communities is governed by the provisions of Articles 9 and 10 of the Proposed Law. It is evident that the cooperative separation of the state from churches and religious communities in the provisions of the Proposed Law has not been consistently developed and elaborated. In a number of provisions, the Proposed Law deviates from cooperation between the state and churches and religious communities. This is also evident from the provision of Article 10 of the Proposed Law under which certain issues of common interest to Montenegro and one or more religious communities may be regulated by an agreement concluded by the Government of Montenegro and religious communities. This provision not only lacks regulation and defining the legal nature, power and procedure of concluding such agreements, as well as the relationship between the laws and them, but omittance and determinations are very visible according to which such agreements should not be concluded for a discriminatory purpose, or prevent them from introducing inequality between churches and religious communities.

Article 12 of the Proposed Law

Article 12 of the Proposed Law stipulates that property on which the religious community has ownership or right of use and which represents the cultural heritage of Montenegro "*cannot be alienated, transferred or removed from the state without the consent of the Government*". The following paragraph reads: "*Prior to the decision referred to in paragraph 1 of this Article, the*

[28] Same, par. 28.

Government shall seek the opinion of the religious community." The said subject matter is already regulated by international conventions and the **Law on the Protection of Cultural Property of Montenegro**.[29] In addition, the issues referred to in Article 12 of the Proposed Law cannot be decided by and against the will of the owner or holder of the cultural property, since in such situations the consent of the owner or holder, and not their "*opinion*", is necessary. Besides, in the legal system of Montenegro, the right to use no longer exists under the **Law on Property Relations**[30], because it is about an anachronistic and officially abandoned property of socialist society and a legal system in which it denied the property right to anyone but the state.

Article 14 of the Proposed Law

According to Article 14 of the Proposed Law, any form of direct or indirect discrimination is prohibited, but it must be added that when priests and religious officials are expressing dogmatic or doctrinal views and moral values from the religious teaching of churches or religious communities to which they belong shall not be considered as discrimination.

Article 15 of the Proposed Law

The basic provisions of the Proposed Law contain a provision from Article 15 according to which the collection and processing of data on the religion or belief of individuals or groups is carried out in accordance with the law governing the protection of personal data. In the legal system of Montenegro, the law governing the protection of personal data is the **Law on the Protection of Personal Data**.[31] The law regulates a number of institutes regarding the protection of personal data. Recognizing the need to protect personal data, especially religious data, we point out that extending the importance of this Law to the collection and processing of data performed by churches and religious communities, given the character of certain institutes governed by the Law, makes no sense and does not take into account the necessary measures of the specifications of data collection and processing by

[29] Law on the Protection of Cultural Property, "Official Gazette of Montenegro", no. 49/2010, 40/2011, 44/2017, 18/2019

[30] Law on Property Relations, "Official Gazette of Montenegro", no. 19/2009

[31] Law on the Protection of Personal data, "Official Gazette of Montenegro", no. 79/2008,70/2009, 44/2012, 22/2017

churches and religious communities. Therefore, it should be emphasized that the express consent of a person, the right of a person to request the erasure of personal data, obligation of notifying persons, etc., given the nature, manner and purpose of the collection and processing of personal data by churches and religious communities, cannot be applied to the manner prescribed by the provisions of the Law on the Protection of Personal Data.

Instead of the Proposed Law recognizing these specifics and providing for legitimate exceptions that would be appropriate to the nature, manner and purpose of the collection and processing of personal data by churches and religious communities, the Proposed Law in the provision of Article 15 goes a step further to the detriment of the rights and legitimate interests of churches and religious communities. Namely, by simply extending the decisions relating to the collection and processing of religious data in the Law on Personal Data Protection, the Proposed Law also expresses the intention to have, in accordance with Articles 50 and 73a of the Law on Personal Data Protection, churches and religious communities supervised by the Agency for the Protection of Personal Data (Article 50 of that Law), and that the Agency gives consent to the rules of work and conduct, as well as to the acts on the basis of which churches and religious communities would carry out the processing of personal data. The proposed solution actually negates the autonomy of churches and religious communities and represents their submission to state authorities, which is certainly not in accordance with the constitutional principle of separation of state and religious communities. In this respect, it should be borne in mind that in many comparative legislations, in order to avoid subjecting of churches and religious communities to state control over personal data, it is provided that churches and religious communities may form a special independent oversight body to exercise supervisory powers. In the stated provision of the Proposed Law, the use of an insufficiently precise term "*group*" is of particular concern. Adopting the law in the proposed text would raise the question of the lawfulness of collecting and processing data on the religion of groups, more specifically, of the entire believing corpus of citizens who, by free will, belong to churches and religious communities.

Registration and database of religious communities

The second part of the Proposed Law is entitled "**Registration and Database of Religious Communities**", which should indicate that registration

of religious communities is different from database of religious communities. By interpreting the provisions of this section of the Proposed Law, it can be concluded that the new religious community will have the status of a legal entity, i.e. it will acquire legal subjectivity by passing a decision on entry in the Register of Religious Communities and by the act of registration (Article 18), and that the existing religious community, which already has the capacity of a legal entity, after legal liquidation, will acquire the status of a legal entity (again) by making a new decision on entry in Database by the act of entry (Articles 24 and 26 paragraph 2). In both cases, a state authority - the Ministry of Human and Minority Rights - will issue a decision as an individual administrative act on the basis of which entry in the Register or Database of Religious Communities will be made. The procedure for acquiring the status of legal entity is therefore the same in the case of registration of new religious communities and in the case of new records of already existing religious communities that have previously acquired the status of legal entity, i.e. subjects of law. This means that this law primarily eliminates the legal subjectivity of those churches and religious communities that have already acquired the status of legal entity and which operate in the legal system of Montenegro.

The purpose of the proposed solution is to eliminate the previously acquired legal subjectivity of churches and religious communities and create only an apparent distinction between registration (entry in the Register of Religious Communities) and keeping records (entry in the Database of Religious Communities). This is evidenced by the fact that existing churches and religious communities, after entry into force of such a law, will have to file an application for entry in the Database, and the Ministry then passes a new decision on the acquisition of a new legal entity to be entered in the new Records of Religious Communities (Article 26 of the Proposed Law).

Article 18 of the Proposed Law

Article 18 of the Proposed Law states that the religious community acquires the status of legal entity by entry in the Register of Religious Communities. *A contrario*, it turns out that the existing church or religious community, being entered in the Records, merely confirms the status of legal entity by that entry. Therefore, Article 24 of the Proposed Law states that "*religious communities that are registered with the competent administrative*

authority in Montenegro in accordance with the Law on the Legal Status of Religious Communities" (Official Gazette of the Republic of Montenegro, no. 9/77) *and operate in Montenegro, on the day this Law enters into force, they shall be entered in the database of the existing religious communities, kept by the Ministry, by submitting an application for registration by a person authorized to represent"*. This is a classic play with words and replacement of theses, since the act of entry in the Register is preceded by the act of passing a new decision on granting a new legal entity status to churches and religious communities that had this status under previous regulations (Article 26 of the Proposed Law).

Article 19 of the Proposed Law

Article 19 paragraph 1 of the Proposed Law states that "*registration of a religious community is optional*". Applying a logical interpretation, it concludes that keeping records of the religious community is compulsory, and other provisions (for example, Article 61 of the Proposed Law) indicate that keeping records of the religious community is also optional. There is no explanation as to why it is not prescribed that keeping records of the religious community is not compulsory, that is, churches and religious communities that do not choose to apply for registration may also operate freely.

Article 20 of the Proposed Law

Article 20 of the Proposed Law states that "*a religious community may register if there are at least three adult believers who are Montenegrin citizens and reside in Montenegro, or foreigners who have been granted permanent residence in Montenegro in accordance with the law*". The said provision is discriminatory, since the right to freedom of religion in the collective aspect is not allowed other persons in Montenegro, namely: persons with approved temporary residence, stateless persons, asylum seekers, refugees and similar social groups existing in Montenegro. Also, this provision is contrary to Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that "*everyone has the right to freedom of thought, conscience and religion."*

Article 21 of the Proposed Law

It is very important to note that Article 21 of the Proposed Law does not provide at all that an application for registration must contain an account of the basics of religious teaching, religious observance, religious aims and basic activities of a religious organization. This is just another proposal to the assessment that the Proposed Law is not systematically harmonized and socially realistic and, as such, unsustainable. Moreover, this omission is completely absurd for at least two reasons. First, without showing the basics of religious teaching, religious observances, religious goals and basic activities of a religious organization, associations that do not have any religious character could be entered in the Register. Second, a state authority would arbitrarily decide to deny registration to the religious community, in the light of Article 30 of the Proposed Law, deciding on the basis of vague data on the applicant's identity and the name of the religious community on whose behalf the application was filed.

Article 24 of the Proposed Law

Article 24 of the Proposed Law shows lack of knowledge of the spirit and meaning of the provisions of the **Law on the Legal Status of Religious Communities of 1977**, since traditional churches and religious communities did not acquire legal subjectivity under the provisions of that law but under earlier regulations. The 1977 law did not interrupt but, on the contrary, recognize the previously acquired legal subjectivities of churches and religious communities that existed in Montenegro and operated until the law came into force.

Article 25 of the Proposed Law

Of particular concern is that the Proposed Law does not provide for the provision that "*provisions of the law governing administrative procedure will be applied to matters not regulated by this Law*". Such a provision was contained in Article 25 of the 2015 Draft Law. The omission of this provision threatens the legal certainty of all entities subject to the right to freedom of religion in Montenegro. The subjects of the right to freedom of religion are thus deprived of the right to participate in the procedure prescribed by law, which will be conducted before state administration bodies regarding exercise and protection of the right to freedom of religion.

The provision in Article 25, paragraph 3 of the Proposed Law provides that "*a religious community whose religious center is abroad, and operates in Montenegro, acquires the status of legal entity by entry in the Register or Database*". This provision discriminates against religious communities that have a "*religious center*" outside of Montenegro, because they are not recognized as a legal entity, as is recognized by all other religious communities that existed and operate in Montenegro.

The 2014 OSCE/ODIHR Guidelines state that access to legal subjectivity must, among other things, be non-discriminatory[32], and that the law should not deny the status of a legal entity because the headquarters of the religious center are located abroad.[33] It is clear here that religious communities that qualify for recognition as a legal entity should not be re-decided on this status - because canceling, and then new granting of legal personality, breaks the continuity of legal subjectivity of these religious communities, thereby rendering them unequal compared to others in this group of religious communities. The 2014 OSCE/ODHIR Guidelines specifically emphasized that, when enacting new laws regulating the registration process, "*states must take into account the rights of already existing communities*" and "*all restrictions must comply with the obligations from the Guidelines"*[34], which is, first of all, *„obligation of non-discrimination against religious communities"*.[35]

This view was also endorsed by the UN Special Rapporteur on freedom of religion or belief in his report of December 22, 2011. He stated that such legislative solutions were "*extremely problematic*" from the point of view of the obligation to prohibit discrimination and that they often wanted to "*control a religious community that is believed not to fit into the state's cultural, religious or political agenda"*.[36]

These standards are specifically referenced in the 2004 OSCE/ODHIR Guidelines, which state that it is necessary to review and amend any legal provisions "*that have retroactive effect or do not protect acquired rights, such*

[32] The 2014 OSCE/ODHIR Guidelines, par. 24

[33] Same, par. 29

[34] Same, par. 36

[35] Same, par. 5

[36] The UN Special Rapporteur's report on freedom of religion or belief of December 22, 2011, A/HRC/19/6; par. 57

as those requiring re-registration of religious entities according to the new criteria".[37]

The Venice Commission negatively assessed the provision in Article 25 paragraph 3 of the Proposed Law because it violates the principle of voluntary registration of churches and religious communities referred to in Article 19 of the Proposed Law by indirectly imposing this obligation on churches and religious communities whose headquarters are outside Montenegro. For this reason, the Venice Commission reminded that the right to freedom of religion is not limited to nationals, which is why the fact of having a seat abroad should not be a reason for discrimination against churches and religious communities.[38] The recommendation of the Venice Commission to amend the provision of Article 25, paragraph 3 of the Proposed Law necessarily applies in relation to Articles 23 and 38 of the Proposed Law, since these provisions propose to discriminate against the seat of a church or religious community.

Due to all of the above, it is necessary to delete the provision from Article 25, paragraph 3 of the Proposed Law, by which recognition of the status of a legal entity of the existing religious communities is conditioned by the fact that their seat or religious center must be within the borders of the state of Montenegro. It is also desirable to amend and clarify the provisions of Article 24 of the Proposed Law, in such a way that it will be unambiguously stated that all existing religious communities are recognized for the continuity of their previously acquired legal personality and, consequently, without interruption, have the status of a legal entity. Otherwise, differentiating between the registration of new ones and database of existing churches and religious communities with previously acquired legal personality can be controversial and in practice lead to numerous problems, disputes and subsequent interpretations by state authorities, thus unnecessarily increasing the margin of free assessment of state authorities and possible abuse at the expense of churches and religious communities.

[37] The 2004 OSCE/ODHIR Guidelines, Second part - Chapter "F"

[38] For the same reason, the Venice Commission recommended that the provision in Article 20 of the Proposed Law be amended accoring to which persons - founders of a church or religious community may be Montenegrin citizens or foreign nationals with registered residence in Montenegro, and that this provision should include even stateless persons. Venice Commission, par. 33 and 37

Article 28 of the Proposed Law

Article 19 of the Proposed Law states that "*registration of a religious community is optional*" and that "*religious communities are free to decide whether to require entry in the Register*". However, other provisions of the Proposed Law prevent the full implementation of the principle of voluntary choice of religious communities for the acquisition of legal subjectivity. Namely, Article 28 paragraph 2 of the Proposed Law roughly separates "*unregistered and unrecorded religious communities"* and it is said that they "*cannot acquire and exercise rights that are exclusively reserved for registered or recorded communities in accordance with the legal system of Montenegro*", which are basically all the rights guaranteed to churches and religious communities by this Proposed Law. The Venice Commission emphasized that the provision of Article 28 paragraph 2 of the Proposed Law was not sufficiently clear, and that the Proposed Law should explicitly prescribe the rights belonging exclusively to registered and recorded churches and religious communities,[39] so that the provision of Article 28 paragraph 2 of the Proposed Law would not invalidate the sense of protection of the right to freedom of religion and purpose of the entire Proposed Law.

The European Court of Human Rights is of the view that the acquisition of the legal personality of a religious organization cannot be challenged on the ground that its headquarters are abroad.[40]

International instruments generally state that restrictions and differences in the legal status of registered and unregistered religious communities should not be of such a nature as to prevent unregistered religious communities from fully exercising their freedom of religion or belief. Thus, the 2004 OSCE/ODHIR Guidelines emphasized that "*states should not impose restrictions for religious groups that choose not to register"*.[41] This view was further endorsed and elaborated in detail in the 2014 OSCE/ODHIR Guidelines, which made it clear that "*no matter what system is used to regulate the acquisition of legal subjectivity and specific terms designating the legal subjectivity of religious or religious communities, state law must allow religious communities the opportunity to perform full range of religious activities, as well*

[39] Same, par. 36

[40] Moscow Branch of the Salvation Army v. Russia, Application no. 72881/01, par 83-85

[41] The 2004 OSCE/ODIHR Guidelines, Second part - Chapter "B"

as those activities normally performed by registered non-governmental organizations"[42] with *„the prohibition of abuse of the right to legal personality. In order to restrict the right to freedom of religion"*.[43]

By contrast, it can be concluded that the Proposed Law reserves all the prescribed rights to freedom of religion exclusively for registered and recorded religious communities. Because of the above, as well as the fact that the provisions of Articles 28 and 29 of the Proposed Law discriminate and unjustifiably neglect communities on the basis of the right to freedom of belief, as well as make a sufficiently clear analogy of the status of unregistered communities with the status of non-governmental organizations, it would be desirable to formulate the provisions of the article 28 and 29 in a substantially different and precise manner. In its Opinion, the Venice Commission pointed out that the provision of Article 29 of the Proposed Law is an example of an insufficiently precise and clear provision and that such provisions can be found in a large number in particular in this part of the Proposed Law entitled "Registration and Database of Religious Communities".[44]

Article 29 of the Proposed Law

Although not thematically relevant to this chapter, the Proposed Law has a provision for non-religious organizations to be established in order to exercise their freedom of belief. According to Article 29 of the Proposed Law, their establishment and operation will be carried out under the **Law on Non-Governmental Organizations**. Non-religious organizations are not religious, but they are not NGOs either. Their position and manner of acquiring legal subjectivity must exclusively be regulated by a separate chapter in this law or a separate law (whichever is better and more appropriate).

On the other hand, certain provisions of the Proposed Law relating to the establishment or registration and records of churches and religious communities are not contained in this part of the Proposed Law, which relates exclusively to these issues, but have been moved to section "**Transitional and Final Provisions**" (Article 61 of the Proposed Law). In this regard, the Venice Commission evaluated Article 61 paragraph 3 of the Proposed Law and pointed

[42] The 2014 OSCE/ODIHR Guidelines, par. 23

[43] Same, par. 42

[44] Venice Commission, par. 41

out that a short period of 6 months from the entry into force of the Proposed Law was unjustified when the religious community, which had been registered under the **Law on the Legal Status of Religious Communities of 1977** may submit an application for entry in the Register.[45] The Venice Commission also evaluated the provision in Article 27, paragraph 1 of the Proposed Law, which leaves churches and religious communities with too short a 30-day deadline to notify the Ministry of changes to basic information about the church or religious community.[46]

Articles 32 and 33 of the Proposed Law

The provisions of Articles 32 and 33 of the Proposed Law governing the procedure for prohibiting the activities of religious communities are not in accordance with Article 19 of the **Constitution of Montenegro** and guaranteed right of every person to equal protection of rights and freedoms. In addition, Article 149, item 6 of the Constitution provides that the Constitutional Court shall, inter alia, decide to ban the work of a political party or non-governmental organization. Bearing in mind that the Constitution, in Article 53, paragraph 1, equally guarantees the freedom of political, trade union and other association and action, it is clear that the intention of the creator of the Constitution was to have the Constitutional Court prohibit any form of association, which churches and religious communities by their very nature are, and that deciding to ban the activities of churches and religious communities, which, according to the Proposed Law, falls within the jurisdiction of regular courts, would not only diminish the level of possible protection of the rights of churches and religious communities, but would also violate the right to equal protection of rights and freedoms.

[45] Same, par. 35

[46] Same, par. 40

Rights and obligations of religious communities and their believers

Article 37 of the Proposed Law

The provision in Article 37, paragraph 2 of the Proposed Law provides that churches and religious communities "shall be held liable for their obligations with all property, in accordance with the law." The Opinion of the Venice Commission rightly points out that such a provision is "*too broad*" and poses a danger to the functioning of churches and religious communities, which is why it is necessary to provide that sacral objects - temples and movable property of churches and religious communities that represent their sacred objects should be exempted from the scope of the provision providing for the property liability of churches and religious communities.[47]

Article 38 of the Proposed Law

Article 38 of the Proposed Law contains a provision according to which "*immovable and movable property owned by a religious community shall be registered or recorded in the name of that religious community or organizational part of a religious community which has a religious center abroad."* This provision is also discriminatory, as it introduces an unnecessary distinction between churches and religious communities that are based abroad and those that are not. The registration of property rights on immovable property, including on religious facilities and immovable property of churches and religious communities, is done on the basis of the Law on State Surveying and Cadaster of Immovable Property. The aforementioned provision interferes with the autonomous law of churches and religious communities, and the "right of use" of Article 38 paragraph 2 of the Proposed Law is not in accordance with Articles 419 and 420 of the Law on Property Relations. The state of Montenegro has no ownership at all of the movable and immovable property of churches and religious communities (except for those properties which were seized from churches and religious communities after the Second World War, which must immediately be subject to restitution or redress).

[47] Same, par. 42

The provision in Article 38, paragraph 2 of the Proposed Law, which states that "*in the name of religious communities and organizational units referred to in paragraph 1, the right to use on movable and immovable property owned by the state entrusted to the religious community for use shall also be entered*", must also be interpreted in connection with Article 62 of the Proposed Law, which provides for the confiscation of the largest number of sacral objects and all immovable property owned by religious communities that were created or acquired before 1918. The secular state thus reaches for sacral objects so that, at its will, its discretion and without any criteria, and with new decisions or solutions after confiscation, it will "give away" to certain religious communities to which that immovable property does not belong and to which they never have belonged. Religious communities have, since they existed, been the owners of property rights over their sacred objects as immovable and religious objects as movable objects. Immovable property, including sacral facilities and land belonging to them, are, in accordance with the legal regulations in force in Montenegro, registered in the Cadaster of Immovable Property as public records kept by the Real Estate Administration as a competent state authority. There is no justifiable reason for the provision in Article 38 of the Proposed Law to require new registration and double-entry of ownership records of the already existing legal entities and property right holders - all with the aim of depriving churches and religious communities of property rights through this law.

Article 39 of the Proposed Law

According to Article 39 of the Proposed Law, the religious community may collect voluntary contributions on the basis of its autonomous regulations, in accordance with the law. In the stated provision, particular attention is drawn to defining that the collection of voluntary contributions on the basis of autonomous regulations is carried out "*in accordance with the law*". The provisions of the Proposed Law do not regulate the manner, place and time of collection of contributions. In principle, all these issues fall solely within the autonomous scope of churches and religious communities. Therefore, defining that the collection of contributions is done “in accordance with the law” causes fear that some other legal provisions may interfere with such a form of exercise of freedom of religion and an age-old, never contested way of financing churches and religious communities.

Article 40 of the Proposed Law

Article 40 of the Proposed Law establishes as a general rule the obligation of the religious community to "*pay taxes, contributions and other duties, in accordance with the law*", while the secondary rule provides "*possibility for the religious community to be partially or fully exempt from tax and other obligations*." This opportunity is generally available to all other organizations and legal entities, including for-profit companies and lucrative businesses. Therefore, churches and religious communities, although traditionally non-profit organizations, with a deep-rooted tradition of charities and social institutions in European countries, are in no way privileged by this Proposed Law with respect to for-profit organizations and companies. The 2004 OSCE/ODHIR Guidelines state that it is "*very common*" for states to provide and guarantee tax exemptions and reliefs to churches and religious communities.[48] The 2014 OSCE/ODHIR Guidelines endorse this practice, citing good examples of legislation from countries such as Germany and the US. [49]

Article 40 paragraph 3 of the Proposed Law provides that natural and legal persons who contribute to the religious community may be exempted from appropriate tax obligations, in accordance with the law introducing adequate public revenue. However, questions remain as to whether taxpayers could be exempt and persons giving gifts to churches and religious communities, whether and to what extent churches and religious communities would be required to disclose the identity of contributors and amounts of their contributions, whether the amount of funds given will play any role in defining the category of persons who may be exempted from appropriate tax liabilities, whether the tax exemption will apply only to contributions made for the purpose of performing social, educational, charitable activities of churches and religious communities or for liturgical activity, etc.

Article 41 of the Proposed Law

The insurance of religious officials is regulated by Article 41 of the Proposed Law. The problem is that this provision does not raise the issue of the right to health, pension and disability insurance for priests at all, nor does it provide for it. This provision not only testifies to lack of familiarity of the

[48] The 2004 OSCE/ODIHR Guidelines, Second part - Chapter ”J”

[49] The 2014 OSCE/ODIHR Guidelines, par. 38

authors of the Proposed Law with the organizational structure of churches and religious communities in Montenegro, but also with lack of familiarity with the laws and other general legal acts governing pension, health and disability insurance of priests and religious officials. The provision should also be supplemented with term "*priest"*.

Article 42 of the Proposed Law

According to Article 42 of the Proposed Law, the religious community may be granted funds from the state budget and budget of the local self-government for activities affirming the spiritual, cultural and state traditions of Montenegro, as well as for supporting social, health, charitable and humanitarian activities of particular importance. It is not questionable, on the contrary, that the provisions of the law should create a legal basis for budget assistance to churches and religious communities, but attention should be paid to the question of how the Proposed Law defines the reasons for providing such assistance. On the one hand, on the basis of the provision outlined, it turns out that such assistance is possible to support social, health, charitable and humanitarian activities, but only to those of "*special importance*". It is a disposition with an indefinite term that can be very differently interpreted. The problem is that the Proposed Law does not contain any legally formulated criterion for assessing whether any such activity is of particular importance, which means that a wide margin of discretion is left to the executive power. On the other hand, on the basis of the above provision, it turns out that such assistance can be granted for "*activities that promote the spiritual, cultural and state traditions of Montenegro*". In relation to the definition set out above, two sets of issues deserve special attention. First, why should such assistance be provided only for the purpose of affirming the Montenegrin tradition when, under the Constitution, material assistance to the state is provided to religious associations of members of minorities, who also enjoy their cultural and historical heritage under the Constitution and how it is possible for the spiritual and cultural tradition, which the religious communities would affirm by law, be defined as of "state". The second group of questions relates to the legal and social justification of the requirement that budget support be provided for activities that promote the "national tradition of Montenegro". Bearing in mind the principle of separation of state and religious communities, it is clear that any budgetary assistance to churches and religious communities in affirming the

state tradition has no legal basis and is an attempt to place churches and religious communities in the service of politics and party interests.

The aforementioned provisions of the Proposed Law show that it is not clearly regulated by what criterion the Government will determine the amount of funds and whether these funds will be distributed to all churches and religious communities. In this sense, the provision should be supplemented by a provision whereby the Government determines the amount of funds for this purpose in an equal and proportionate manner to the number of priests, religious officials and believers belonging to churches and religious communities in Montenegro. Without such precise formulation, the stipulated provision would create a legal basis for discriminatory treatment.

Article 43 of the Proposed Law

The construction, adaptation and reconstruction of religious facilities is regulated by Article 43 of the Proposed Law. According to the provisions of this Article, the religious community has the right to build religious facilities and perform renovation and reconstruction of the existing ones, in accordance with the law (paragraph 1), and construction, adaptation and reconstruction of religious buildings shall be performed on the basis of permits and approvals prescribed by law and regulations governing the area of building of facilities and protection of cultural property and with expert supervision in accordance with the law (paragraph 2). Pursuant to paragraph 3 of this Article, the competent body of state administration or local self-government is required, when drafting spatial plans, to consider the stated needs of the religious community for building a religious structure, while paragraph 4 stipulates that the state administration bodies competent for spatial planning and building of structures, will not consider requests for the construction of religious facilities that do not have the consent of the competent authorities of the religious community in Montenegro, in accordance with the law and autonomous regulations of the religious community.

Some provisions of this article have failed to address some very important issues. First of all, given that the Proposed Law does not even *exempli causa* specify what constitutes a "religious facility" in the Proposed Law, the provisions set out above could be interpreted rather narrowly by the authorities. For this reason, the Proposed Law should include that churches and religious communities can build churches, temples, parish homes, monasteries,

administrative buildings, schools, institutions and other establishments, in accordance with the law.

In the stated provision of Article 43 paragraph 2 of the Proposed Law, which stipulates that the construction, adaptation and reconstruction of religious facilities shall be carried out on the basis of permits and approvals prescribed by law and regulations governing the area of construction of buildings and protection of cultural property and with expert supervision in accordance with the law, there is lack of determination according to which such construction, adaptation and reconstruction would be carried out "*upon the decision of the church or religious community*". It would indeed be improbable that construction, adaptation or reconstruction be carried out without the decision of the church or religious community, since such a decision is *conditio sine qua non* for any construction activity.

The provision in Article 43, paragraph 4 of the Proposed Law establishes the obligation not to consider requests for the construction of religious buildings that do not have the consent of competent authorities of the religious community. This is foreseen only as an obligation of the state administration authority in charge of spatial planning and construction works. There is a noticeable absence of such an obligation for the bodies of local self-government units. In addition, the Venice Commission in its Opinion estimates that this provision is superfluous, since it is understood that those requests will not and cannot be taken into consideration by the competent authorities of the church or religious community.[50]

The Proposed Law, as pointed out, does not at all regulate a number of important issues of importance for the construction, adaptation and reconstruction of religious facilities. These include the rights of churches and religious communities to organize works; to define, in accordance with law and autonomous regulations, the style and purpose of facilities; receive possible professional and material assistance for the construction of religious and associated facilities and perform religious ceremonies in such facilities on the basis of a decision of their competent authorities. It is clear that the absence of such provisions suggests the intention of the proponents of the law is to deny these rights to churches and religious communities.

[50] Venice Commission, par. 51

Article 44 of the Proposed Law

Article 44 of the Proposed Law provides that the religious community has access to public service broadcasting and other media, as well as the right to exercise its own information and publishing activities on a non-profit basis, in accordance with the law. The stated provision of the Proposed Law, although classified as part of the Proposed Law entitled **"Rights and Obligations of Religious Communities and Their Believers"**, makes it clear that religious communities are not recognized as having the *right to use public broadcasting service*, but only to *have access* to these services. The essential difference is that if churches and religious communities were entitled to use public broadcasting service, then public services, or more precisely, public service broadcasters, would be obliged, within their programs, to provide content for reporting on activities churches and religious communities and in which representatives of churches and religious communities would participate. It is certainly in the spirit of a democratic society to ensure that churches and religious communities have the right to use public services to ensure the existence of media content that reflects pluralism.

Article 46 of the Proposed Law

The subject matter of performing religious ceremonies and related rights of religious communities is regulated by Article 46 of the Proposed Law. According to the provisions of this Article, religious ceremonies and religious activities are performed in religious facilities (paragraph 1), and may be performed outside religious facilities in places accessible to citizens, without authorization, with prior notification to the state administration body competent for internal affairs, in accordance with the law governing the right to a public meeting (paragraph 2). Paragraph 3 of that Article stipulates that religious ceremonies performed at the request of citizens (family ‘slava’, wedding, baptism, chrism, circumcision, confession, sanctification of homes, etc.) do not require registration unless these rituals are performed in a public place. The aforementioned provisions of the Proposed Law raise doubts regarding the implementation and reduce the level of acquired rights.

First of all, the Proposed Law does not regulate the issue of performing religious ceremonies in cemeteries. As pointed out, the current Law on the Legal Status of Religious Communities in Article 10 stipulates that religious ceremonies may be performed in cemeteries, which does not require

registration. Since the Proposed Law does not regulate this issue, it seems that the intention of the proposer of the law is to report such ceremonies, both very common and every day, to the state administration body responsible for internal affairs. Such a legal regime would be truly meaningless, since it is not possible to comply with the relevant provisions of the law governing the right to a public gathering within the deadline for notifying the gathering at the latest. Also, according to the current Law, certain religious rituals performed in public places do not require approval, and from this, in the context of valid legal decisions governing the right to public gathering, it should be concluded that they do not require a registration, such as, for example, the case with the blessing of fields and similar rituals, so the obligation to report religious ceremonies in cemeteries, introduced by the Proposed Law, would represent a reduction in the level of acquired rights.

Of particular concern is the provision in paragraph 3 of this Article of the Proposed Law. Namely, it clearly stated the intention of the proponents of the law that all religious ceremonies performed in a public place at the request of citizens are required to be announced. The Venice Commission has rightly criticized such a decision, stating in its Opinion that it may be a demanding procedure for believers and that it would be useful to elaborate this provision in stating that reporting is necessary only if a religious ceremony may present a risk of disruption of the ordinary course of life.[51] The obligation to report all religious ceremonies that take place in a public place is therefore a significant burden for churches and religious communities; since, in accordance with the provisions of the law governing the right of public gathering, there is a possibility of banning gatherings in public places, the obligation to report them constitutes a violation of freedom of religion. In addition, such a registration compels persons, at the request of whom religious services are performed, to declare their religious affiliation and beliefs.

The Proposed Law does not at all regulate particular issues regarding the worship of churches and religious communities. For example, the Proposed Law does not regulate the protection of worship space and time, which leaves open the question of possible reaction and protection that state bodies, in accordance with the Constitution and law, should provide for the smooth running and organization of religious ceremonies.

[51] Venice Commission, par. 43

Article 47 of the Proposed Law

Article 47 of the Proposed Law stipulates that a religious official who performs a religious ceremony or religious work may receive compensation or remuneration for religious affairs and religious ceremonies from the person at whose request he/she performs a ceremony or work, based on autonomous regulations of the religious community. The religious community keeps records of such income, in accordance with the law and autonomous regulations of the religious community. The above provisions are controversial because they impose a legal obligation to keep such records and create inappropriate mechanisms of state control over such incomes. Such records would, by the nature of the matter, entail the registration of persons who requested the ceremony and who voluntarily contributed to a religious ceremony, which violates freedom of religion and right to privacy. The need to protect the privacy and identity of believers in this case was also pointed out by the Venice Commission in its Opinion.[52]

Article 48, 49 and 50 of the Proposed Law

Religious spiritual care in the army, police, prisons and health care institutions is regulated by Articles 48, 49 and 50 of the Proposed Law. The manner in which the provisions of the Proposed Law regulate these issues is a matter of concern. First, it should be noted that the holders of the right to religious spiritual care is differently defined. Article 48 of the Proposed Law does not explicitly provide that persons in the service in the army and police are "entitled" to religious spiritual care, but states that religious spiritual care of believers, who are in the service of the Montenegrin Army and police, is exercised in accordance with an act of the competent state administration body governing the rules of service more closely. On the other hand, as holders of the right to religious spiritual care in penitentiary institutions, health and social institutions, are persons who are detained or serve their sentence, or persons placed in those institutions. Such different determination of the holders of the right to religious spiritual care can cause a number of problems in the exercise of that right and does not add to the legal certainty of both churches and religious communities, as well as persons in need of spiritual care. Particularly problematic is the defining according to which spiritual care in the army and police is exercised toward believers, which could mean that persons in need of

[52] Same, par. 52

such care are required to make a special statement about their religious beliefs. Also, it is unclear why persons employed in prisons, health and social care institutions are deprived of such right.

They do not comply with the standards of enjoyment and protection of human rights and freedoms, the provisions according to which the manner of exercising the right to spiritual care is regulated by the acts of competent state administration bodies.

It is important to emphasize that the provisions of the Proposed Law do not regulate at all the rights of persons serving in the amry and police, as well as persons in prisons, health and social institutions, to receive food prepared in accordance with the requirements of the religion to which they belong, to receive religious literature, or the right that, depending on the occasion, at least in part, they wear certain types of religious clothing in accordance with the autonomous regulations of churches and religious communities.

Religious instruction and religious schools

Article 51 of the Proposed Law

Article 51 paragraph 1 of the Proposed Law provides that religious instruction may be taught in religious buildings or other facilities suitable for this purpose. The stated provision of the Proposed Law significantly deviates from the applicable solutions by introducing legal uncertainty. Namely, in contrast to the applicable decisions contained in Article 17, and in relation to Article 9 of the Law on the Legal Status of Religious Communities, the stated provision not only does not contain an explicit definition of religious facilities and other facilities in which religious instruction can be performed, but also does not specify who would, and on what criteria, evaluate whether a facility is appropriate for teaching religious instruction. Of particular concern is the fact that the Proposed Law, in Article 59, prescribes misdemeanor liability and sanction for a religious official who performs religious instruction contrary to the stipulated provision, more precisely, outside a religious facility or in a facility unsuitable for performing religious instruction; this misdemeanor, due to lack of refinement, leaves room for an unacceptably wide margin of discretion and, thus, interference and abuse by the competent authority.

Paragraph 2 of the same Article provides that the participation of minors in religious instruction requires the consent of the parent or guardian, as well as consent of the minor himself/herself if he/she is over 12 years of age. The stated

provision of the Proposed Law, like a number of others, does not contain precise definitions and leaves a wide margin of discretion to state authorities. Namely, since the concept of religious instruction can be widely understood, the question may first be asked whether, for example, by treating sermons as religious lessons, it would be possible to prevent the presence of minors at such sermons. In general, on the basis of the provision set out, it is not clear in what form such consent would be given and who and on what basis is someone entitled to assess whether it exists. The issues raised are of particular importance given that Article 59 of the Proposed Law prescribes misdemeanor liability and misdemeanor sanction for a parent or guardian who exercises a child's religious instruction contrary to that article. Also, the stated provision, especially in the part that provides for the consent of a child over the age of 12, threatens and invalidates the exercise of religious instruction and right of parents or guardians to provide religious education to their children in accordance with their religious beliefs. Namely, the right to participate in religious instruction is an integral part of freedom of religion, just as the right to exercise publicly or privately, even to change one's religion, is clearly provided for in Article 4 paragraph 2 of the Proposed Law. It is perfectly reasonable and desirable for minors to be consulted on religious instruction in order to take into account the interests of the child, but it is more than clear that the age of 12 is not sufficient for the minor to decide and give consent to such sensitive and, for their development, important issues such as religious instruction or change of religion.

According to the **Family Law of Montenegro**[53] age of 15 is required for the child's right to decide with which parent he/she will live, decide to maintain personal relations with the parent with whom he/she does not live, decide which high school to attend, undertake legal affairs he/she manages and dispose of his/her income or assets acquired through his/her own work, etc. Bearing in mind the provisions of the Family Law, it is clear that the age of 15 in the legal system of Montenegro is the age that is necessary and sufficient for enjoyment and exercise of certain rights, with an understandable condition that the child is capable of reasoning. In this sense, there is not much legal logic, nor a constitutional and systemic justification that in order to enjoy and exercise freedom of religion, which, among other things, implies the possibility of a change of religion, a significantly lower age is required than to enjoy and exercise certain rights, some of which even of minor personal and social

[53] Family Law, ”Official Gazette of the Republic of Montenegro”, no. 1/2007 and ”Official Gazette of Montenegro”, no. 53/2016

importance, with the notable absence of stating that it is about a child capable of reasoning.

Paragraph 3 of this Article of the Proposed Law radically restricts the right to freedom of religion. Namely, stipulating that religious instruction can be performed only when students do not have classes at school, the Proposed Law substantially prevents such instruction. Since this is a general legal norm, it refers to the whole time when students do not have classes in school. Considering that in most educational institutions in Montenegro, classes are taught in two shifts, it is clear that religious instruction can practically not be provided during a work week, but only on weekends. In this case, the proponent of the law deliberately caused confusion with a vague provision. The provision in Article 59 of the Proposed Law, which prescribes misdemeanor liability of a religious official who performs a religious sermon when students have classes, is a true testimony to the stated remark. This further creates a legal basis for unjustifiably widespread government interference and restrictions of the right to freedom of religion.

Article 52 of the Proposed Law

Article 52 of the Proposed Law provides that parents are entitled to exercise their child's religious instruction in accordance with their religion or beliefs, respecting the physical and mental integrity of the child. The mentioned provision omits the guardian, which has no justification, especially taking into consideration the aforementioned provision from Article 51, paragraph 2 of the Proposed Law, according to which a consent of the guardian is required for the participation of minors in religious instruction.

A particular issue is the boundaries of the child's mental integrity, which must not be crossed by parents during religious instruction. It is understood that religious instruction should not be exercised in such a way that the child is mentally neglected and/or abused. On the other hand, it is clear that the stated order, without specifying that it is about a violation of the mental integrity embodied in neglect and/or abuse of the child, can be the basis for unjustified interference with family life and, possibly, denying the parents and guardians the right to provide their children with religious instruction in accordance with their religious beliefs.

Article 54 of the Proposed Law

Articles 54, 55, 56 and 57 of the Proposed Law regulate the establishment and operation of religious schools. The main problem with these provisions of the Proposed Law is whether term “religious school” can be considered as an educational institution that exclusively conducts religious instruction, namely, in which, according to the dictionary of the current Law on the Legal Status of Religious Communities, priests are educated or the term includes educational institutions established by churches and religious communities where classes are taught under the applicable curricula. It seems that the intention of the lawmakers was to make the provisions of the Proposed Law applicable to both types of educational institutions. Such an approach may raise significant dilemmas about the meaning and nature of the proposed solutions.

Article 54 paragraph 1 of the Proposed Law provides that the religious community may establish religious schools of all levels of education, except for elementary school, which is compulsory by law, as well as homes for the accommodation of persons studying in these institutions. In the above provision, in the context of other solutions contained in the Proposed Law, particular attention is drawn to the use of the word "*establish*". Namely, the Proposed Law does not specify under which legal act the establishment of a "religious school" should be carried out, which by the nature of the matter should have legal subjectivity. The basic dilemma that arises is whether the establishment of a religious school should be included in Article 27, paragraph 3 of the Proposed Law regulating the entry into the Register of organizational parts of religious communities and according to which organizational parts can be included “*in the conditions and manner prescribed by this law for the registration of religious communities*.” If the aforementioned provision of Article 54, paragraph 1 of the Proposed Law were to be systematically linked to Article 27, paragraph 3 of the same Proposed Law, it remains unclear whether the registration for at least three believers would also be submitted for religious schools, in particular whether they were subject to the restrictions in respect of the names provided for in Article 21, paragraph 2, item 1 of the Proposed Law for the registration of religious communities. Also, the use of term "*establish*", as in the case of registration of religious communities, raises the question of the future and status of religious schools that exist and operate in Montenegro. The question is whether such religious schools would be subject to registration, which would mean, as in the case of the existing churches and religious communities, that they were acquiring some new legal subjectivity. Therefore,

the Venice Commission stressed that it would be a good idea for unregistered churches and religious communities to have the right to establish and manage religious schools explicitly recognized, as this would avoid possible violations of international legal norms - especially if the requirements for registration and records for churches and religious communities turns out discriminatory, and it has already been assessed by the same international body that the provisions of the proposed Law on registration and records are discriminatory.[54]

Article 54, paragraph 2 of the Proposed Law stipulates that the religious community independently determines the educational program of the religious school, contents of textbooks and manuals and sets the conditions for teaching staff. By systematically interpreting the Proposed Law and bringing the above provision in line with other provisions of the Proposed Law, it is concluded that, if the law were adopted in the proposed text, churches and religious communities would not in fact be independent in establishing programs, textbooks and teaching manuals, and not even in terms of teaching staff.

It should be reminded that Article 14 paragraph 2 of the Proposed Law states that discrimination against affiliation with a particular religious community shall not be considered as a legitimate condition for employment in a religious community or its organizational part when affiliation with a religious community is an irreplaceable condition and reasonable justification for the expiration of that employment condition. In the stated provision of the proposed Law, it should be noted in particular that the general prohibition of discrimination does not apply to cases where belonging to a particular religious community is a legitimate condition for employment, but only in the religious community or its organizational part. In other words, if religious schools are not an organizational part of churches and religious communities, then according to the Proposed Law, churches and religious communities would be discriminated against if they required membership of a church or religious community among the conditions for teaching staff in religious schools and institutions. On the other hand, as it was pointed out, if religious schools were to be considered as organizational units of churches and religious communities, then, as one of the conditions for teaching staff in such schools, they might require some religious affiliation, but such religious schools would need a registration under the conditions and in the manner prescribed for religious communities. This would mean that the existing religious schools must be re-registered. Not only does such incompleteness leave a wide margin of appreciation for the competent authorities and does not meet the standards of a clear legal norm, but it is in

[54] Venice Commission, par. 47

stark contrast to the exception to the general prohibition of discrimination, which in many legal systems, including EU countries, does not only include religious schools in the narrow sense (clergy and religious education schools), but also other educational institutions established by churches and religious communities.

Churches and religious communities would not be fully independent if the law were adopted in the proposed text. Namely, Article 54 paragraph 3 of the Proposed Law states that educational programs and contents of textbooks and manuals must not contravene the Constitution and the law. At first glance, such defining cannot be remarked, since there is nothing questionable about it, especially in the requirement that educational programs and contents of textbooks and manuals comply with the Constitution. However, it is very problematic to define that such programs and content must comply with the law. Namely, it is not clear, for example, whether textbooks for religious schools should comply with public education programs adopted in accordance with the law, which, by the nature of the matter, especially in the case of schools exclusively providing religious instruction, would be completely absurd and unacceptable. Should the textbooks of such schools contradict current programs which, for example, provide for the compulsory teaching of theories of physics of the origin of the world or evolutionary theories of the development of life on earth? It is understood that such a request would undermine the autonomy of churches and religious communities, which also implies the independent defining of what their future priesthood will teach, and which is consistent with the basics of their religious teaching. It is also unclear whether exposure to appropriate religious teachings could be considered contrary to the constitutional and legal prohibition of discrimination. Finally, such a requirement leaves a wide margin of discretion to the competent authority.

Article 55 of the Proposed Law

Article 55, paragraph 1 of the Proposed Law stipulates that the harmonization of educational programs and contents of textbooks and manuals of religious schools with the Constitution and law shall be carried out by the state administration body competent for education. Considering that the extent to which the educational programs and content of textbooks and manuals with the Constitution and the law are not clearly defined in the provisions of the Proposed Law, it could be concluded that the administrative authority competent for education would have practically unlimited discretionary

authority to carry out such "*harmonization*". Moreover, it is not clear what "harmonization" could be considered, nor under what conditions and to what extent such "harmonization" could be performed. Specifically, the question arises whether, after a possible failure of a responsible person at a religious school to correct identified irregularities (as required by paragraph 2 of the same article), the administrative authority responsible for education would have the right to "harmonize" the curricula independently, and especially textbook content? If the competent authority had this right, and in principle, nothing stands in its way in the Proposed Law, then it would practically mean that the administrative authority in charge of education could determine what would be taught in a religious school.

As pointed out, Article 55 paragraph 2 of the Proposed Law, among other things, stipulates that a responsible person in a religious school is required to correct the identified irregularities within the time limit set by the administrative authority competent for education. Bearing in mind that paragraph 1 of that article refers to the harmonization of educational programs and content of textbooks and manuals, the question arises as to whether any "*identified irregularities*" within the meaning of paragraph 2 of that article could also be considered as possible inconsistencies of educational programs and textbook content, and of manuals that the competent state administration authority has discretionally identified. If the answer to the question referred were positive, and based on the linguistic interpretation of the provision of paragraph 2, then that provision would not only be devoid of systemic quality, since educational programs and textbooks go through a certain approval process beforehand, but would be devoid of any sense at all, since the correction of "identified irregularities" would be done during the school year, and would sometimes require printing of new textbooks, which would be done by a responsible person who, by the nature of the matter, and would not always be the person in charge for preparation of educational programs or who is the author of the textbooks at issue. Bearing in mind that due to all the above, the responsible person at the religious school would not be able to remove the identified irregularities, it is clear that in this way room is created for the administrative body to "correct" irregularities whose existence was previously discretionarily defined, more precisely, to impose educational programs and textbooks to students and teaching staff of a religious school.

Article 56 of the Proposed Law

Article 56, paragraph 1 of the Proposed Law states that a religious school established under this law may publicly implement valid educational programs if it has been licensed in accordance with regulations in the field of education. The stated provision of the Proposed Law actually means that in order to establish an educational institution that implements valid educational programs, a church or religious community must first establish a religious school that can only later be licensed to carry out valid educational programs. In this way, unlike other entities, churches and religious communities are prevented from establishing an ordinary private educational institution whose educational program could become valid in accordance with the provisions of the General Law on Education and Upbringing.

It is also important to point out another significant omission of the Proposed Law regarding religious schools. Namely, unlike the current Law on the Legal Status of Religious Communities, the Proposed Law does not regulate the issue of the rights of students of religious schools, or more precisely does not specify whether the students of religious schools can enjoy the rights granted to persons in regular education on the basis of the law.

As outlined, most provisions of the Proposed Law on religious instruction and religious schools do not meet the standard of a clear legal norm, but allow a wide margin of appreciation for public administration bodies. The decision of state administration bodies on whether certain facilities are “appropriate” for the maintenance of religious instruction, whether there is a genuine consent of parents (guardians) and minors to participate in religious instruction, whether religious instruction is performed at a time when students do not have classes, and whether the educational programs and contents of textbooks and manuals for religious schools are in accordance with the Constitution and the law with the possibility of their "harmonization" - would not be done on the basis of clear and known conditions and criteria. The consequences of the discretionary decision-making of state administration bodies would be reflected in a drastic violation of freedom of religion. Of particular concern is the fact, contrary to the value of the rule of law, that some of these consequences would be embodied in the pronouncement of misdemeanor liability and the possibility of punishing priests and religious officials, which would certainly constitute a serious attack on their rights and freedoms.

A serious violation of the human rights of parents and guardians is also contained in the provisions of the Proposed Law regulating the consent of

minors to participate in religious instruction. Namely, instead of respecting and normatively giving greater emphasis on the rights of parents and guardians in relation to religious instruction and education, which is also an international standard, the Proposed Law, a provision establishing the inappropriate age of minors for consenting to participate in religious instruction, in fact denies the right of parents and guardians to provide children with education and upbringing in accordance with their religion. The Proposed Law also violates the rights of students in religious schools, because it does not include, as the current law does, the right to equality with persons-students in full-time education.

A number of provisions regulating religious instruction and religious schools are not in line with the constitutional decisions on freedom of religion, freedom of religious communities in conducting religious affairs, prohibition of discrimination, as well as with international standards in this field. Namely, apart from the provisions on facilities where religious instruction can be carried out and the required age of minors, the Constitution, guaranteeing freedom of religion and freedom of religious communities in religious affairs and international standards on freedom of religion, is not in line with the provisions establishing a possibility of a state authority to decide on educational programs and content of textbooks for religious schools. Namely, the religious content of religious school programs and textbooks is a matter that exclusively belongs to religious affairs, and therefore churches and religious communities must be completely free to decide on this independently. Otherwise, the unjustified and disproportionate interference with the exercise of the right to freedom of religion also violates the constitutional principle of separation of state and religious communities.

Penal provisions

Article 58 and 59 of the Proposed Law

The chapter with penal provisions, which contains two articles that regulate misdemeanors and fines, is the only chapter of the Proposed Law that, based on form and place, is in line with the applicable **Legal and Technical Rules for Drafting Regulations in Montenegro**.[55]

[55] Law and Technical Rules for Drafting Regulations in Montenegro, ”Official Gazette of Montenegro”, no. 2/2010

The proposed fines are in accordance with the applicable **Law on Misdemeanors** [56], but, having in mind the content and meaning of the provision from Article 24 of that regulation, the creators of the Proposed Law exclusively treated all these misdemeanors as **serious misdemeanors.** It is not clear why some more serious or less serious misdemeanors than the stated ones were not stipulated by the law. This clearly shows the absence of legal and social sensibility of the author and initiator of this Proposed Law.

The standardized and sanctioned misdemeanors under Articles 58 and 59 of the Proposed Law do not meet the requirements of logic and common sense. The best example of this is the provision in Article 58, paragraph 1, item 3 of the Proposed Law, which provides for a fine for a legal entity that "*establishes a religious school for primary education*", and in relation to Article 54, paragraph 1, of the Proposed Law. How can a religious community establish a primary school and even a religious one, and, in so doing, such an establishment is considered a "primary education school" within the meaning of legal regulations in the field of education? Judging by the above provision, the author of the Proposed Law does not know at all how and under what conditions primary schools are established in Montenegro. And how, if anything, could a church or religious community do such thing when no school can be established without the decision of the Ministry of Education as an administrative act?

The aforementioned provisions of Articles 58 and 59 of the Proposed Law make it clear which "misdemeanors" are sanctioned by fines as a serious form of misdemeanor. But it is particularly problematic that the Proposed Law does not include any misdemeanor against freedom of religion on the individual and collective plan for exercising this right.

The provisions of Articles 58 and 59 of the Proposed Law show that the way of exercising the right to freedom of religion is not only not regulated but not adequately protected by prohibiting legal norms and sanctions. Judging from the provision of Article 10, paragraph 1 of the **Constitution of Montenegro**, which stipulates that "*everything is free in Montenegro as long as it is not prohibited by the Constitution and the law*", it can be concluded that the largest number of violations of the provisions set out in the Proposed Law, which would be to the detriment of believers, priests, religious officials, churches and religious communities, in the future anyone can commit with being punished! By failing to prohibit and prescribe adequate punishments for such acts, the authors of the Proposed Law actually create an ideal space to

[56] Law on Misdemeanors, ”Official Gazette of Montenegro”, no. 1/2011, 6/2011-corr., 39/2011, 32/2014, 43/2017 - dec. US, 51/2017

prevent, obstruct or disable the exercise of the right to freedom of religion and human rights violations. True, there are certain offenses and misdemeanors already sanctioned by the **Criminal Code** [57] and **Law on Misdemeanors**[58], but there are a number of provisions in the Proposed Law whose breach would not constitute criminal or misdemeanor liability at all.

Unsanctioned misdemeanors, many of which have been seen and committed to the detriment of churches, religious communities, priests, religious officials and citizens as believers in previous years, and especially in previous decades, represent not only permissible but also desirable conduct, since they will not be prohibited and sanctioned. This is especially highlighted in the era of universal secularization, which is very often imposed as the only correct view of the world and life, and which, in these and similar ways, is actually enthroned and forcefully imposed as the "new religion" of modern man. Such anti-religious activity is, among other things, encouraged and enthroned in the manner shown in the Proposed Law.

The Proposed Law also does not specifically define in the criminal provisions the liability and sanction of the competent authority and officials in the implementation of the proposed provisions. In addition, a number of violations were omitted because many, very important provisions for the exercise of freedom of religion were not included in the Proposed Law.

The provisions of Articles 58 and 59 of the Proposed Law indicate that an unacceptable selection of misdemeanors in the area of freedom of religion was carried out, exclusively to the detriment of citizens, churches, religious communities and the legal system. For this reason, it would not be inappropriate for the Proposed Law to be titled as a Proposed Law on impunity for violation of the right to freedom of religion. For the reasons stated above, the provisions of sections 58 and 59 of the Proposed Law must be substantially amended.

[57] Criminal Code, ”Official Gazette of Montenegro”, no. 70/2003, 13/2004-corr., 47/2006 and ”Official Gazette of Montenegro”, no. 40/2008, 25/2010, 32/2011, 64/2011-state law, 40/2013, 56/2013-corr., 14/2015, 42/2015, 58/2015- state law, 44/2017, 49/2018

[58] Law on Misdemeanors, ”Official Gazette of Montenegro”, no. 1/2011, 6/2011-corr., 39/2011, 32/2014, 43/2017 - dec. US, 51/2017

Transitional and final provisions

Article 62 of the Proposed Law

Article 62, paragraph 1 of the Proposed Law states the following provision: "*Religious facilities and land used by religious communities in the territory of Montenegro that have been constructed or acquired from the public revenue of the state or were state-owned until December 1, 1918, and for which there is no evidence of property rights of religious communities, as the cultural heritage of Montenegro, are state property.*" Paragraph 2 of the same article reads: "*Religious facilities constructed on the territory of Montenegro through joint ventures of citizens until December 1, 1918, for which there is no evidence of ownership, as the cultural heritage of Montenegro, are state property.*"

This provision, while unprecedented in modern legislative practice in European states, is a classic example of the confiscation of sacral and other immovable property of churches and religious communities. The 2004 OSCE/ODHIR Guidelines make it clear that it is common for two types of property disputes to occur: first, when the state did nationalization, i.e. transfer of property rights from a church or religious community to another group or individual, and the other, when many churches and religious communities dispute over ownership of the same immovable property. In the current legislative practice of European states, there is no case like the one in Article 62 of the Proposed Law. It is necessary to bear in mind that the OSCE/ODIHR Guidelines do not mention the case under Article 62 of the Proposed Law. The Guidelines, on the other hand, clearly state and condemn the unacceptable practice of states that "*use such laws to restrict religious communities from operating religious facilities*" where "*justifications for restrictions may appear neutral but are selectively applied for discriminatory purposes"*.[59] Accordingly, the 2014 OSCE/ODHIR Guidelines specifically emphasize that any restriction or deprivation of property rights to religious communities must be in accordance with a general rule of international law on the prohibition of arbitrary and disproportionate restriction of rights not serving public causes in a democratic society.[60]

The universality and inviolability of property rights has been unchanged for 230 years in the world. The Virginia Declaration of Rights of 1776 equates the ownership right with a "right of survival", with the guarantee that no owner

[59] The 2014 OSCE/ODIHR Guidelines, Third part – Chapters "C" and "D"

[60] Same, par. 5, 6, 7, 8 and 9

can be deprived of ownership without applying the "*old rule of court and jury*". This guarantee of property rights was later taken over by the French Declaration of Human and Civil Rights (1789), followed by the Universal Declaration of Human Rights (1948) which states that "*no one shall be deprived of his or her property rights arbitrarily.”* After the collapse of the so-called Communist bloc, today, more than 95% of the United States member states guarantee their national rights with respect to property rights, while more than 130 states have signed and ratified conventions explicitly guaranteeing and protecting this right. As a direct condition for the freedom of entrepreneurship and freedom of movement of goods and services, the guarantee of property rights is an integral part of over 2,400 bilateral agreements on trade and investment between states.

This was unambiguously confirmed in the case law of the European Court of Human Rights, which has condemned all forms, not only of direct confiscation but also of indirect as illegal, *de facto* and confiscation of property by law.[61]

The provision of Article 62 of the Proposed Law was contained in Article 52 of the 2015 Draft Law. However, there are also some differences, in the sense that section 62 of the Proposed Law is more rigid than section 52 of the 2015 Draft Law. Specifically, Article 52 of the 2015 Draft Law stipulated that the said provision would refer to those religious facilities and land "*defined*" to have been built and acquired in the manner described until 1918. In Section 62 of the 2019 Proposed Law, this allegation was dropped, meaning that religious, sacral buildings and land belonging to them would be confiscated, i.e. taken away from religious communities as their centuries-old, historical and lawful owners - by the direct application of this provision.

In addition, Article 62 of the Proposed Law adds that these are religious facilities and land "*for which there is no evidence of ownership of religious communities*" and that these religious facilities and land will automatically, through this legal confiscation measure, become "*state property"*. **Deputy Prime Minister of Montenegro and Minister of Justice Zoran Pazin** directly answered our question that the issue of the property rights of religious communities over sacral buildings and land belonging to them was a "political issue". The content, meaning and purpose of the provision in Article 62 of the Proposed Law clearly confirms this.

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[61] Among others, cases: Marckx case, 1979; Sporrong and Lönnroth case, 1982; Håkansson and Sturesson case, 1985; Akdivar and Others v. Turkey case, 1996; Loizidou v. Turkey case, 1996; Papamichalopoulos v. Greece case, 1993.

In 2015, the Venice Commission and OSCE/ODHIR experts in their Draft Joint Opinion no. 820/2015 stated that the Government of Montenegro first informed the Venice Commission that the disputed provision of Article 52 of the 2015 Draft Law did not constitute a means of confiscation and then (November 11, 2015) stated that it would "*determine by a special law compensation to religious communities for confiscated property*". Then (November 26, 2015), however, it announced that it was "*not about expropriation, but about transfer into state ownership those immovable properties and buildings over which no religious community has ownership.*" Subsequently, the Government of Montenegro withdrew the Draft Law on Freedom of Religion from the procedure before the Venice Commission only to establish on May 16, 2019 the Proposed Law for the same law, in which the same provision, with even more negative content, found its place in Article 62 of the Proposed Law.

It could be inferred from the first provision of Article 62 of the Proposed Law that religious facilities and land have been used by religious communities as holders of property rights for more than 100 years, but that religious communities allegedly lacked evidence of ownership, while the state could allegedly have evidence of the right of ownership over the sacral buildings and land belonging to them. The case in the first provision is difficult, and the case in the second provision is impossible to imagine, since the provision in Article 62, paragraph 2 of the Proposed Law leads to the conclusion that there are "religious facilities" for which both the owner and user are unknown, but it is assumed that they were built 100 years ago from public revenue, so they should be considered state property. Article 63 of the Proposed Law states that on these facilities and land, the competent authority will register the property right for the benefit of the state after independently and unilaterally completing their "inventory".

The above provisions have no basis in any international instrument, nor in the Constitution and applicable laws of Montenegro. The applicable **Law on State Property of Montenegro** [62] does not stipulate that the State of Montenegro owns religious, sacral buildings and land belonging to them. In addition, Montenegro has the **Law on Expropriation**[63], as well as the **Law on Property Relations**[64], which apply in cases where there is a dispute over

[62] Law on State Property, "Official Gazette of Montenegro", no. 21/2009, 40/2011

[63] Law on Expropriation, "Official Gazette of Montenegro", no. 55/2000, 12/2002, 28/2006 and "Official Gazette of Montenegro", no. 21/2008, 30/2017, 75/2018

[64] Law on Property Relations, "Official Gazette of Montenegro", no. 19/2009

property rights. The aforementioned laws guarantee the multi-level judicial protection of each legal entity. **The said subject matter may not be subject to regulation in the Law on Freedom of Religion or Belief and Legal Status of Religious Communities and the provisions of Articles 62, 63 and 38 paragraph 2 of the Proposed Law should be deleted.**

Any subject of law, including the State of Montenegro, can only emphasize the requirements of Article 62 of the Proposed Law only through concrete litigation in appropriate court proceedings to prove ownership in accordance with the legal regulations governing that subject matter. The State of Montenegro could only participate in such litigation as a party to litigation. Anything else would constitute a severe and intolerable violation of the Law om Freedom of Religion or conviction for carrying out the unconstitutional and illegal confiscation of property of churches and religious communities, thereby committing the most serious, unprecedented violation of the fundamental rights of churches and religious communities and their believers. The natural consequences of such unlawful conduct would be embodied in the creation of long-lasting legal uncertainty and chaos in the relationships and life between individuals and groups in Montenegro.

It should be borne in mind that in most of the territory of present-day Montenegro, the Turkish, tapian system of the records on immovable property (from the end of the XIX and the beginning of the XX century) was applied, and only in one part of the territory (in Boka Kotorska and part of the Littoral) the Cadaster of Immovable Property was applied. The formation of the Cadaster of Immovable Property has not yet been completed in one small part of the territory of Montenegro. During the communist regime, a number of Orthodox temples as well as religious facilities of other religions were registered on a patron to whom the temple was dedicated. In such a situation, applying Articles 62 and 63 of the Proposed Law would be even more unfair and worse for the Orthodox Church than Communist times. A real list of Orthodox temples in the territory of present-day Montenegro has existed in the Schematism of the Serbian Orthodox Patriarchate since 1924, as well as in other publications and archives of the Metropolitanate of Montenegro and the Littoral and other Orthodox dioceses that have operated in the territory of present-day Montenegro.

In no state that originated from the former socialist Yugoslavia and in which the same legislation was applied as in Montenegro was a legal model applied so the state could take i.e. confiscate religious facilities and land belonging to churches and religious communities.

It should be borne in mind that the provisions of Articles 62 and 63 of the Proposed Law both serve the purpose of depriving churches and religious communities of the right to restitution and compensation of property confiscated after the Second World War by the Communist regime. At the moment, churches and religious communities are being discriminated against because they alone are not entitled to have the value of property confiscated after World War II recovered or compensated.

Regarding Article 62 of the Proposed Law, we emphasize that there is no definition of term "*religious facility*" in the legal system of Montenegro. The classification of types of buildings prepared by the Statistical Office of Montenegro lists "*facilities for performing religious and other ceremonies*", but they are not the only type of buildings and facilities that churches and religious communities in Montenegro have owned and used for centuries. In this regard, it is debatable whether, if the law were adopted in the proposed text, the provision of Article 62, paragraph 1 would apply only to temples, churches, monasteries, abbies, mosques, etc. or, on all buildings, whether masonry or erected, including, for example, parish homes, rectory, and similar facilities. Bearing in mind that in the legal system of Montenegro there is no definition of term "religious facility" and that, essentially, defining the religious character of a building falls within the religious affairs *par excellence*, and that according to Article 14 of the Constitution of Montenegro, religious communities are free in religious practice - it is clear that defining the religious character of a building, even under the Constitution of Montenegro, falls exclusively within the autonomous scope of religious affairs of churches and religious communities. This is, however, violated by the provision in Article 63, paragraph 1 of the Proposed Law, according to which the administrative authority designates religious facilities.

Regarding the terms "*religious facilities*" used by "*religious communities*", we point out that the Church and religious communities in Montenegro not only do they "use" religious facilities and land, as stated incorrectly, inappropriate and tendentious in Article 62 paragraph 1 of the Proposed Law, but they are their centuries-old and present lawful right holders of property or owners. It is precisely the use of the term "*use*" in the proposed provision that discloses the intention of the state authorities to illegally take away sacral and other property from churches and religious communities, neglecting the fact that their property rights over sacral facilities and land belonging to church and generally religious institutions are recognized in a number of applicable laws and that this right of ownership is legally registered,

as with all other entities in Montenegro, in the Cadaster of Immovable Property. This can be seen, inter alia, from Article 10 of the applicable **Law on Immovable Property Tax** [65], which, in Article 10, stipulates tax exemptions and provides that immovable property taxes are not payable on immovable property *owned* by religious organizations used for religious purposes. Thus, the use of term "use" in this provision of the Proposed Law is intended to change *ex lege* the character of existing property of churches and religious communities.

Regarding the provision stating that these were religious facilities and land "*which were built or obtained from the public revenues of the state*" or "*were state-owned until December 1, 1918*", we indicate that there are no religious facilities in Montenegro that were state-owned until December 1, 1918. Also, even if some immovable property of churches and religious communities were partly obtained from state funds, the question arose whether the funds invested by churches and religious communities in maintaining such immovable property, which came from their own sources, exceeded the value of the funds that were originally allocated for the construction, or acquisition of such immovable property, which would particularly make absurd making church property state-owned stipulated by the Proposed Law. In the same context, the question could be raised whether the funds, invested by other benefactors and contributors, or even other states (for example, Tsarist Russia and Tsar Nicholas II Romanov in the construction of St. Basil's Church in Nikšić), as and in the maintenance of sacral immovable property, exceeded the amount of funds originally intended for the construction or acquisition of such immovable property, which would also make absurd making church property state-owned. In particular, one must point out another absurdity of the proposed provision. Namely, even if Montenegro provided the funds for the construction or acquisition of certain immovable property, it could not claim the return of that immovable property, because it just gave these funds for the exercise of the right to freedom of religion as a public interest. Nor could any such question be ascertained outside the ordinary courts in a litigation.

It is very important to point out that the argument, presented by the representatives of the state government of Montenegro to the representatives of the Venice Commission, stating that any compensation for the cost of maintaining the property that churches and religious communities had was based on the state's responsibility for maintaining the property that is part of the cultural heritage, has no grounds in the applicable regulations, so the Venice

[65] Law on Immovable Property Tax, ”Official Gazette of Montenegro”, no. 65/2001 and ”Official Gazette of Montenegro”, no. 75/2010, 9/2015, 44/2017

Commission also stated in its Opinion that such a provision should be guaranteed by law.[66] The absence of such a provision in the Proposed Law clearly expresses the intention of the authorities to unlawfully seize the sacral and other property of churches and religious communities without any compensation.

In this proposed provision particular attention is drawn to the mention of "state", since it is unclear to what "state" exactly refers, in what period of history and its status that provision refers. In the territory of present-day Montenegro, there was an independent Duklja state in the early Middle Ages, followed by Zeta, and later that area was part of the Serbian medieval state, and in the second half of the 15th century geographically, especially during the time of Crnojević, which was vassal in relation to the Venetian Republic, which directly governed certain parts of the Littoral. Turkey conquered Montenegro in 1496, and Montenegro gained special and unique autonomy within the Ottoman Empire in the sixteenth century, relieving many tribes of their obligations. Even so, the Montenegrins did not accept the Ottoman rule, and in the seventeenth century numerous rebellions happened. During this period, Montenegro became a theocratic state headed by the bishops - metropolitans of the Metropolitanate of Montenegro and the Littoral, and which flourished during the time of the bishops from the noble family Petrović-Njegoš. Montenegro transformed from a theocratic state into a secular one during the reign of Danilo Petrovic, who was proclaimed Prince of Montenegro in 1852. Prince Danilo immediately faced the possibility of the occupation of Montenegro by the Turkish army, which was prevented by the diplomatic action of Austria and Russia. As the Montenegrins assisted the Herzegovinian uprisings, Porta again ordered the Bosnian vizier to invade Montenegro, but the Turks were defeated in the battle of Grahovac in 1858. After this battle, Montenegro was expanded and demarcated with Turkey, but Montenegro remained an internationally unrecognized country. Montenegro received international recognition and new territorial expansion at the 1878 Berlin Congress. Montenegro gained new territorial expansion after 1913.

Bearing in mind the outlined, very concise, account of the development of Montenegrin statehood and its territorial expansion, it is not clear whether the provision encompassing religious facilities and land that were built, that is, obtained from the state's public revenues or was state-owned until December 1, 1918 applies only to facilities and lands built or obtained by means of public revenues of the Montenegrin state and only in the period from 1878 to 1918 or does it relate to all religious facilities and lands built or acquired by means of

[66] Venice Commission, par. 71

any state that in the area of today's Montenegro exercised power!? Indeed, the question arises whether other states, for example the Republic of Serbia, could, by this logic and according to the proposed provision, claim property rights over sacral buildings erected by its rulers and dignitaries on the territory of present-day Montenegro? Could Turkey, as a country with continuous international legal continuity, which has existed since the Ottoman Empire, be able to make the same claim? It is understood that the vagueness of the proposed solution not only violates the standards and imperatives of clear legal norms, but creates the legal basis for a broad, almost unlimited area of discretion of the competent authorities in Montenegro.

Here, just because of the issue raised, there are several other important points to make regarding state continuity. Continuity in law signifies what that word means - continuity. The international continuity of a country means that it is considered the same entity as its predecessor. The nature of international relations and international law implies that continuity will be enjoyed by the state that wishes to do so and to which other entities on the international scene (states and international organizations) recognize it. Starting from the fact that other republics seceded from the SFRY, the FRY insisted that it was a continuer of the SFRY's international subjectivity, but it was not recognized internationally. Finally, after the changes of October 5, 2000, the FRY also gave up on insisting on continuity, applying for admission to the United Nations. As regards Montenegro, Article 60, paragraphs 4 and 5 of the **Constitutional Charter of the State Union of Serbia and Montenegro** [67] prescribes that *„in the event of the withdrawal of the State of Montenegro from the State Union of Serbia and Montenegro, the international documents relating to the Federal Republic of Yugoslavia, in particular United Nations Security Council Resolution 1244, would apply and be fully applicable to the State of Serbia, as a successor"* and that *"a Member State exercising its right of withdrawal does not inherit its right to an international legal personality, and all disputes are specifically regulated between the successor State and the independent State."* In such circumstances, Montenegro certainly could not pretend to go back a hundred years and become in the international legal sense the same entity that was the Kingdom of Montenegro.

As for internal legal continuity, it also implies continuity of the legal system. This does not necessarily imply the same regulations, but does mean that new regulations were enacted on the basis of the provisions of earlier

[67] Constitutional Charter of the State Union of Serbia and Montenegro, "Official Gazette of Serbia and Montenegro", no. 1/2003

regulations and on the basis of the provisions of the same higher regulations or a continuous series of higher regulations (for example, by adopting a new constitution by applying the provisions of the previous constitution, etc.). In the case of present-day Montenegro, there is no such possibility especially given the **Law on the Invalidity of Legal Regulations adopted before April 6, 1941 and during hostile occupation**.[68] The provisions of Articles 1 and 2 of the said Law declared the nonexistent regulations from the time of occupation to be non-existent, and those from before April 6, 1941 were found to have "*lost legal effect.*" Article 3 of that law leaves the possibility for the Presidium of the National Assembly of the FPRY and the presidiums of the National Assemblies of the people's republics (within their jurisdiction) to stipulate that certain rules contained in the laws and other legal regulations adopted before April 6, 1941 apply, whereby defining necessary amendments. Therefore, it would not be a matter of applying the old regulations, but only their extracted contents, to which the said Law on Irrelevance and corresponding acts of the competent assembly presidiums would give legal effect. Legal continuity was therefore interrupted. The present Montenegro therefore has no internal legal continuity with the Kingdom of Montenegro. Any proclamation cannot cause something that has been interrupted to become continuous and uninterrupted.

With regard to the part of the provision of Article 62 of the Proposed Law, which deals with religious facilities and immovable property "*for which there is no evidence of property rights of religious communities*", particular attention is drawn to the wording of "evidence of property rights". Since in the legal system of Montenegro, a distinction is made between "proof of ownership" and grounds for acquiring property, and even that this basis is a document (for example, a sale contract) and that "cadastral certificate" is considered as "proof of ownership" of immovable property - the question arises whether the intention of the proponent of the law is to support every single religious facility and land for which the property of churches and religious communities, but which have a property-legal basis or as such, is still not registered in the Real Estate Cadaster, but, as stated, relevant laws recognize their ownership rights? The answer to the question seems to be positive and thus inadmissibly severely violates property rights and freedom of religion, since churches and religious communities, and especially the Metropolitan and other dioceses of the SOC in Montenegro, by possible adoption of the law in the proposed text, will be exposed to an attempt of depriving them of their

[68] Law on the Invalidity of Legal Regulations adopted before April 6, 1941 and during hostile occupation, "Official Gazette of FPRY", no. 86/1946, 105/1947

centuries-old religious facilities, which would have the effect of rendering them impossible to exist in Montenegro.

Considering that the Montenegrin authorities, as pointed out in the Opinion of the Venice Commission, take the view that so far property rights in the Cadaster of Immovable Property over religious facilities and other immovable property belonging to them have been made illegal, it can be reasonably assumed that in the application of the law, no cadastral document shall be considered as proof of ownership. In this regard, the explanations of the Government of Montenegro to which the Venice Commission refers in its Opinion, according to which the religious community will be able to raise any evidence, including written documents or even testimonies, are empty promises, because in the Proposed Law this issue is not regulated at all. Therefore, the Venice Commission also suggested that the Proposed Law provides the key standards of evidence that should be applied in administrative and judicial proceedings for proving ownership.[69]

However, apart from the standard of proof, particular questions are raised as to why proof of ownership rights would be provided when, as it was pointed out, the applicable Law on the Legal Status of Religious Communities and the Law on Immovable Property Tax, at least with respect to religious facilities, contain a presumption of property rights for the benefit of churches and religious communities, as well as the burden of proof.

At this point, another legal-logical argument should be made. Namely, if the state, through the enacting law, wants to transfer to its ownership rights to religious facilities owned by churches and religious communities, then is it not logical and based on legal principles a request for the state to submit evidence of possible investments and possible right over religious facilities? Given that there is no such evidence and it cannot be, it is clear why the Proposed Law, contrary to the logic, places the burden of proof on churches and religious communities. Most probably because the state has no evidence of investments or of its ownership of religious facilities.

It is necessary to point out another legal and logical deficiency of the provision that makes the whole first paragraph of Article 62 of the Proposed Law completely absurd. Namely, the use of cumulative conjunction “and” in this norm imposes an obligation to fulfill both conditions (that is, immovable property that was built or acquired from public revenue or was state property until 1918, and for which there is no proof of the ownership of churches and religious communities), but it also raises the question of how it is possible that

[69] Venice Commission, par. 68

some religious facilities and land were state-owned, and that the rights of ownership of churches and religious communities were obtained and provided for them. The proposer of the law and authorities that will enforce it seem to have been stuck in the following dilemma: Either the said religious facilities and the land were not state-owned, in principle it is possible to speak about proof of property rights, or, if such evidence can be obtained and provided (with an understandable request that, as the Venice Commission notes in its Opinion, due to the age of certain religious facilities, proof should include a long-term bona fide possession, more precisely statehood), then state ownership of such facilities and land becomes irrelevant and makes the idea of subsequent making of such immovable properties state-owned absurd.

Article 62 of the Proposed Law also uses wording "*Montenegro's cultural heritage*". Stating that religious facilities and land, as Montenegro's cultural heritage, are state property, the proponent announced the alleged *ratio* of nationalization and public interest, which allegedly requires confiscation of religious facilities and property by churches and religious communities. But is that really so?

In the legal system of Montenegro, under Article 11, item 9 of the **Law on Protection of Cultural Property**, cultural heritage is a collection of goods, inherited from the past, which people recognize as a reflection and expression of their values, beliefs and traditions, which are in a constant process of evolution, including all aspects of their environment that result from the interaction of humans and nature over time, *independent of ownership*. Thus, cultural heritage is a set of cultural assets independent of ownership. In this sense, the property belonging to the cultural heritage of Montenegro does not necessarily have to be state-owned, nor is the fact that a good part of the cultural heritage is a necessary and sufficient reason for it to necessarily become state-owned.

Moreover, bearing in mind that cultural heritage is made up of goods, and in terms of the Law on Protection of Cultural Property, it is about a cultural property, it is clear that such a status must be determined in accordance with the procedure prescribed by that Law. This, in fact, means that, within the meaning of Article 26 of the Law on Protection of Cultural Property, a special final decision on establishing the status of a cultural property must be made, whereby, in the case of an immovable cultural property, under Article 29 of that Law, status of immovable cultural property is entered in the Cadaster of Immovable Property.

The presented systemic solutions, in the context of the provision of Article 62 paragraph 1 of the Proposed Law, raise the question of whether, according to the proposer of the Proposed Law, only those religious facilities which have a status of cultural property in the Cadaster of Immovable Property should go into state ownership. If the answer is yes, which seems to be the only correct systematic interpretation, then the sense of legal transfer of ownership of such facilities to the state ownership is lost due to the fact that they are cultural property, because the state and public authorities, precisely on the basis of the Law on the Protection of Cultural Property, have significant ways and mechanisms of influencing the protection of such property, regardless of the legitimate rightsholders. On the other hand, if (and, judging by everything, it is) the intention of the proposer of the law, under Article 62 paragraph 1 of the Proposed Law, to have all religious facilities transferred into state ownership, that is, those that have not been defined as immovable cultural property, then the criterion "*cultural heritage*" does not really play any role, but rather shows that the intention to commit the worst and by no means justified seizure of the property of churches and religious communities.

It is also clear that the systemic solutions of the Law on the Protection of Cultural Property require that religious facilities defined as cultural property may be exclusively owned by churches and religious communities. Namely, Article 5 paragraph 2 of that Law stipulates that every natural and legal person, including religious communities, is required to respect the cultural goods of "*others*" in the same way as "*their own*". The use of possessive adjective "*their own*" in the above provision cannot signify the cultural affiliation of cultural goods, since they are accessible to all, but exclusively the property rights over such goods.

Since cultural heritage in Montenegro is made up of cultural goods, it is especially important to point out that the mention of land in the provision of Article 62 paragraph 1 of the Proposed Law sounds grotesque and can be interpreted in the same way: Montenegro, by adopting such a legal provision, would become the only state in the world in which land is, as such, cultural goods. In addition, it is important to note that Article 419 of the **Law on Property Relations** [70] stipulated that the right to manage, use, or permanently use and dispose of *land* in socially, now state-owned property *becomes, with the entry into force of this law, the property right of the former holder* of the right of use, unless otherwise provided by a special law. In view of the stated provision of the Law on Property Relations, it seems that the Proposed Law, in

[70] Law on Property Relations, "Official Gazette of Montenegro", no. 19/2009

the case of adoption, should be precisely such a law that would prevent churches and religious communities from converting the right of use to the right of ownership, even if some of their land is either socially or state-owned. However, such legal acrobatics is not possible, since the Proposed Law was drafted 10 years after the Law on Property Relations entered into force, from which the provisions of Article 419 imply that the right of use became a property right at the time of entry into force of this Law and that it is otherwise was possible only on the basis of the law in force at the time that Law came into force. There is another, *prima facie* linguistic detail, but one that has far-reaching significance. Namely, in the provision of Article 62 paragraph 1 of the Proposed Law it is about the cultural heritage of Montenegro. So, not about the cultural heritage *in Montenegro*, but about the cultural heritage *of Montenegro*. Such an appropriation not only jeopardizes the constitutional provision of Article 78 according to which cultural heritage is of general interest, as elaborated by a number of provisions of the Law on the Protection of Cultural Property, but also creates a legal basis that, broadly speaking, any cultural goods that make cultural heritage can be considered state-owned.

Regarding the allegations in Article 62, paragraph 1 of the Proposed Law, which states that religious facilities and land are "*state property*", it can be said that the true meaning of that provision is reflected in making church property state-owned, namely, legally imposed change of the title holder on the property for which in the system laws there is a presumption that it belongs to churches and religious communities and on a part which such a property right has already been entered in the Cadaster of Immovable Property. Is such a solution possible in the legal system of Montenegro? Judging by the constitutional norms and provisions of systemic laws, such a solution is not possible at all.

According to Article 14, paragraph 1 of the Constitution of Montenegro, religious communities are separated from the state. Therefore, the Constitution of Montenegro bases the relationship between the state and churches and religious communities on the principle of separation. This constitutional provision first means that there is no state church or religious community in Montenegro and that there is no state identification with a particular religion or religion at all. Paragraph 2 of the same article of the Constitution stipulates that religious communities are free to perform religious ceremonies and religious affairs. The meaning of this provision is that churches and religious communities are free to perform religious ceremonies and affairs independently, which also means independently defining the internal organization and making

and applying their autonomous regulations and decisions, especially with regard to religious ceremonies and affairs.

Constitutive elements of property rights: *usus*, *fructus* and *abusus* are also recognized in Article 6 paragraph 2 of the Law on Property Relations of Montenegro according to which the owner has the right to hold his property, use it and dispose of it within the limits determined by law. According to Article 7, paragraphs 1 and 2 of the same Law, the state may be the owner of the property rights as other legal and natural persons (*dominium*), while certain objects of property (natural resources, goods in common use, funds of state bodies, cultural property owned by them) the state, or government bodies and organizations, manage and dispose of it in accordance with the law (*imperium*). That provision of the Law is in conformity with the constitutional provision of Article 58, paragraph 3, according to which natural resources and goods are in general use in state ownership, which, of course, does not mean reducing state property exclusively to these two categories of things, but, as it is specified in Article 9 paragraph 2 of the Law on State Property that natural resources and goods in general use cannot be private property. If the property of churches and religious communities, under Article 62, paragraph 1 of the Proposed Law, would become state property, then the provisions of the aforementioned Law on State Property would apply to it, except for the provisions of the Law on the Protection of Cultural Property. According to Article 8 of this Law, things and other goods in the state property are used for carrying out the functions of Montenegro, local self-government, state bodies and local self-government bodies and for performing the activities of public services, established by Montenegro or local self-government, and can be used to carry out activities for the purpose of obtaining income or profit in accordance with the law. Such a solution first raises the question of whether, in accordance with the constitutionally proclaimed separation of religious communities and the state, is it at all possible for religious facilities to be used for carrying out the functions of Montenegro, state bodies, public services and/or profit? The elementary logic states that the answer to the question raised is certainly negative, since such use would undermine the purpose of religious facilities, and possible state income from the property of churches and religious communities, i.e., both from religious facilities and land, would raise a question of financing churches and religious communities that could be resolved only in the way that the state finances them in the future, which certainly would not mean a constitutional separation of the state and religious communities. Of course, the reasoning presented acknowledges the fact of the existence of churches and religious

communities and their constitutional recognition and does not take into account that the possible aim of the provision of Article 62 paragraph 1 of the Proposed Law may be exactly to crackdown on churches and religious communities.

Article 62, paragraph 1 of the Proposed Law does not regulate at all the issue of the use of religious facilities that would become state property on the basis of that provision. Therefore, in its Opinion, the Venice Commission also recommends that the Proposed Law explicitly states that the mere fact that a state has been declared the owner of a religious property will not automatically affect the already existing right to use such property. In the absence of explicit provisions on the use of such property by churches and religious communities, the issue of use would be subject to the general regime of use of state property under the Law on State Property. According to Article 24 of that Law, special rights of use (concession, BOT, lease and other arrangements of private-public partnership) can be acquired, but *only for the public good*, where religious facilities, which have been declared as cultural property, do not belong. On the other hand, Article 25 paragraph 1 of that Law stipulates that the Government, at the proposal of the Ministry of Finance, decides on the conditions of granting the use of immovable property of greater value, but only those which *serve for the performance of activities of state bodies*, where, as it has been proven, religious facilities do not belong. Therefore, in the absence of explicit provisions on the use of property that would become state property by churches and religious communities, such use would not be possible at all under the provisions of the Law on State Property. However, even if the use of state-owned property by churches and religious communities would be explicitly prescribed in the Proposed Law, it would not be a guarantee of *smooth use, which would have to be provided if the existence of churches and religious communities were not jeopardized as well as securing and exercising the constitutionally proclaimed freedom of religious communities in the performance of religious ceremonies and religious affairs.* Namely, not only explicitly prescribing the possibility of use would not impede to have such use in the future by a unilateral act of government denied, which would in fact jeopardize the existence of churches and religious communities, but would not prevent the Government of Montenegro, pursuant to Article 28 of the Law on State Property, to determine the conditions and manner of such use by special regulation. The possibility for the authorities to determine the ways and conditions of the possible use of religious facilities by the nature of things constitutes a violation of the constitutionally guaranteed freedom of religious communities in the performance of religious ceremonies and religious affairs,

and, since religious facilities are primarily used for performing religious ceremonies, the right of everyone, guaranteed by Article 46 paragraph 1, to publicly manifest their religion, either alone or in association with others, through prayer, sermons, or ceremonies would also be violated – for it would greatly exceed the permissible restriction of that freedom which, according to paragraph 3 of the same article of the Constitution, is allowed only if it is necessary for the protection of life and health of people, public order and peace, as well as other rights guaranteed by the Constitution, which is certainly not the case here. One can only imagine the impact on the regulation of religious ceremonies, for example, timing of the use of these facilities, number of people who "use" them, objects and food that can be brought inside, their lighting and fire protection, etc.

The only purposeful, understandable and acceptable form of state right to restrict the use of religious facilities is reflected in the decisions contained in the Law on the Protection of Cultural Property relating to the reconstruction and maintenance of such property, but it does not, as pointed out, constitute a legitimate ground for confiscation of property, because it is already at the disposal of state bodies that can exercise public interest in this regard independently of the property regime of such property.

Bearing in mind that the Montenegrin authorities, as pointed out in the Opinion of the Venice Commission, are of the view that the registration of property rights in the Cadaster of Immovable Property so far has been illegal and it can be reasonably assumed that in the application of the law, should it be Adopted in the proposed text, even a copy from the Cadaster of Immovable Property will not be considered as proof of property rights, the question arises whether such a hitherto unseen transfer of property rights would be in accordance with the Constitution of Montenegro. Article 58, paragraph 2 of the Constitution stipulates that no one may be deprived or restricted of property rights, except when required by the public interest, with just compensation. In the case of confiscation of property and its transfer into state property, as planned by the provision of Article 62 paragraph 1 of the Proposed Law, not only is there no legitimate public interest, but no just compensation is provided, which renders the said decision unconstitutional.

It should be pointed out that the provision in Article 62, paragraph 1 of the Proposed Law does not have any legal, systematic and logical connection with other provisions of the Proposed Law relating to property of churches and religious communities. Namely, according to Article 12, paragraph 1 of the Proposed Law, goods that represent the "*cultural heritage*" of Montenegro, and

on which the religious community has the right of ownership or use, cannot be alienated, transferred or removed from the state without the consent of the Government. The provision in Article 12, paragraph 1, if the law were adopted in the proposed text, would not only recognize and acknowledge the property of churches and religious communities existing at the time of its adoption, but would also make absurd the alleged reason for making the property of churches and religious communities state-owned, because it would establish additional guarantees for the authorities that churches and religious communities could not completely dispose of the cultural heritage property on their own. Also, Article 37 of the Proposed Law provides that the *property of the religious community*, that is, its property and other property rights, is used for performing religious ceremonies and religious affairs, construction and maintenance of religious facilities, as well as other social, health, cultural, charitable, educational purposes in accordance with the law and autonomous regulations of the religious community. If the law were to be adopted in the proposed text, hence with the provision of Article 62, paragraph 1, then churches and religious communities would be deprived of a large part of their property and would not be able to carry out the construction and maintenance of religious facilities, or to perform other social, health, cultural, charitable, educational activities, neither in accordance with the law nor in accordance with its autonomous regulations.

The provision in Article 62, paragraph 2 of the Proposed Law provides that religious facilities that were built "*by joint venture of citizens by December 1, 1918, for which there is no evidence of ownership*" shall also be converted into state ownership.

In the above provision, special attention is paid to wording "*joint venture*" and the question of its meaning. Namely, it is not clear from this wording whether "joint venture" will be understood in the modern sense of the word, i.e. as a form of association of entities resulting from the conclusion of contracts whereby two or more entities join their resources and work for the implementation of a business, and profit and losses from this business are borne equally, unless otherwise agreed, or else it would mean any form of raising funds, that is, one that occurred spontaneously in the past, without a contractual relationship and without knowing the entities that have allocated their funds to build religious buildings and contribute them to churches and religious communities. If term "joint venture" is interpreted in the first of two possible meanings, then the provision in Article 62, paragraph 2 of the Proposed Law is completely meaningless, since in the past, as well as today, contributions for the

construction of religious buildings were collected and given without any contractual relationship between the contributors.

Also, term "*citizens*" in the provision of Article 62 paragraph 2 of the Proposed Law does not have a clear meaning. Namely, it is not clear whether it refers to *citizens* of the Principality and Kingdom of Montenegro or to *natural persons* irrespective of their citizenship. If referred to natural persons irrespective of their citizenship, that is, foreign citizens who contributed to the construction of religious facilities, then there is not much logic and no justification for transferring religious facilities built with the contributions of such persons into state ownership. If, however, these were citizens of the Principality and Kingdom of Montenegro, then it should be borne in mind that this population, especially in the second half of the nineteenth century and in the first decades of the XX century, was rather indefinite due to territorial changes.

However, even if "citizens" are understood as citizens of the Principality and Kingdom of Montenegro, there is not much logic or justification for transferring religious facilities constructed with their funds into state property. Namely, as stated, **The Constitution of the Principality of Montenegro of 1905** in Article 140, paragraph 2, contained a provision according to which an estate (property) of a legacy for church purposes founded by "*private people by their estate or funds"* cannot be *"regarded as state property, and cannot be used for anything other than that, what it was bequeathed to and how it was intended"*. In this sense, the eventual future transfer of religious facilities, built with the contributions of believers, into state ownership would be playing tricks on their expressed will in the past to erect religious buildings with their contributions, which at that time were not and could not have been state property. So, if "joint venture of citizens" in building a religious facility and association in a religious community are expressions and elements of the enjoyment of the same basic human right, freedom of religion - then proclaiming religious facilities, which citizens have jointly erected using their freedom of religion, as a state property (instead of respecting the will of those citizens and respecting the property right over that facility of that church or religious community that has a continuity of subjectivity with the church or religious community from the time of the violation building a facility by joint venture), in addition to violation of the right to property, it also constitutes a violation of the right to freedom of religion of the citizens who participated in the construction of the religious facility.

Anything that is outlined in the interpretation of the provision in paragraph 1 of this article of the Proposed Law regarding the absence of proof of property rights could also refer to the identical wording in paragraph 2 with one important addition. Namely, one might ask whether, precisely in the sense of the provision of the Constitution of the Principality of Montenegro of 1905, giving contributions for the construction of religious buildings was proof that the contributors intended to make such facilities church rather than state property?

Article 63 of the Proposed Law

Article 63 of the Proposed Law regulates the procedure for registration of state property on religious facilities and land. Paragraph 1 of this Article of the Proposed Law proposes the jurisdiction of the administrative body competent for property affairs and prescribes its duty, within one year from the day this Law enters into force, to first define religious facilities and land which are, within the meaning of Article 62 of the Proposed Law, state property, and then, complete their inventory and, finally, apply for the registration of state property rights on these immovable properties in the Cadaster of Immovable Property.

The first of the questions that should be considered in interpreting the provision set out is which authority may be considered competent for the property affairs. According to the Decree on the organization and manner of work of state administration, that body is the Property Administration.[71]

If the law is adopted in the proposed text, the Property Administration will first be required, therefore, acting *ex officio*, to identify religious facilities and land which, within the meaning of Article 62 of the law, are state property. This actually means, as has already been pointed out, that state ownership of religious facilities and lands of churches and religious communities, upon the entry into force of the law, would be established *ex lege*, but the Administration is required to *define* which religious facilities and lands are transferred to state property. The Proposed Law does not regulate the question of how the Property Administration defines these facilities and lands and whether it adopts any legal act in the process of such defining. Bearing in mind that this is an administrative procedure, which would be conducted ex officio, and according to Article 98,

[71] Decree on the organisation and manner of work of state administration, ”Official Gazette of Montenegro”, no. 78/2018

paragraph 3 of the **Law on Administrative Procedure**[72], in such cases the procedure is considered instituted when any action is taken in the public body to conduct the procedure, it is clear that any action by the Property Administration to *define the property* will be the beginning of the procedure.

The procedure for registering state property rights on religious facilities and land is, according to the Proposed Law, a special administrative procedure. According to Article 4, paragraph 2 of the Law on Administrative Procedure, the provisions of special laws which, due to the specific nature of administrative matters in certain administrative areas, prescribe necessary deviations from the rules of administrative procedure "*cannot be contrary to the principles and purpose of that law, nor diminish the level of protection of the rights and legal interests of the parties prescribed by that law*." A closer examination of the provision of the Proposed Law makes it clear that in defining property that, within the meaning of Article 62 of the Proposed Law, is state property, there is no obligation on the Property Administration to invite and hear the legal representatives or proxies of the church or religious community as parties to the proceedings, since they, within the meaning of Article 51 paragraph 1 of the Law on Administrative Procedure, would have to have such status, since their legal interests would be governed by administrative procedure. In this way, contrary to the provision of Article 4, paragraph 2 of the Law on Administrative Procedure, the provisions of Article 14 of that Law, which form part of its principles, are violated, according to which a party has the right to participate in the administrative procedure in order to determine the facts and circumstances that are important for the adoption of an administrative act, as well as the right to comment on the results of the examination procedure. Also, it should be taken into consideration the fact that an administrative act can be issued without a party's statement only in cases prescribed by law, which is not explicitly prescribed in the case of the Proposed Law. Without the statement of legal representatives or proxies of churches and religious communities, even at this stage of the proceedings, it is not clear how the Property Administration will be able to impartially determine which religious facilities and lands belong to state ownership, because, for the sake of reminding, under Article 62 of the Proposed Law, it is about those facilities and land for which there is no evidence of ownership of churches and religious communities. It would seem that the Proposed Law has left to the Property Administration an inadmissible broader discretion in this regard, especially given the fact that such *defining of a*

[72] Law on Administrative Procedure, "Official Gazette of Montenegro", no. 56/2014, 20/2015, 40/2016, 37/2017

property, in the proposer's view, is in fact final - because the administrative authority competent for the cadaster, as it will be shown, is required to register the state property right on that property.

According to the solutions outlined in the Proposed Law, the Property Administration should compile a list of such facilities and land. The proposed Law does not specify in what form such a list is made, nor does it specify the legal nature of such a list. Nor does it regulate the question of the remedies available to interested parties to possibly refute such a list. Bearing in mind the provision in Article 63, paragraph 2 of the Proposed Law, such an inventory is of great importance, because, as will be shown, the administrative authority competent for the cadaster, in accordance with the idea of the creators of the Proposed Law, has the obligation to enter the ownership right in favor of the cadaster so that in a broader sense it could be explained that the list is more significant even than the prior consent that exists with the so-called complex administrative acts. The only thing that can be inferred from the provision of Article 63 paragraph 1 of the Proposed Law is that such a list will be an integral part of the application for registration of state property rights.

The draft law, in the provision referred to in Article 63, paragraph 1, states that the Property Administration will submit a *request* for registration of state property rights on these immovable properties. Judging from the use of term "*request*", it turns out that one request will cover all religious facilities and lands of different churches and religious communities (!?). Considering that this is a large number of facilities and lands of different churches and religious communities, which are listed in numerous and different immovable property portfolios, and that the claim should be supported by appropriate evidence, it is not clear how the proponent thought the stated norm would be possible to implement.

Moreover, for defining such property, compiling its inventory and submitting a request to the Real Estate Administration, the Proposed Law leaves a period of one year from the entry into force of the law. One gets the impression that in such a short time it is impossible to impartially define the religious facilities and land of all churches and religious communities, compile their list and submit an appropriate request. The speed of action required by this provision of the Proposed Law points to the fact that the meaning of the whole enactment of the law is the unlawful deprivation of the rights of churches and religious communities, with a drastic violation of their right to participate in the procedure, and that can only be a civil procedure.

The administrative body competent for cadastral affairs is *obliged*, pursuant to paragraph 2 of Article 63 of the Proposed Law, to register state property rights within 60 days from the date of submission of the request. This actually means that the authority responsible for cadaster immediately enters every religious facility and land into state ownership stated in the list provided to it by the Property Administration. Thus, although the Property Administration will formally be the applicant, it is essentially the issuer of the act or co-decides, which is a special type of administrative procedure that is not recognized or regulated by the provisions of the Law on Administrative Procedure. Namely, the Law on Administrative Procedure recognizes and regulates the cases of issuing a decision with the consent, confirmation or approval of another public body, but not the case of filing a request by one body, which has already substantially previously decided on an administrative matter. This, as will be shown, can raise serious doubts and distortions of rights with regard to the protection of the rights and interests of the parties to the proceedings, especially with regard to appeal and judicial protection.

The Proposed Law does not specify whether the interested churches and religious communities at this stage of the proceedings will be able to participate in the administrative procedure in order to determine the facts and circumstances that are relevant for the adoption of the administrative act, and how they will exercise their right to declare the results of the examination procedure, which, as stated in the interpretation of paragraph 1 of this Article of the Proposed Law, does not actually exist. The explanation given by the Government of Montenegro to the representatives of the Venice Commission, according to which the concerned religious community will be informed about the submission from authorities to the cadaster and that they will have the opportunity to participate in the so-called debate procedure is false because the Proposed Law does not contain any relevant provisions. On the contrary, because of the explicitly established obligation of the cadastral authority to register state ownership, which due to the fact that one application is submitted, it is clear that at this stage of the process churches and religious communities will not have the right to participate in the proceedings and comment on the results of the examination procedure.

The administrative authority competent for cadastral affairs is *obliged*, by explicit provision, to register state property rights. Such a provision contradicts the systemic solutions contained in the **Law on State Surveying and Cadaster of Immovable Property**. Namely, according to Article 86 of that Law, registration in the Cadaster of Immovable Property is made on the basis of

documents drawn up in the prescribed form for their validity and which do not have obvious deficiencies that call into question their authenticity, and the document which represents the legal basis for registration, change, restriction and termination of immovable property rights must have a clear and unambiguous legal basis. According to Article 87, paragraph 1 of that Law, the registration is made on the basis of the document made in accordance with Article 86 of the same law. Such a document, in principle, can be private and public.

According to Article 89 of the same Law, the public documents on the basis of which registration is made include:

1) *documents* drawn up by a competent authority or notary public within the limits of their powers and in the form for their validity referred to in Articles 86, 87 and 88 of this Law, provided that they contain all that is necessary and for registration on the basis of private documents;

2) *decisions of the court or other competent authority, that is, the settlements concluded before them,* which according to the enforcement regulations are considered executive documents eligible for registration of rights in the Cadaster of Immovable Property, provided that they contain an accurate marking of the immovable property and the rights to which the registration relates;

3) *other final decisions of the court, that is, executive decisions of the competent authority or other document drawn up in the form of a notarial deed,* if the law determines that real rights are acquired, changed or terminated by such decision or notarial deed in accordance with the law, and

4) *foreign documents* which, in the place where they are drawn up, are considered to be public documents in accordance with the law.

If the legal provisions on public documents on the basis of which the registration is made are considered more carefully, it becomes clear that the inventory of property, which, according to Article 63 paragraph 1 of the Proposed Law, is made by the Property Administration, does not fall into any of the said categories. Namely, such an inventory can by no means be considered an executive document, and the Proposed Law does not explicitly state that the right of state ownership of religious facilities and land is acquired on the basis of that inventory.

Article 63, paragraph 2 of the Proposed Law states nothing about remedies against the decision on the registration of state property in the Cadaster of Immovable Property. Therefore, an appeal was not foreseen nor excluded. In principle, starting from Article 20 paragraph 1 of the Constitution,

according to which everyone has the right to a legal remedy against a decision deciding their right or a legitimate interest, as well as Article 119 paragraph 1 of the Law on Administrative Procedure, according to which a party is entitled to the appeal, unless permitted by law, should conclude that churches and religious communities would be entitled to appeal in these proceedings. However, it is clear that such an appeal, from the point of view of protecting the legal interests of churches and religious communities, would not constitute an effective remedy.

The Government of Montenegro informed the Venice Commission that the appeals of churches and religious communities before the governing bodies would have suspensive effect.[73] That is entirely not true. According to Article 125, paragraph 3 of the **Law on State Surveying and Cadaster of Immovable Property**, the appeal does not delay execution of the decision on registration, among other things, in the case of registration made by law, which would be the case in this situation. It was clear to the Venice Commission that an appeal would not have suspensive effect, based on the proposed provisions.[74]

Nor was a possibility to pursue an administrative dispute, which exists in principle and is discussed in the Venice Commission Opinion [75] deprived of certain challenges and possible problems that churches and religious communities would face if they went about protecting their rights. Namely, according to Article 126 of the Law on State Surveying and Cadaster of Immovable Property, there is a possibility of conducting the administrative proceedings against the decision on registration, but, as stated, according to Article 124a of the same Law, if one considers that the registration of the property right in the Cadaster of Immovable Property violates his property right, may, within three years from the knowledge of the registration, sue the competent court for the deletion of the registration and restoration of the previous state. Bearing in mind that the administrative proceedings against the decision on registration is primarily created in order to protect the rights of the persons requesting registration, and that Article 13 of the **Law on Administrative Proceedings**[76] stipulates that the administrative proceedings may not be brought against an act issued in a court case protection provided in other judicial proceedings, it is clear that courts in Montenegro could take the view that judicial protection was provided to churches and religious

[73] Venice Commission, par. 69

[74] Same

[75] Same, par. 65

[76] Law on Administrative Proceedings, ”Official Gazette of Montenegro”, no. 54/2016

communities through the procedure provided for in Article 124a of the Law on State Surveying and Cadaster of Immovable Property, and that conducting the administrative proceedings is not possible.

On the other hand, the procedure prescribed by Article 124a of the Law on State Surveying and Cadaster of Immovable Property would place churches and religious communities in a position to prove their lawfully acquired and established property rights over religious facilities and land belonging to them. Thus, one consequence of the eventual adoption of the law in the proposed text would be to shift the burden of proof from the state to the churches and religious communities, not only in the administrative procedure but also in the administrative proceedings. In this regard, there is no allegation by the authorities that the Proposed Law seeks to avoid the costly and lengthy procedure of lawsuits filed by the state against churches and religious communities in relation to each disputed religious facility, given the large number of cases in which this should be implemented. Namely, churches and religious communities, especially the Metropolitanate and SOC Dioceses in Montenegro, have the right of ownership over certain religious facilities and land that is legally registered in the Cadaster of Immovable Property, and have a legitimate expectation based on the provisions of the applicable laws in Montenegro about the property and property rights of churches and religious communities that are recognized and acknowledged by the state as owners of certain land, especially religious facilities. In that sense, shifting the burden of proof to churches and religious communities would be unjustified, as it would place them in a more difficult position than the state. This would be contrary to the general principle of law which does not establish the facts whose existence the law presumes. This would also be illegitimate and could lead to significant differences in the jurisprudence of the competent courts, depending on how they interpret the legal presumptions of property rights of churches and religious communities contained in particular laws, maintenance of certain immovable property, as well as systematic harmonization of Article 22, paragraph 3 of the Law on Property Relations, which stipulates that natural resources which includes cultural and historical monuments cannot be the subject of private property, with the Law on the Protection of Cultural Property. Based on this, it is clear that churches and religious communities would be in a state of extreme legal uncertainty. At this point, it should be reiterated that, precisely because it lacks evidence of investment and property rights in religious facilities and land, it places the burden of proof on churches and religious communities.

We also point out that the analyzed provisions are directly discriminatory against churches and religious communities, because they place them in an unequal position with respect to all other immovable property owners who are registered in the Cadaster of Immovable Property and indirectly discriminatory against the Metropolitanate and SOC Dioceses in Montenegro. Finally, the provisions of sections 62 and 63 of the Proposed Law are unconstitutionally retroactive because there is no public interest in their retroactivity.

Articles 62 and 63 of the Proposed Law are not in line with the constitutionally proclaimed principle of separation of religious communities from the state, their equality and freedom in performing religious ceremonies and religious affairs. As already pointed out, the constitutional principle of the separation of state and religious communities first means that there is no state church and state identification with a particular religion or religion at all. If there is no state church or religious community, and if there is no identification of the state with a particular religion, then based on elementary logic it turns out that even the state cannot own religious facilities. This conclusion is supported by comparative arguments. That is, even in countries where the state church system is or was institutionalized and/or constituted, of the prevailing religion or traditional church (e.g. Greece, Denmark, England in the United Kingdom, Sweden) or where there is a system of cooperative separation whereby the state finances the revenues and insurance of clergy, or provides significant subsidies to churches and religious communities (Belgium, Slovakia), property of churches and religious communities exists. The conversion of property of churches and religious communities into state property that can be used by law to exercise the functions of Montenegro, state bodies, public services and/or gain profits is not in line with the nature of religious facilities and deprives churches and religious community of original autonomous financing, as well as the freedom to perform religious ceremonies and affairs, since it implies the possibility for the state to prescribe the conditions of use of such facilities, and therefore to influence the performance of religious ceremonies and activities within those facilities.

The maintenance of the property of churches and religious communities over religious facilities and land, which is planned by Articles 62 and 63 of the Proposed Law, is inconsistent with a number of Constitution-guaranteed rights and freedoms and constitutes their unconstitutional restriction, as it is prescribed to the extent not permitted by the Constitution, but nor to the extent necessary to satisfy the purpose for which a restriction is allowed in an open and free

democratic society. In this way, such impermissible restrictions are, in fact, introduced for purposes other than those for which they were prescribed. Such treatment is not allowed by Article 24 of the Constitution and constitutes a serious violation thereof. This is, first and foremost, the right to freedom of religion. Namely, according to Article 46 paragraph 3 of the Constitution, limitation of the right to freedom of religion is allowed only if it is necessary for the protection of life and health of people, public order and peace, as well as other rights guaranteed by the Constitution. Bearing in mind this constitutional provision, it can be stated that Articles 62 and 63 of the Proposed Law are contrary to the said constitutional provision. It is evident that Articles 62 and 63 of the Proposed Law are designed to directly jeopardize the right to freedom of religion, since in the application of these provisions the state would be able to define the ways and conditions of possible use of religious facilities, which are primarily used for performing religious ceremonies. This means that the application of the above provisions would limit the right of every individual, alone or in community with others, in these religious facilities, to publicly exercise their religion through prayer, sermons, or ritual. Moreover, the state would regulate the ways and conditions of possible use of religious facilities, which would be in its possession, by a by-law, and, in accordance with Article 24 of the Constitution, guaranteed human rights and freedoms can, in these situations, be restricted only by law.

In addition, Articles 62 and 63 of the Proposed Law are not in line with the Constitution guaranteed by property rights. Namely, under Article 58 paragraph 2 of the Constitution, no one may be deprived or restricted of property rights, except when the public interest so requires, with just compensation. Due to the principle of separation between the state and churches and religious communities, there is no public interest in supporting the ownership of churches and religious communities in the legal system of Montenegro. "Public interest", which is only superficially and without valid justification stated in the aforementioned provisions of the Proposed Law, and it is about the fact that religious facilities, but not the land referred to in those provisions, are cultural heritage, is addressed through the provisions of the Law on the Protection of Cultural Property. Based on these provisions, public authorities have significant mechanisms to influence the conservation, maintenance and reconstruction of such facilities.

The idea of transferring the property rights of churches and religious communities to state-owned religious facilities and land is also contrary to the

Constitution. Such procedure, as envisaged by the Proposed Law, is not in accordance with the constitutionally proclaimed prohibition of all direct or indirect discrimination, equality before the law, the right to equal protection of rights and freedoms, or equality of all forms of property. Pursuant to Article 2 of the **Law on Prohibition of Discrimination**[77], discrimination is any legal or factual difference or unequal treatment or omission of treatment of one person or group of persons in relation to other persons, as well as exclusion, limitation or giving priority to another person in relation to other persons, which, inter alia, is based on religion. The same article of that law stipulates that direct discrimination exists if by an act, action or omission a person or group of persons, in the same or similar situation, are brought or may be put in an unequal position with respect to another person or group of persons under that law on that basis, while indirect discrimination exists if an apparently neutral provision of a law, regulation or act, criterion or practice puts or could place a person or group of persons in an unequal position with respect to other persons or groups of persons on any of the prohibited grounds, unless that provision, criterion or practice is objectively and reasonably justified by a legitimate aim, using means that are appropriate and necessary to achieve the objective, or in an acceptable proportion to the aim pursued. It is clear that the adoption of the law in the proposed text constitutes direct discrimination against churches and religious communities and their entities, whose undisputed property rights were lawfully established and registered in the Cadastre of Immovable Property, based on the following:

1) property would be confiscated only to churches and religious communities, which means that they would be made a legal distinction, more precisely, so that they would not be treated in the same way as other natural and legal persons who have ownership, that is, who are in the same legal situation,

2) possibility of legal protection of property rights would not be the same for churches and religious communities and other natural and legal persons whose property is registered in the Cadaster of Immovable Property, and

3) given that an essential component of the identity of churches and religious communities is the *religion they preach and witness*, it is clear that such distinction and unequal position would be based on religion as a forbidden basis for distinction and inequality.

[77] Law on Prohibition of Discrimination, "Official Gazette of Montenegro", no. 46/2010, 40/2011 – state law, 18/2014 and 42/2017

The provisions of Articles 62 and 63 of the Proposed Law also contain disguised discrimination against the Metropolitanate and SOC Dioceses in Montenegro. Namely, although apparently neutral, since they apply, in principle, to all churches and religious communities, it is clear that the proponent of the law was primarily had in mind, and which was confirmed based on the public statements of the authorities in Montenegro, that these provisions essentially only relate to the Metropolitanate and SOC dioceses in Montenegro. Bearing in mind the provisions of the three agreements concluded by the Government of Montenegro in 2011 and 2012 with one church and two religious communities, it is clear that the provisions of the Proposed Law, even before its adoption, and especially in the case of its adoption in the proposed text, they place or could put the Metropolitanate and SOC dioceses in Montenegro in an unequal position with respect to other churches and religious communities solely on the basis of religion. In so doing, such practices and provisions are not objectively and reasonably justified by the objective provided for by law, nor are the resources provided appropriate and necessary. Although the Proposed Law does not explicitly refer to the Metropolitanate and SOC dioceses in Montenegro, it is clear that the authorities' intention to seize religious facilities and land belonging to them is primarily directed to the Metropolitanate and SOC dioceses in Montenegro.

The discriminatory effects of such solutions can be discussed in another context. Namely, even if the claim of the Montenegrin authorities that the immovable property of religious communities was state property, their *ex lege* seizure would not be in accordance with the provision of the Law on Property Relations, which stipulates that the right of management, use, or permanent use and disposition of land on social, now state property becomes, upon the entry into force of this law, the right of ownership of the former holder of the right of management, use, or permanent use, which can be considered as one of the principles of the legal system of Montenegro. If the Proposed Law, contrary to the provision of section 419 of the **Law on Property Relations**, deprives the right of churches and religious communities to land, it would be discriminatory to their detriment against other persons who have been granted the right to conversion over land.

The provisions of Articles 62 and 63 of the Proposed Law are not in line with the constitutional prohibition of retroactivity, since the application of Articles 62 and 63 would change the legal relations that were established before the entry into force of these provisions. Namely, according to Article 147 of the Constitution of Montenegro, law and other regulations cannot have retroactive

effect, but exceptionally, certain provisions of the law, if required by the public interest established in the procedure of passing the law, may have retroactive effect. The provisions of Articles 62 and 63 of the Proposed Law essentially have a retroactive effect, but their retroactive effect cannot in any way be justified by some public interest claim. In this case, the public interest, as shown, cannot exist, nor, under the provisions of the Constitution of Montenegro, can be the basis for restricting certain rights and freedoms. Thus, stating in both paragraphs of Article 62 of the Proposed Law that declaring/stating that state-owned religious facilities and land used by religious communities "*as a cultural heritage of Montenegro*", although it represents a kind of attempt to establish some proportion of these provisions, by no means can constitute "*defining public interest in the law-making process*", because the public interest behind the declaration of certain goods as cultural property has already been achieved regardless of the type of property rights holders over them, therefore, even if they are in private or any other form of ownership.

Another fact regarding retroactivity needs to be pointed out. As the reference to "*introduction of the legal order in the property data of religious communities and defining what constitutes and does not constitute state property*", as stated in the responses to suggestions from the public hearing, in the process of passing the law it does not constitute defining public interest which justifies retroactivity but denies the fact that legal relationships are changing. It can be argued that the cited statement from the response to the proposals from the public hearing did not fulfill the constitutional requirement of establishing public interest in the process of passing the law.

In its Opinion of June 24, 2019, the Venice Commission justifiably renamed the section of the Proposed Law entitled "Transitional and Final Provisions" and named it "Property of Religious Communities". This part of the Proposed Law deliberately proclaims the existence of some alleged property dispute between the Church and the state, as the same provisions of the Proposed Law prescribe vague, unconstitutional and illegal, *ad hoc* rules for resolving this dispute, which assumes its outcome making the Government of Montenegro, as proponent of this law, a potential illegal usurper and confiscator of church property.

The Venice Commission dedicated most of its Opinion to this issue, almost half of the analysis of the provisions of the Proposed Law, and made the following evaluations and recommendations:

For these reasons, Articles 62 and 63 of the Proposed Law are not only inadmissible but also unsustainable. Articles 62 and 63 of the Proposed Law should be deleted.

Substantive remarks of the Venice Commission

Notwithstanding the fact that they have been cited repeatedly, the substantive remarks and instructions of the Venice Commission Opinion of June 24, 2019 will be presented here.

The Venice Commission pointed out to the following:

1. Necessity for "the need for inclusive and effective public consultation, including representatives of religious communities, was stressed".[78]

2. The Government was advised to "consult with the institution of the Protector of Human Rights and Freedoms and take into account any comments that the institution may submit to the Assembly when finalizing the Proposed Law".[79]

3. It is pointed out that a number of the provisions of the Proposed Law in the first chapter dealing with key aspects of organized community life in this area do not explicitly mention "religious communities" or "other organizations based on people's beliefs" but the provisions exclusively relate to religious communities.[80]

4. It is recommended that the Proposed Law defines "communities of belief" (preferably under Article 6) and clarifies that all principles and rules established in relation to religious communities also apply to "communities of belief".[81]

5. With regard to the provision in Article 1, paragraph 1 of the Proposed Law, it was recommended that "this provision should not be understood and applied in the sense that individuals have only and exclusively the specific rights set out in the law on freedom of religion", which would limit the constitutional and international conventions. It should be reminded that "the

[78] Venice Commission, par. 24

[79] Same

[80] Same, par. 25

[81] Same

existence of a legal regulation is not a prerequisite for individuals to enjoy the fundamental rights guaranteed by international human rights conventions and constitutional provisions."[82]

6. It is noted that the "restriction clause in Article 8 paragraph 1 of the Proposed Law was too broadly set" and it was recommended that "Article 8 paragraph 1 of the Proposed Law be amended in accordance with the restriction clauses in Article 9 paragraph 2 of the European Convention on Human Rights".[83]

7. Regarding the provision in Article 8, paragraph 2 of the Proposed Law, it is stated that "freedom of expression of religion includes, in principle, the right to attempt to convince a neighbor of your beliefs", for example through "teaching". It is pointed out that Article 9 of the European Convention on Human Rights "does not protect inappropriate or offensive proselytism, such as providing material or social advantages or exerting undue pressure to win new members for the religious community." It was recommended that Article 8, paragraph 2 of the Proposed Law "explicitly states that the prohibition is limited to improper/abusive proselytism and that restrictive measures authorities may take under this provision should respect the criterion" of necessity in a democratic society".[84]

8. It is stated that the use of term "religious affairs" in Article 6 of the Proposed Law is "ambiguous and superfluous", and it is recommended to be "deleted".[85]

9. It is pointed out that "the non-profit character of religious communities, in the definition of Article 6 of the Proposed Law, should not be construed as a prohibition on any activities that generate some income to religious communities." Otherwise, the provision in Article 40 of the Proposed Law which states that "the religious community is obliged to pay taxes does not make any sense" and, furthermore, "such a general prohibition could seriously interfere with the work of religious communities and disproportionately restrict freedom of religion".[86]

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[82] Same, par. 26

[83] Same, par. 27

[84] Same, par. 28

[85] Same, par. 29

[86] Same

10. It is stated that "freedom of religion or belief is not restricted to citizens and that the law should not deny access to the status of legal subjectivity to religious communities on the ground that some of the founders of the community concerned are foreign nationals or stateless persons or that its headquarters are located abroad".[87]

11. It is specified that "the binding character of registration of religious communities based abroad would be contrary to the provision of Article 19 of the Proposed Law (on the optional registration of a religious community)" and that "religious communities are free to decide whether to require registration in the Register". It was stated that "religious or belief communities should not be obliged to seek legal personality if they do not wish to do so, and that this also applies to religious communities whose headquarters are outside the territory of the State concerned."[88]

12. It is recommended that "the text of Article 25, paragraph 3 of the Proposed Law be amended to clarify the provision that registration or database of religious communities with headquarters abroad are an option, and not an obligation".[89]

13. It is pointed out that "Article 61 paragraph 1 of the Proposed Law seems redundant in addition to the existing provision in Article 24".[90]

14. Regarding the 6-month deadline from the date of entry into force of this law for religious communities to file for registration under Article 61, paragraph 3 of the Proposed Law, the Venice Commission considers that the "6-month deadline may in practice prove quite short." It was also pointed out that the said provision "does not say whether religious communities which do not submit a report to the competent authority for registration within 6 months still have the opportunity to apply for entry in the Register under Article 21 of the Proposed Law".[91]

15. It is recommended that the 6-month deadline "be extended or that Article 61 of the Proposed Law without any ambiguity indicates that those religious communities that are already registered under the 1977 Law but do not

[87] Same, par. 32

[88] Same, par. 33

[89] Same

[90] Same, par. 34

[91] Same, par. 35

register within 6 months have the ability to apply for registration in accordance with Article 21 of the Proposed Law".[92]

16. It is also problematic that "the Proposed Law does not provide any details or precise references to other laws that contain information on rights belonging exclusively to registered religious communities or the ones in the database," and it is recommended that "either the Proposed Law contains details of rights exclusively granted to registered religious communities or the ones in the database, or the Proposed Law clearly refers to other laws containing this information".[93]

17. Regarding the provision in Article 20 of the Proposed Law, it is recommended that it "includes, in addition to foreign nationals, stateless persons as persons who would participate in the smallest number of members a community must have in order to register pursuant to Article 20 of the Proposed Law".[94]

18. It is emphasized that "freedom of religion or belief implies the organizational autonomy of a religious community or community of belief".[95]

19. It is advisable to "further specify the procedures for multiple persons claiming to be members of a particular community or for the community itself challenging the mandate of its representative" and to specifically emphasize the application of the Law on Administrative Procedure.[96]

20. It is recommended that it be useful to further specify in the "Proposed Law" specific procedures in the event that multiple communities claim to use the same/similar name".[97]

21. It is stated that Article 27, paragraph 1 of the Proposed Law "does not make clear whether" notification "of changes in information (in the religious community) means informal notification or whether formal registration requirements should be met and that "confusion arises from the use of different terms - notification and registration for the same procedure". It was argued that "this provision could be more consistent if it were further clarified", but also

[92] Same

[93] Same, par. 36

[94] Same, par. 37

[95] Same, par. 38

[96] Same

[97] Same, par. 39

stated that "in any case, the 30-day deadline could turn out to be rather short in certain cases and should be taken into consideration".[98]

22. It is stated that "there are a number of provisions that could be improved through clarification and more precise wordings".[99]

23. It is stressed that "generic terms such as a fine or other appropriate restrictions in due process" could be interpreted ambiguously when applying the provisions (where they are) "and that it would be "sufficient to indicate in the provision that religious acts may be prohibited (under the conditions provided for in Article 30, paragraph 1) only if the legitimate objectives cannot be achieved by applying less restrictive measures".[100]

24. It is stated that the property liability of the religious community with its entire property in Article 37, paragraph 2 of the Proposed Law "was too broad and did not provide any guarantee that sufficient funds would be available to the religious community to adequately perform religious services." In relation to this provision, it was stated that "the authorities could consider the possibility of exempting, for example, sacred facilities and sacral movable property, which are necessary for the basic needs of religious services."[101]

25. Regarding Article 46, paragraph 3 of the Proposed Law and conducting of religious ceremonies in a public place, the Venice Commission finds that "not specifying a restriction in the wording of this provision results in procedures that are complicated for believers" and that "this provision could be improved through further elaboration and pointing to the fact that that a report to a governing body is necessary only in the event that a religious ceremony carries the potential risk of disruption of the ordinary course of life".[102]

26. Concerning challenging the right of religious communities to establish primary schools, the Venice Commission pointed out that "religious communities should, in principle, be able to establish primary schools as long as they respect the condition of conformity of educational programs and the content of textbooks and manuals".[103]

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[98] Same, par. 40

[99] Same, par. 41

[100] Same

[101] Same, par. 42

[102] Same, par. 43

[103] Same, par. 45

27. Regarding Article 35 of the Proposed Law and the revenue of religious communities, it is stated that "the Constitutional Court of Montenegro is obliged to ensure that the implementation of provisions enabling the allocation of funds to religious communities from the state budget and the budget of local self-governments is in accordance with Article 14 of the Constitution" and it is pointed out that "when allocating funds from the state budget, religious communities must be treated equally, in accordance with Article 14, paragraph 2 of the Constitution of Montenegro."[104]

28. With regard to Article 47, paragraph 2, and maintaining the database by the religious community of persons who voluntarily pay contribution for performing religious ceremonies, it is recommended that that article "clearly state that the information, which the religious community is obliged to keep, does not include the identity of the believer who required a religious ceremony to be performed".[105]

29. It is found that the provisions of Articles 62 and 63 of the Proposed Law, as well as their background, were "vague and ambiguous".[106]

30. It is stated that "the judicial authorities have an obligation to examine and determine the existence of specific property rights" and "in accordance with the standards of protection of private property rights contained in the European Convention on Human Rights and the case law of the European Court of Human Rights".[107]

31. It is specified that "no *ad hoc* rules" or "rules specifically tailored to this particular case" can be applied".[108]

32. It is stated that the same applicable rules should be applied and "regular, detailed evidentiary procedures" should be carried out in order to provide, in substantive and procedural terms, "a level of judicial protection equal to that provided for by the Law on Civil Procedure".[109]

33. It is made clear that the procedure for proving specific rights must be multi-stage, and that, in the case of Montenegro, this means the right to file an

[104] Same, par. 49

[105] Same, par. 52

[106] Same, par. 55

[107] Same, par. 77

[108] Same, par. 66 and 76

[109] Same, par. 66, 68 and 78

appeal and, subsequently, the right of appeal to the Supreme Court, but also to the Constitutional Court.[110]

34. It is suggested that the text of the Proposed Law should include "clear provisions referring to the implementation of the Law on Civil Procedure of Montenegro and other relevant laws and regulations in this area."[111]

35. It is specified that "the burden of proof lies with the state"[112] and

36. It is stated that the state can enter a specific ownership right on the property of churches and religious communities "only after the final court decision has been made" and that "before that, the right of the state cannot be entered into the Cadaster of Immovable Property, but only the requirement it emphasizes."[113]

C O N C L U S I O N

From the contents of these Remarks on the Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities, it is evident and clear that, for legal and civilizational reasons alone, the provisions of Articles 1, 3, 4, 6, 7, 8, 9 , 10,12, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 32, 33, 37, 38, 39, 40, 41, 42, 43 , 44, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 62 and 63 of the Proposed Law cannot be sustained. In addition, the content of the provisions of Articles 2, 5, 11, Article 12 paragraph 1, Articles 13, 16, 17, 31, 34, Article 35 paragraph 1, Articles 36, 45, 53, 60, 61, 64 and 65 of the Proposed Law is not disputable. However, given the number of articles in the Proposed Law that are unsustainable in legal and civilizational terms, others that are not controversial are not themselves satysfying enough to make a Law. The number of non-disputable provisions in relation to the number of the disputable ones of the Proposed Law is, as it seems, very small.

Considering all the procedural failures during the drafting of the Proposed Law and its contents, which is very tendentious and maliciously formulated to the detriment of the existing churches and religious communities,

[110] Same, par. 66

[111] Same, par. 68, 78

[112] Same, par. 64

[113] Same, par. 69

and especially of the Metropolitanate and Diocese of the Serbian Orthodox Church in Montenegro, it cannot be said, unfortunately, that "Relations between the state and religious communities are based on mutual trust and cooperation" (Article 9, paragraph 2 of the Proposed Law).

The Metropolitanate of Montenegro and the Littoral and the Diocese of Budimlje and Nikšić, Zahumlje and Herzegovina and Mileševo, existing in Montenegro, bring together the largest number of Orthodox believers, who represent the majority of the population of Montenegro. Bearing in mind that the **Law on the Legal Status of the Religious Communities of Montenegro** was adopted in 1977 and has been largely outdated in a number of provisions, the Metropolitanate and Dioceses of the Serbian Orthodox Church in Montenegro, acknowledging their historical role and importance in the social life of Montenegro, respect the need to prepare and pass a new law, which would, in accordance with international standards on the right to freedom of religion and the constitutionally proclaimed equality of religious communities and guarantee their freedom in performing religious ceremonies and religious affairs, as well as separation of the state from religious communities, in an affirmative, comprehensive and systematically qualitative way, has regulated the way of exercising and enjoying the right to freedom of religion, especially in its collective and corporate dimension, whose expression represents a free and autonomous activity of churches and religious communities.

The Metropolitanate and SOC Dioceses of Montenegro express their concern over the numerous civilizationally and legally unacceptable solutions contained in the Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities, as well as the manner in which the proposal was prepared. On the other hand, the Metropoliatanate and SOC dioceses in Montenegro are ready to improve, through open dialogue, understanding and cooperation with the competent state authorities and, in the spirit of the Venice Commission recommendations addressed to the Government and other state bodies of Montenegro, contribute to the inclusiveness of the drafting process.

It is necessary for the Proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities to undergo fundamental, substantive and comprehensive changes, which, starting from the principle of legal certainty, will be an expression of consistent adherence to the international legal acts and the principles of prohibition of religious discrimination proclaimed by the Constitution of Montenegro, autonomy of churches and religious communities and state neutrality in matters of the exercise of the right to freedom of religion. Consistent adherence to these principles requires that the

legal regulation of the legal status of churches and religious communities rests on their equality, but not on imposed equalization, which in the case of the Metropolitanate and SOC dioceses in Montenegro inevitably entails respect and protection of the religious identity and canonical order of the Church, which are part of, then, continuity of historical activity and acquired legal subjectivity, as well as full respect and protection of a wide variety of acquired rights and the applicable laws based on legitimate interests and expectations - ranging from the freedom to self-regulate internal organization to the smooth enjoyment and disposition of one's own sacred property.

The Metropolitanate and other SOC dioceses in Montenegro are of the view that, with the strict observance of the principles outlined, a broader consensus can be ensured in the adoption of the Law.

It is necessary to provide and comply with the minimum acceptable and reasonable solutions that would enable the adoption of a quality law, and those are:

1. Legal reference to the possibility of restricting the freedom of religion and activity of churches and religious communities must rest on the obligation to establish by law and the necessity of existence in a democratic society. In this respect, the provisions of Article 3, Article 8 paragraph 1 and a number of other articles of the Proposed Law that explicitly do not mention the conditions and/or provide for a wide discretion for executive-administrative authorities are not acceptable for the Metropolitanate and other SOC dioceses in Montenegro.

2. The legal provisions governing the general relationship between the state and churches and religious communities, as well as details of this relationship in different aspects and spheres of social life, must rest on state neutrality, equality between churches and religious communities and prohibition of discrimination. In this sense, for the Metropolitanate and other SOC dioceses in Montenegro, the provision of Article 10 of the Proposed Law is not entirely acceptable under which certain issues of common interest for Montenegro and one or more religious communities may be regulated by a contract concluded by the Government of Montenegro and religious communities without explicitly stating that such agreements should not be concluded in a discriminatory manner and without enabling other churches and religious communities which wish to do so, and which have justified needs and legitimate interests may conclude such agreements. On this occasion, we reiterate our readiness for both the Metropolitanate and other SOC dioceses in Montenegro to conclude such an agreement with the Government of Montenegro on behalf of the SOC,

reminding us that our Proposal Agreement was formally submitted to the Government of Montenegro in 2012 and that the Government has not yet provided an answer to it. It is also unacceptable that there is no explicit standardization that the Government, in the event that there are funds in the state budget provided for the health and pension and disability insurance of priests, the amount of insurance funds will be determined equally and in proportion to the number of believers and priests and religious officials of churches and religious communities.

3. The Proposed Law must recognize and respect the existence of the Orthodox Church in Montenegro and respect the civilizational fact that the Church and religious community do not share the same religious organizational structure. In this sense, in the title of the law, as well as in its text, it is necessary to use noun - Church in addition to term "religious community".

4. The Proposed Law must recognize and respect the existence of centuries-old historical continuity and the legal subjectivity of individual churches and religious communities. In this sense, it is completely unacceptable for the Metropolitanate and other SOC dioceses in Montenegro to be bound by the provisions of the Proposed Law on the new procedure of registration and database (Articles 18 - 23 of the Proposed Law) resulting in *ex lege* loss of the existing capacity of a legal entity. In this sense, the Proposed Law should include a provision that the Metropolitanate and other SOC dioceses in Montenegro and all ecclesiastical entities, as well as other religious communities who meet the same condition, should be recognized as a legal entity in accordance with canon law or a provision that would point to an identical solution under the Agreement to be concluded with the Government of Montenegro. In this connection, the provision of Article 32 of the Proposed Law “on the prohibition of operating of religious communities” is also not acceptable, because it does not meet the standard of a clear legal norm and creates a legal basis for the unlawful interference of the state with freedom of religion.

5. The Proposed Law does not fully respect the autonomy of churches and religious communities, namely the constitutional principle of separation of the state from churches and religious communities and their freedom to perform religious ceremonies and religious affairs. It is evident that the Proposed Law does not regulate certain issues that are important for the exercise of that

autonomy. In addition, through certain solutions in the Proposed Law, the internal autonomy of churches and religious communities is severely violated and jeopardized, as it enables the state to interfere with their autonomous affairs, which are not at all contrary to the legal order.

Not only does the Proposed Law not correspond to the three agreements concluded by the Government of Montenegro in 2011 and 2012 with the Holy See, the Islamic and Jewish communities, but it is in direct contradiction to their content. We believe that the Proposed Law, based on the three agreements mentioned above, should regulate a number of issues of importance for the autonomy of churches and religious communities, such as: exclusive right of the competent church authorities to freely regulate their own internal organization; establish, change and abolish units of their religious organizational structure (dioceses and the like); establish, change, abolish or recognize ecclesiastical persons under the provisions of their own canon law and inform the competent administrative authority thereof in order to regulate the question of their legal subjectivity; respect for the provisions of the internal autonomous law and participation of state bodies in their implementation and enforcement; authority for church appointments and assignment of church services, etc.

Provisions of the Proposed Law that violate the internal autonomy of churches and religious communities are unacceptable because it enables the state to interfere with autonomous affairs. This is Article 15 of the Proposed Law under which the collection and processing of personal data is subject to state control; Article 25 of the Proposed Law according to which the area of registration must extend within the borders of Montenegro and according to which the seat of the registered community for the territory of Montenegro must be in Montenegro; Article 37 of the Proposed Law according to which churches and religious communities are liable for all their property, including the obligation to pay taxes; Articles 35 and 36 of the Proposed Law under which there is an obligation to keep records of income and possibility of controlling the lawfulness of the acquisition and expenditure of funds, and which is in connection with Article 47 of the Proposed Law according to which there is records of income by virtue of fees for religious ceremonies; Articles 54 and 55 of the Proposed Law enabling not only the oversight by state bodies of curricula, textbooks and manuals in religious schools, but also the influence of state bodies on their enactment.

6. Provisions of the Proposed Law that do not meet the standards of a clear legal norm and/or are incomplete and/or do not regulate certain important

issues are very problematic, thus creating a legal basis for a wide discretion of the bodies of executive-administrative power and unlawful interference of the state with the freedom of religion, and they refer especially to worship, religious services and religious buildings. It is primarily a provision from Article 46, paragraph 3 of the Proposed Law introducing the obligation to report all religious ceremonies that are performed in a public place, i.e. at cemeteries at the request of a believer, which, in connection with the legal provisions on public gathering, opens the possibility of prohibiting religious ceremonies, as well as provisions from Articles 48, 49 and 50 of the Proposed Law according to which the manner of exercising the right to spiritual care is regulated by by-laws! The Proposed Law inevitably requires amendments due to the lack of protection of worship time and space, due to lack of explicit normalization of the type of facilities that churches and religious communities have the right to build and obligations of the competent state bodies of Montenegro to accept the proposal of their competent bodies for the location of construction of religious buildings, except unless there are contrary objective reasons of the public order; due to not recognizing the right of churches and religious communities to religiously care for believers in the armed forces and police services and those in prisons, hospitals, orphanages and in all health and social care institutions, whether public or private.

7. Articles 51 and 52 of the Proposed Law governing religious instruction require significant improvement, especially given that they are accompanied by misdemeanor liability. We believe it is necessary to guarantee the unconditional right of parents and guardians to the religious instruction of children; that it is necessary to increase the age of the child required for the child's consent to participate in religious instruction, and that, in the interests of legal certainty, it is prohibited to discriminate against children with regard to the right to religious instruction which is evident in the Proposed Law.

8. The provisions of Articles 61 and 62 of the Proposed Law, which provides for the nationalization, i.e. seizure of sacral objects and other immovable property from churches and religious communities, are completely unacceptable. The aforementioned provisions are contrary to all international and domestic guarantees of human rights and directly and severely violate the right to freedom of religion, prohibition of discrimination, right to property and right to an effective remedy.

In addition, it is necessary to explicitly stipulate that churches and religious communities and their legal entities have the right to acquire, possess, use and dispose of movable and immovable property for their own purposes under the provisions of autonomous (canon) law and the applicable legislation of Montenegro. Also, it should be stipulated that the existing sacral property, which is not registered with churches and religious communities due to the fact that the cadastre of immovable property in Montenegro is still not fully completed, will be registered as the property of every church and religious communities to which they belong and which carry out religious ceremonies. Entry will be made at the request of the competent authorities of these churches and religious communities.

Provisions should be made for the restitution of immovable property, confiscated or nationalized from churches and religious communities during the totalitarian communist regime, without appropriate compensation, which will be regulated by a special law that will be adopted with prior agreement with churches and religious communities from which the property has been confiscated.

9. Unconditional legal or contractual recognition and respect (with a simultaneous legal provision that addresses the contractual regulation of this issue) of the existence of centuries-old historical continuity and legal subjectivity of the Metropolitanate of Montenegro and the Littoral and the Diocese of Budimlje and Nikšić, Zahumlje and Herzegovina and Mileševo in Montenegro and all ecclesiastical legal entities under canon law is necessary.

10. There is no justifiable reason for the Government of Montenegro not to conclude an agreement with our Church, with a legal reference to the application of the agreement in all matters that are not regulated or otherwise regulated. The agreement would regulate issues of common interest on an equal and substantially identical basis, contained in the three agreements concluded by the Government of Montenegro in 2011 and 2012 with the Holy See, the Islamic and Jewish communities.

11. There is a need for consistent, affirmative and constitutional and international standards-based regulation and respect for the autonomy of churches and religious communities, which involves regulating a number of issues relevant to such autonomy and preventing any form of intereference by the state and its authorities with the existence and activity of churches and

religious communities that would not be based on permissible reasons, provided by law, commensurate, legitimate and necessary in a democratic society.

12. We believe that it is necessary to amend the text of the Proposed Law in order to amend unclear, inconclusive or contradictory provisions and omit provisions that allow for a wide discretionary decision-making of executive-administrative bodies, as recommended by the Venice Commission in its Opinion.

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Consequences of possible adoption and implementation of the Proposed Law abolishing the previously acquired legal subjectivity of churches and religious communities, confiscating sacral religious facilities that have never been state-owned, leaving believers and priests without their centuries-old prayer homes, which encourages religious violence and hatred, which impedes the right to freedom of religion or belief, especially in the collective aspect, through the activities and mission of the Church and religious communities in a complex Montenegrin society – can be enduring and catastrophic.

The Orthodox Church, embodied in the Metropolitanate of Montenegro and the Littoral and SOC dioceses in Montenegro, does not claim for itself any privileges, but it can by no means agree to a legal act that derogates and suspends the right to freedom of religion of its believers and priests and by which, through the announced seizure of temples, monasteries and other centuries-old church property, bequeathed to the Church by believers and benefactors, the ground for its annulment is being prepared.

We consider it necessary for the Government of Montenegro to express and show good will with regard to the opening of a public, permanent and institutional professional and civilized dialogue with the Church and religious communities so that, in a setting of mutual respect and respect, in a repeated procedure and with the participation of legal experts, **the Proposed Law on Freedom of Religion or Belief and Legal Status of Churches and Religious Communities** be drafted in accordance with the civilizational and European acquis and standards with full respect for the internal autonomy of the Church and religious community. Only in this way can the constitutional and other international and domestic legal acts be governed by the legal order and enable in Montenegro, as well as in other countries, exercise and protection of the right

to freedom of religion or belief and regulate the legal position of churches and religious communities.

Metropolitan of the Montenegro and Littoral
Amfilohije, PhD

Bishop of the Diocese Budimlje and Niksic
Joanikije

Very Rev. Velibord Dzomic, PhD
Very Rev. Nikifor (Milovic), ma
Savo Markovic, PhD
Vladimir Leposavic, PhD
Vojislav M. Djurisic, lawyer
Miroslav Jankovic, lawyer
Vera Mijanovic, lawyer
Dragan Soc, lawyer
Jugoslav Krpovic, lawyer
Dalibor Kavaric, lawyer
Dragoljub Scepanovic, lawyer
Vladimir Cadjenovic, lawyer
Bozo Milonjic, lawyer
Radovan Bojovic, lawyer
Daliborka Stojanovic, lawyer
Mladen Dubak, lawyer

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MONTENEGRO

DRAFT LAW ON FREEDOM OF RELIGION OR BELIEFS AND LEGAL STATUS OF RELIGIOUS COMMUNITIES

DRAFT

LAW ON FREEDOM OF RELIGION OR BELIEFS AND LEGAL STATUS OF RELIGIOUS COMMUNITIES

I BASIC PROVISION

Article 1

Freedom of thought, conscience and religion, guaranteed by the Constitution and the confirmed and published international agreements, shall be exercised in line with this Law.

The state shall guarantee unimpeded exercise of the freedom of thought, conscience and religion.

Article 2

Freedom of thought is absolute and inviolable.

Article 3

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

The degree of this limitation shall be proportionate to the legitimate aim referred to in Paragraph 1 of this Article, and public authority shall ensure not to resort to more restrictive limitation if the same legitimate aim can be achieved with a less restrictive measure.

Article 4

Freedom of religion or belief protects theistic, non-theistic and atheistic beliefs, as well as the right, acting in line with one's own conscience, not to manifest any religion or belief.

Freedom of religion or belief includes the right of a person, acting in line with his own conscience, either alone or in community with others, in public or in private, to manifest his religion or belief in prayer, sermon, customs, practice, or in some other manner, the right to adopt or change religion or belief, freedom to participate in religious teaching and education, or teaching and education that correspond with one's belief, as well as the right to foster and develop religious tradition and tradition in line with one's belief.

Article 5

Freedom of conscience includes the right of an individual to refuse, in line with the law, military service or other obligation involving the use of arms (conscientious objection).

Article 6

Religious community is a voluntary, non-profit association of persons belonging to the same religion, established for the purpose of public or private manifestation of religion, exercise of religious ceremonies and religious affairs, which has its structure, bodies, internal rules and religious teaching.

Article 7

Religious communities are churches, communities of believers and other institutional forms of religious action.

Religious community is free in holding religious service and exercising religious affairs.

Religious community shall decide freely, particularly on the following:

1. Internal organization, education, composition, powers and functioning of the bodies thereof;
2. Appointment and powers of its religious servants and other religious workers;

3. Rights and responsibilities of its believers, on condition that it does not interfere with their religious freedom;
4. Association with or participation in inter-religious organizations with the seat in Montenegro or abroad.

Article 8

Religious community shall act in line with the legal order of Montenegro, public order and morals.

Actions of the religious communities shall not be directed against other religious communities and religions, and shall not harm other rights and freedoms of believers and citizens.

Article 9

In Montenegro, no religion shall have the status of a state religion.

Relations between the state and the religious communities shall be based on mutual understanding and cooperation, particularly in the area of charitable, social and health-related, educational and cultural activities.

The state and religious communities promote tolerance, dialogue and respect between believers from different religious communities, as well as between believers and non-believers.

Article 10

Particular issues of a common interest for Montenegro and for one or more religious communities may be regulated by an agreement concluded between the Government of Montenegro (hereinafter: the Government) and the religious community.

Article 11

Religious community shall manage independently its property based on autonomous regulations, in line with the law.

Article 12

Resources that represent cultural heritage of Montenegro, over which a religious community has ownership or easement rights, shall not be alienated, moved or taken out of the country without the consent of the Government.

Prior to adopting the decision referred to in Paragraph 1 of this Article, the Government shall seek the opinion of the religious community.

Article 13

No one shall be forced to or impeded in any way from becoming or remaining a member of a religious community, or from participating or not participating in the manifestation of religion or belief.

No one shall be impeded, for the reasons of belonging or not belonging to a religious community, in the exercise of rights granted by the law.

Article 14

All forms of indirect or direct discrimination based on religion or beliefs and incitement of religious hate and intolerance shall be prohibited.

Adherence to a certain religious community as a legitimate requirement for employment in a religious community or its organizational form shall not be considered discrimination, in the sense of this Law, if adherence to a religious community represents an irreplaceable requirement and a reasonable justification for posing this requirement for employment.

Article 15

Collection and processing of data regarding religion or beliefs of individuals or groups shall be done in line with the law regulating personal data protection issues.

Article 16

Terms used in this Law to refer to physical persons in masculine gender shall also include the same terms in feminine gender.

Article 17

Supervision over the implementation of this Law shall be exercised by the public administration authority responsible for human rights and freedoms (hereinafter: the Ministry).

II REGISTRATION AND RECORDS OF RELIGIOUS COMMUNITIES

Article 18

Religious community shall obtain the status of a legal person by being entered into the register of religious communities (hereinafter: the Register), kept by the Ministry.

The Register shall be comprised of a database and a collection of documents.

Contents and manner of keeping of the Register, as a public record, shall be prescribed by the Ministry.

Article 19

Registration of a religious community shall not be mandatory.

Religious communities decide freely whether they will request to be entered into the Register or not.

Article 20

Religious community may be registered if it has minimum 3 adult believers who hold Montenegrin citizenship and have residence in Montenegro, or foreigners whose permanent residence in Montenegro was approved, in line with the law.

Article 21

Application for registration of a religious community shall be submitted to the Ministry by the person authorized to represent the religious community.

Application from Paragraph 1 of this Article shall include:

1) Name of the religious community that must differ from the names of other religious communities to the extent that allows for avoiding confusion or mistake in the identification due to resemblance with the name of another registered community;
2) Seat and address of the religious community in Montenegro.

The following shall be enclosed with the application referred to in Paragraph 1 of this Article:

- Founding Act if the religious community is newly established, with the data on persons referred to in Article 20 of this Law (personal name, evidence of citizenship and residence, i.e. permanent residence for foreigners), with the original signature thereof;
- Data on the representative of the religious community (personal name, evidence of citizenship and residence, i.e. permanent residence for foreigners), with the original signature thereof.

Article 22

The Ministry shall refuse to register the religious community if the person authorized to represent the religious community fails to submit the application for registration in line with Article 22 of this Law.

A lawsuit may be filed with the Administrative Court of Montenegro against the decision referred to in Paragraph 1 of this Article.

Article 23

Organizational part of the religious community active in Montenegro, with the religious center abroad, which was not previously registered with the competent public authority in Montenegro, shall enclose with the application referred to in Article 21 of this Law the decision of the competent authority of that religious community to be entered into the Register.

Article 24

Religious communities that are reported and registered with the competent public authority in Montenegro, in line with the Law on legal status of religious communities (Official Gazette of SR Montenegro no. 9/77) and are active in Montenegro on the date of coming into force of this Law, shall be entered into the inventory of existing religious communities (hereinafter: the Inventory), kept by the Ministry, by submitting an application for entry into the Inventory by the persons authorized to represent them.

The Ministry shall prescribe the contents of the Inventory.

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 Register or the Inventory.

Article 26

The Ministry shall establish whether the requirements stipulated in this Law for the entry of the religious community into the Register or the Inventory are met within 30 days from the date of receipt of the complete application and necessary documentation referred to in Articles 21 and 23 of this Law.

If the religious community meets the requirements referred to in Paragraph 1 of this Law, the Ministry shall adopt the decision on entry into the Register or the Inventory.

Article 27

Religious community shall inform the Ministry of any change of data referred to in Article 21 of this Law, within 30 days from the date when the change took place.

Registration of changes shall be done in line with the provisions of this Law regarding registration of a religious community.

Besides the religious communities, their organizational parts may also be entered into the Register, upon request of the religious community, as well as associations of religious communities, under the conditions and in the manner stipulated in this Law regarding registration of religious communities.

Article 28

This Law shall not prevent or limit the establishment or operation of those associations of citizens and other forms of civil society organizations that hold the status of a legal entity or without the status of a legal entity, established for the purpose of exercising freedom of thought, conscience, religion or belief, and it shall not prevent the operation of non-registered religious communities or the ones that are not recorded in the Inventory.

Non-registered religious communities and the ones that are not recorded in the Inventory shall not have the legal status of religious communities that are registered or recorded in line with this Law and shall not acquire and exercise rights that, in line with the legal order of Montenegro, belong exclusively to the registered or recorded religious communities.

Article 29

The manner of establishment, status, bodies, financing and other issues relevant for the operation and activities of the organizations that are not religious communities in the sense of this Law, and that are established for the purpose of expressing the freedom of belief, shall be exercised in line with the law regulating the legal status of non-governmental organizations.

Article 30

Entry into the Register or Inventory may be denied to a religious community or its operation may be prohibited if:

1) it incites racial, national, religious or other type of discrimination and violence or encourages or incites racial, national, religious or other type of hate, intolerance, strife or persecution or in some other way harms or offends human dignity;
2) the purpose, goals and manner of its religious action are based on violence or use violence that imperils life, health or other rights and freedoms of persons belonging to that or some other religious community, as well as other persons.

Provisions of this Article shall also apply to the non-registered or non-recorded religious communities, if the reasons referred to in Paragraph 1 of this Article exist.

Article 31

The Ministry shall decide on denying the entry of a religious community into the Register or the Inventory by a Decision.

It is possible to file a lawsuit with the Administrative Court of Montenegro against the Decision referred to in Paragraph 1 of this Article.

Article 32

The State Prosecutor's Office shall instigate the procedure for the prohibition of operation of a religious community, if the reasons referred to in Article 30, Paragraph 1 exist, by filing a motion for the prohibition of operation of a religious community with the relevant court, if the legitimate goal in the interest of public security, protection of public order, health or morals, or the protection of rights and freedoms of others, could not have been achieved effectively by pronouncing a fine, denying tax relieves or some other appropriate restrictive measure in a relevant procedure.

Prior to the adoption of the decision on the prohibition of operation of a religious community, the court may leave an appropriate deadline to the religious community to bring its actions in line with the legal order and public morals.

If within the specific deadline specified by the court the religious community meets the requirement of the court by bringing its actions in line with the legal order and public morals, the competent court may suspend the procedure for the prohibition of operation of the religious community.

Article 33

The Ministry shall delete the religious community from the Register or the Inventory if:

1) the religious community itself decides to end its activity;
2) the activity of the religious community is prohibited in line with the provisions of this Law, on the basis of a final court decision.

A religious community shall be deleted from the Register or the Inventory based on the decision of the Ministry.

It is possible to file a lawsuit with the Administrative Court of Montenegro against the decision of the Ministry referred to in Paragraph 2 of this Article.

Article 34

The property of the religious community deleted from the Register or the Inventory, upon discharge of liability, shall be decided upon in the manner stipulated in the acts of the religious community.

If the acts of the religious community do not define the manner of action, property of the religious community shall become the property of Montenegro.

III RIGHTS AND RESPONSIBILITIES OF RELIGIOUS COMMUNITIES AND THEIR BELIEVERS

Article 35

Religious community shall ensure resources for the performance of its activity from the revenues based on its own property and religious services, endowments, legacies, funds, donations and other contributions from physical and legal persons, resources from the international religious organizations that it is a members of, resources from the Budget of Montenegro and local self-government units, as well as from other affairs and activities on a non-profit basis, in line with the law.

Religious community shall keep the record of the revenues referred to in Paragraph 1 of this Article, in line with the law and autonomous regulations.

Article 36

Control of legality of acquisition of funds of the religious community and control of legality of earmarked use of resources of the religious community from the state budget and the local self-government budget shall be performed by the competent authorities, in line with the law.

Article 37

Property of the religious community shall be used for the exercise of religious ceremonies and religious affairs, construction and maintenance of religious buildings, as well as for other social, health-related, cultural, charitable, educational purposes, in line with the law and autonomous regulations of the religious community.

Religious community shall be held liable for its obligations with its overall property, in line with the law.

Article 38

Immovable and movable goods owned by the religious community shall be entered, i.e. registered to the name of the religious community or the organizational part of the religious community whose religious center is abroad, but which holds the status of a legal person with the seat in Montenegro.

The right of easement over movable and immovable goods owned by the state that the state has entrusted to the religious community for use shall also be registered to the name of the religious communities and organizational parts referred to in Paragraph 1 of this Article.

Article 39

Religious community may collect voluntary contributions based on its autonomous regulations, in line with the law.

Article 40

Religious community shall pay taxes, contributions and other duties, in line with the law.

Religious community may be fully or partially exempt from tax and other obligations, in line with the law.

Physical and legal persons who give contributions to the religious community may be exempt from relevant fiscal obligations, in line with the law introducing the relevant public revenue.

Article 41

Religious servants shall have the right to health and pension and disability insurance, in line with the law.

Religious community may establish institutions for social, that is, health and pension and disability insurance of the religious servants, in line with the law.

Religious communities shall register religious servants who exercise the rights referred to in Paragraphs 1 and 2 of this Article, in line with the regulations defining payment of contributions.

Religious community referred to in Paragraph 3 of this Article may also have funds secured in the state budget for health and pension and disability insurance of the religious servants, in line with the law.

If the funds for the purpose referred to in Paragraph 4 of this Article are secured in the state budget, the Government shall define the amount of funds, whereas the religious communities with a small number of believers may be subject to the principle of affirmative action.

Article 42

Religious community may have the funds approved from the state budget and the local self-government budget for the activities promoting spiritual, cultural and state tradition of Montenegro, as well as for the support to social, health-related, charitable and humanitarian activities of a particular interest.

Article 43

Religious community shall have the right to build religious structures and engage in building adaptation and reconstruction of existing ones, in line with the law.

Construction, building adaptation and reconstruction of religious structures shall be carried out based on permits and consents stipulated by the law and regulations defining the area of construction of buildings and protection of cultural resources, and with the professional supervision in line with the law.

In the development of spatial plans, the competent public administration authority, i.e. local self-government authority shall also consider the expressed needs of the religious community for the construction of a religious structure.

Public authorities responsible for spatial planning and construction of buildings shall not consider the applications for construction of religious structures that do not have the consent of the responsible authorities of the religious community in Montenegro, in line with the law and the autonomous regulations of the religious community.

Article 44

Religious community shall have access to public broadcasting services and other media, as well as the right to independently perform its own informative and publishing activity on a non-profit basis, in line with the law.

Article 45

Within its social, cultural, charitable and humanitarian activity, the religious community may establish relevant institutions in line with the law.

Article 46

Religious ceremonies and religious affairs shall be executed in the religious structures.

Religious ceremonies and religious affairs may also be executed outside the religious structures in places accessible to the citizens, without approval, with the previous announcement to the public administration authority responsible for internal affairs, in line with the law regulating the right to public assembly.

If the religious ceremonies are executed at the request of the citizens (family saint day, wedding, baptism, confirmation, circumcision, confession, consecration, etc.) it is not necessary to report them as stipulated in Paragraph 2 of this Article, unless these ceremonies are executed in a public place.

Article 47

Religious servant exercising a religious ceremony or religious affair may receive a compensation, that is, reward for the religious affairs and religious ceremonies from the person at whose request the ceremony or the affair is being executed, on the basis of the autonomous regulations of the religious community.

The religious community shall keep a record of the revenues referred to in Paragraph 1 of this Article, in line with the law and the autonomous regulations of the religious community.

Article 48

Religious spiritual care for believers who serve in the Army of Montenegro and the police force shall be exercised in line with the act of the competent public authority that regulates in more detail the rules of service.

Article 49

A person in detention or serving a prison sentence, as well as a person placed in the Institute for juveniles or institutions for placement of children with behavioral problems shall have the right to religious spiritual care, either individual or in community with others, in line with the act of the public authority responsible for the area of judiciary.

Article 50

A person placed in a health institution or social welfare institution shall have the right to receive religious spiritual care, either individual or in community with others, in line with the house rules of that institution.

IV RELIGIOUS TEACHING AND RELIGIOUS SCHOOLS

Article 51

Religious teaching may take place in religious buildings or in other buildings appropriate for that purpose.

In order for juveniles to participate in religious teaching it is necessary to obtain the consent of the parent or guardian, as well as the consent of the juvenile if he is 12 years old or older.

Religious teaching with students may only take place during the period when students do not have classes at school.

Article 52

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.

Article 53

Schools and educational institutions shall observe the rights of pupils and students to religious holidays, in line with the law.

Article 54

Religious community may establish religious schools at all levels of education, except for primary school, which is compulsory according to the law, as well as dormitories to accommodate persons studying in those institutions.

Religious community shall independently define the curriculum of the religious school, contents of the textbooks and manuals, and define the requirements for the teaching staff.

The curricula, as well as the contents of the textbooks and manuals in religious schools shall not be contrary to the Constitution and the law.

Article 55

Harmonization of the curricula and contents of the textbooks and manuals of the religious schools with the Constitution and the law shall be exercised by the public administration authority responsible for education.

Responsible person in the religious school shall put at the disposal of the responsible authority referred to in Paragraph 1 of this Article all the necessary data for the purpose of supervision, and correct the noted irregularities within the deadline stipulated by that authority.

Article 56

Religious school established in line with this Law may implement publically applicable curricula, if it obtained the license in line with the regulations in the area of education.

Religious school that is licensed or accredited as an educational institution shall have the right to be financed from the state budget, in proportion to the number of students, in line with the law.

Article 57

Teaching in the religious school may be provided by a person who holds the work permit in line with the law, as well as the accreditation or approval from the religious community that establishes the religious school.

V PUNITIVE PROVISIONS

Article 58

A fine ranging from 2,000 to 20,000 euro shall be imposed for the misdemeanour offence on a legal entity:

1) that forces or impedes in any way another person from becoming or remaining a member of the religious community or from participating or not participating in the manifestation of religion or beliefs (Article 13, Paragraph 1);
2) that prevents other person, due to belonging or not belonging to a religious community, from exercising the rights that belong to that person in line with the law (Article 13, Paragraph 2);
3) that establishes a religious school for primary education (Article 54, Paragraph 1).

A fine ranging from 200 to 2,000 euro shall be imposed on the physical person and the responsible person in the legal entity for the misdemeanor offence referred to in Paragraph 1 of this Article.

A fine ranging from 300 to 6,000 euro shall be imposed on an entrepreneur for the misdemeanor offence referred to in Paragraph 1, Items 1 and 2 of this Article.

Article 59

A fine ranging from 200 to 2,000 euro shall be imposed for the misdemeanor offense on the physical person:

1) parent or guardian engaged in religious teaching contrary to the decision of the child (Article 51, Paragraph 2);
2) religious servant who engages in religious teaching contrary to Article 51, Paragraphs 1 and 3 of this Law.

VI TRANSITIONAL AND FINAL PROVISIONS

Article 60

Secondary legislation for the implementation of this Law shall be adopted within 6 months from the date of coming into force of this Law.

Article 61

The Ministry shall take over from the public administration authority responsible for internal affairs the Inventory and other data on religious communities registered with that authority within 30 days from the date of coming into force of this Law.

Within 30 days from the date of coming into effect of this Law, the Ministry shall take over from the public administration authority responsible for foreign affairs, the data on religious communities that have concluded an agreement with Montenegro by the date of coming into effect of this Law.

A religious community registered in line with the Law on legal status of religious communities (Official Gazette of SR Montenegro no. 9/77) may submit an application for entry into the Inventory in line with this Law, within six months from the date of coming into effect thereof.

The religious community that fails to act in line with Paragraph 3 of this Article shall not be considered a recorded religious community in the sense of this Law.

Article 62

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 until 1 December 1918, and for which there is no evidence of ownership by the religious communities, as cultural heritage of Montenegro, shall constitute state property.

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

Article 63

The public administration authority responsible for property issues shall identify religious buildings and land owned by the state, in the sense of Article 62 of this Law, make an inventory thereof and submit a request for registration of ownership rights of the state over that real estate in the real estate cadaster within one year from the date of coming into force of this Law.

Public administration authority responsible for cadaster affairs shall register the rights referred to in Paragraph 1 of this Article within 60 days from the date of submission of the request.

Article 64

The Law on legal status of religious communities (Official Gazette of SR Montenegro no. 9/77) shall cease to be valid as of the date of coming into force of this Law.

Article 65

This Law shall come into force on the eighth day from the date of being published in the Official Gazette of Montenegro.