

Orthodox Archbishop of Cetinje Metropolitan of Montenegro & Coastlands

81250 Cetinje, Montenegro
tel: +382-41-231-273, +382-41-231-193
mitropolija@t-com.me, www.mitropolija.me

AEM № 1160-3
9.12.2019.g.

Council of Europe
European Commission for Democracy through Law (Venice Commission)
Mr. Gianni Buquicchio

Strasbourg

Dear Mr Buquicchio,

We take this opportunity to provide you with the Remarks to the proposed Law on Freedom of Religion or Belief and Legal Status of Religious Communities in Montenegro, which we submitted to the Government of Montenegro on November 27 this year. These Remarks, i.e. Objections to the Draft Law, are solely of a legal nature, representing our contribution to the process of preparing a future law on freedom of religion.

We believe it is important for you to know that a meeting between representatives of the Metropolitanate and the Government of Montenegro took place on November 26, 2019 in the Cetinje Monastery as the centuries-old seat of the Metropolitanate of Montenegro and the Littoral. The Government's delegation included Mr. Zoran Pažin (Deputy Prime Minister and Minister of Justice), Mr. Mehmed Zenka (Minister for Human and Minority Rights), Mr. Dragoljub Bulatović (Chief of the Cabinet of the Prime Minister), Mrs. Dušanka Jauković (Head of the Government's Department for Legislation), Mrs. Slavica Bajić (Chief Deputy of the Government's Department for Legislation), and Mr. Ismet Latić (newly appointed Director of the Directorate for Relations with Religious Communities - Ministry of Human and Minority Rights). On behalf of our Church, the following persons participated in the meeting: myself as Bishop of the Metropolitanate of Montenegro and the Littoral, His Excellency Bishop of Budimlje and Nikšić Mr. Joanikije, Archpriest-Stavrophor and Legal Council Coordinator Dr. Velibor Džomić as well as Professor Bogoljub Šijaković, Attorney Dragan Šoć and Dr. Vladimir Leposavić – all members of the Legal Council of the Metropolitanate.

Our Church has been and still is open to discussions with the holders of the executive and legislative power in Montenegro, especially in such important and delicate social situations such as drafting a new law to regulate the manner of exercising and protecting the right on freedom of religion or beliefs and the legal status of churches and religious communities. In this regard, after the Venice Commission adopted its Opinion on Montenegrin Draft Law on 24 June 2019 (Opinion No. 953/2019), we officially informed the Government of Montenegro that we are open and ready to start a dialogue on the draft Law on Freedom of Religion (“the Draft Law”). On September 24, 2019, we initiated a

general meeting with the Prime Minister, Mr. Duško Marković. However, the first meeting with Government representatives came two months later.

For five months, the Government and its bodies did not address this important issue. Then, with little notice, we were informed that the Draft Law would be submitted to the National Assembly for adoption very soon. At the Government's ad hoc meeting held on November 26 this year, Mr. Pažin, the Vice-President of the Government, informed us that the Government's delegation was authorized to negotiate with us only in regards to the Venice Commission Opinion, not the rest of the provisions of the draft Law which the Government considered to be of a "political nature". At the outset of this meeting, the Government's delegation informed us that they planned for the whole dialogue on the draft Law's content to be conducted and finished within two business days. No working materials were presented to us at the meeting.

We have made it clear to the Government representatives that human rights are not and cannot be political but purely legal questions for which there are established, well-known international standards and procedures. This is crucially important when it comes to the provisions set out to enable unlawful confiscation of the Church's property and liquidation of the status of legal persons – these are exactly the provisions that the Government representatives titled, in their own words, as a “political and therefore, non-negotiable question”. Dialogue with the Government should only mean a free and responsible discussion in good faith on all of the proposed provisions to which we have prepared expert opinion and substantial objections. Relatedly, in the field of regulating complex relations between the state and the Church, we have proposed to open a dialogue on the Government's duty to enable the restitution of property confiscated from our Church during the communist regime. However, we were verbally informed that the Government is not ready to open a dialogue on this very important issue. Unfortunately, for years, the Church and religious communities, deprived of its property after World War II, has been openly discriminated against, as the only legal person who was not given the legal opportunity to exercise its rights in the EU-supported restitution process of those seized rights, i.e. possessions.

Numerous recent public statements made by state officials as well as discussions held with government representatives, made us awestruck that the draft Law would proceed further to the National Parliament as a legal text free of any of the proposals and substantial objections we made after our hard and conscious work. Unfortunately, that our impression came true on Dec 5, 2019 at the 146th session when the Government, without prior notification, published the final version of the Draft Law and referred it to the National Parliament of Montenegro for adoption.

The first analysis of the finalized Draft Law showed that the most significant recommendations of the Venice Commission either had not been adopted or were minimized to such an extent that they were rendered meaningless. The essential, binding OSCE/ODIHR recommendations contained in the 2004 and 2014 Guidelines were not included in the Draft Law. Nor were any of the legal proposals we made adopted! All this transpired despite numerous recommendations from significant international addresses that clearly called for the future law to be prepared in an atmosphere of dialogue. Those same addresses warned that this process could not be carried out unilaterally without multi-stakeholder input and a sense of social reality and civilizational values.

Therefore, we are aware, highly upset, and concerned that the right to religious freedom will be used as a political tool for election campaigning in the coming year with all the unpredictable consequences it may cause.

We use this occasion to once again express our sincere attitude that our Church does not seek nor expect any privileges. We are not against the preparation and adoption of a new law on freedom of religion. However, future legal norms on the right to religious freedom – to be recognized and accepted by all and by the majority of believers – cannot nullify binding international legal instruments nor the Constitution of Montenegro. Future laws on freedom of religion must be prepared in an earnest, truthful, and responsible dialogue between the Government and the Churches and religious communities, with the involvement of legal professionals, rather than in plain satisfaction of form.



Consider especially that in 2011 and 2012, the Government of Montenegro concluded foundational agreements with the Roman Catholic Church, Islamic and Jewish religious communities. We publicly expressed our desire and officially informed the Government that our Church was willing to make the same kind of agreement with the Government – an agreement that guaranteed the same level of legal protection to our Church as it is guaranteed to the rest of the Churches and religious communities. To this day, the Government has shown no willingness to conclude such an agreement with our Church. Consequently, the adoption of the draft Law would violate the constitutional principle of equality of religious communities; its adoption would commit direct and gross discrimination against our Church that creates impermissible political pressure on the freedom and independence of our Church and our believers.

If adopted, this Draft Law will introduce systematic inequality and liquidation of the acquired and judicially confirmed status of our Church's legal subjectivity. On its face, the Draft Law enables arbitrary confiscation of churches and sacral temples, including other immovable property. In its effect, it is intended to be applied solely against our Orthodox churches and religious communities and thus, will constitute religious discrimination.

We will stay fully devoted in our struggle to show our respect and help the defense of the core Christian, legal and civilized values and achievements so that Montenegro can adopt a law which would be a legitimate and modern legal document, rather than a mere political tool aimed to discriminate. We sincerely hope that you will meet us in this devotion and that you will – within the limits of your high duty and in the appropriate manner – be able to help us and our society avoid conflicts in this very important moment and process.

Please accept our kindest regards,

**Archbishop of Cetinje
Metropolitan of Montenegro and Coastlands**



+Amfilohije