



# General Assembly

Distr.: General  
22 August 2019

English only

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## Human Rights Council

### Forty-second session

9–27 September 2019

Agenda item 4

Human rights situations that require the Council's attention

### **Written statement\* submitted by Public Organization "Public Advocacy", a non-governmental organization in special consultative status**

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

[19 August 2019]

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



## **The threat to the right to survival of the Churches and religious communities in Montenegro**

We draw the attention of the UNHRC to considerable complications by honoring the freedom of religious belief in Montenegro due to the Draft Law on Freedom of Religion or Belief which is being prepared by the Government of Montenegro.

In particular, at its 121st session held on 16 May 2019, the Government of Montenegro has determined the Draft Law on Freedom of Religion or Belief and Legal Status of Religious Communities in Montenegro. The text of the Proposal of the Law on Freedom of Religion or Belief and Legal Status of Religious Communities relies to a great extent on the text of the 2015 Draft Law on the Freedom of Religion, for which the five experts of the Venice Commission and OSCE/ODIHR prepared the Draft Joint Interim Opinion on 27 November 2015. On that occasion the Ministry of Human and Minority Rights of the Government of Montenegro withdrew the Draft Law on the Freedom of Religion from the procedure conducted before by the Venice Commission.

The term belief is mentioned in the title of the Draft Law and even 16 times in its text, but reading the text of the Proposal one can hardly grasp the meaning of belief and the right to freedom of belief. Although it is mentioned in the text that the Law among other things regulates the right to freedom of belief, any organizations that the citizens would establish for the purpose of expressing their freedom of belief would have a status of non-governmental organizations in compliance with the Law of Non-Governmental Organizations (Article 29 of the Draft Law).

Article 3 of the Draft Law contains a provision on legitimate limitations to freedom to manifest one's religion or belief. The provision in Article 3 is not in compliance with the Venice Commission/OSCE 2014 Guidelines on the Legal Personality of Religious or Belief Communities<sup>1</sup> (Part I, paragraph 5, as well as paragraphs 6, 7, 8 and 9), since the limitation of freedom to manifest one's religion or belief must be prescribed by law. Likewise, Article 3 of the Proposal Law does not contain the provision which states explicitly that limitation must not be introduced with the aim of discrimination, and must not be used in a discriminatory manner. The 2014 Guidelines (paragraphs 21, 32, 33 and 36) as well as the Venice Commission/OSCE 2004 Guidelines for Review of Legislation Pertaining to Religion or Belief (Part I and Part II – section G) state more than once that all the obligations and special conditions imposed on the religious communities and their members (primarily in terms of registration and obtaining the status of legal entity) need to be aligned with the universal and regional legal instruments on limitations of human rights.

In Article 6 of the Draft Law a religious community is defined as a non-profit association of persons belonging to the same religion, established for the purpose of public or private manifestation of religion. The word 'establish' implies that the religious communities are the communities to be established, and not those communities that were established in the past and have existed in Montenegro for centuries. The definition of religious communities is included in the 2014 Guidelines (para 1 and 17), in which it is stated precisely that religious communities are the communities that are recognized as autonomous legal entities within the national legal system.

The title of the Second part of the Draft Law (Registration and Records of Religious Communities) draws a distinction between the registration and records of religious communities. It is further stated that the religious community obtains the status of a legal person, i.e. legal entity after a decision is issued on its entry into the register of religious communities (Article 18) and that the active religious community, which already has the status of a legal entity on the date of coming into force of this Law, shall be entered into the Inventory of existing religious communities kept by the Ministry, by submitting an application for entry into the Inventory (Article 24).

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<sup>1</sup> [www.protiktor.com/MontenegroStatements](http://www.protiktor.com/MontenegroStatements).

In both cases, the Ministry of Human and Minority Rights, as a public authority, issues a decision as a single administrative act upon which a community is entered into the Inventory or Records of religious communities. The same registration procedure applies both to the newly established communities or the re-registration of the religious communities that are already active and already hold the status of a legal person, i.e. legal entity.

It means that this law is primarily aimed at liquidating those religious communities that already hold the status of a legal person and are active in the legal system of Montenegro. The purpose of such a distinction is to enable annihilation of the previously obtained legal status of religious communities. This can be confirmed by the fact that after the new Law enters into force the existing religious communities will be obliged to submit the application for registration, and the competent authority will bring a new decision on legal status which is to be entered into the Records of religious communities. It becomes clear that the communities that meet the criteria for recognition of their status should not be imposed with the obligation to undergo the same procedure again – since the annihilation of their status and obtaining it again interrupts the continuity of the legal personality of religious communities, which is how they actually receive less favorable treatment in comparison to other religious communities from the same group.

Provision contained in Article 25 para 3 of the Draft Law prescribes that a 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. This provision discriminates against the religious communities having their religious center abroad, since their status of a legal entity is not recognized the same way it is recognized to other religious communities which have existed and operated in Montenegro.

Article 19 of the Proposal of the Law stipulates that “the registration of a religious community shall not be mandatory” and that “religious communities decide freely whether they will request to be entered into the Register or not”. However, the following provisions of the Draft Law hinder the full realization of the voluntary opting of the religious communities to acquire legal subjectivity. Namely, the Article 28 of the Proposal of the Law makes a harsh division between “non-registered religious communities and the ones that are not recorded”, for which it is stipulated that they “shall not acquire or exercise rights that, in line with the legal order of Montenegro, belong exclusively to the registered or recorded religious communities”, and these are practically all the rights which are guaranteed to the religious communities by this Draft Law (Sic!).

The Article 62, paragraph 1 of the Proposal of the Law contains the following provision: «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». Paragraph 2 of the same Article states that 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.

This provision, although unprecedented in the modern legislative practice of European states, is a classic example of confiscation of property held by the religious communities.

Provisions mentioned above are not based on any international instrument, nor on the Constitution or on the existing legislation of Montenegro.

It should be borne in mind that the provisions of Articles 62 and 63 of the Draft Law are aimed at depriving the religious communities of exercising their right to restitution and indemnification of assets that were seized from them by the communist after the Second World War. At this moment, religious communities are discriminated, because they do not have the right to receive restitution or indemnification for the property that was seized from them after the Second World War.

The Government of Montenegro is undoubtedly also accountable for the failure to fulfill international obligations to protect human rights on its territory due to numerous

confrontations around church property, attempts to prevent hierarchs of bishoprics of the SOC in Montenegro from attending public services, attempts to seize church buildings by the non-canonical “Montenegrin Orthodox Church”, supported by the government (See A/HRC/39/NGO/2; A/HRC/39/NGO/1).

Owing to the above facts, we urge the UNHRC to use an international human rights mechanism to prevent violations of the right to freedom of religion or belief.

View also: [www.protiktor.com/MontenegroStatements](http://www.protiktor.com/MontenegroStatements)

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