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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.

[8 February 2019]

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



On discrimination and violations of the right to freedom of religion or believers of the Serbian Orthodox Church in Montenegro

We draw the attention of the UN Human Rights Council, representatives of UN member states, as well as international organizations to violations of the rights of Orthodox believers committed by Montenegro. Unfortunately, in the same way as governments in Ukraine and FYROM, the State of Montenegro, on the one hand, supports only one religious denomination – the Montenegrin Orthodox Church – and, on the other hand, exerts a multi-faceted discriminatory pressure on the Montenegrin Archdiocese of the Serbian Orthodox Church with its the clergy and believers.

I. Facts and types of violations of the rights and discrimination of believers and religious organizations of the Serbian Orthodox Church in Montenegro:

On the territory of Montenegro, the clergymen and the faithful of various Dioceses of the Serbian Orthodox Church are being subjected to discriminatory pressure from senior civil servants, different kinds of offenses are committed, including:

1. In 2015, the Government prepared the Draft Law on Freedom of Religion. The Draft Law caused a considerable disapproval by the public. Legal experts assessed it as retrograde, as compared with the Communist Law from 1977 and as non-aligned with the European Convention. The right to the freedom of religion was significantly reduced in both individual and collective aspects. It was a severe attack from the positions of the state authorities on the internal autonomy and internal organizational establishment of the churches and religious communities, and the Article 52 of the Draft Law is particularly problematic, since it stipulates a new nationalization, i.e. seizure, in favour of the state, of all sacral facilities that were constructed by believers until the year of 1918.

On 27 November 2015, the Venice Commission prepared the opinion No 820/2015 on the Draft Law on Freedom of Religion in Montenegro, upon the request of Ambassador Božidarka Krunic, Montenegro permanent representative to the Council of Europe, submitted on 24 August 2015.

The international legal experts provided negative opinion/comments in 96 items within the Draft Law, and recommended many of them to be deleted due to discriminatory features.

Legal advisers of the Venice Commission and OSCE/ODHIR say articles 52 and 53 of the Draft Law currently determine procedures of confiscating religious facilities without compensation, which represent clear violation of the right to peaceful enjoyment of a property. They also underline that the Government's explanations of 26 November 2015 haven't been in compliance with the existing articles within the Law.

Particularly, by article 95 of the opinion of the Venice Commission No 820/2015: "95. The Draft Law presents serious problems on many points that should be addressed with, concerning re-registration process, burdensome registration requirements, discriminatory citizenship and territorial requirements, disproportionate sanctions on the religious communities (prohibition and removal from registry) and finally the issue of "confiscation" (Art. 52-53) and the property rights of religious communities.

Therefore, the attempt to adopt this draft law was connected with the desire of the Government of Montenegro to create a legal basis for depriving the archbishops of the Serbian Orthodox Church of their historically owned property.

2. The second type of pressure on religious organizations of the Serbian Orthodox Church consists in the coercion on the part of the government to include the Church in the state register without no guarantees of preserving the fullness and succession of their rights, which have existed long before the formation of the state register

itself. The administrative procedure proposed by the state requires that the already existing legal entity – the Montenegrin Archdiocese of the Serbian Orthodox Church – undergoes a new registration. Registered as a new legal entity, the Montenegrin Archdiocese will inevitably face difficulties to realize the rights of succession, restitution or property ownership. This problem was also partially addressed in the above-mentioned conclusion of the Venice Commission, paragraph 96 of stipulates as follows:

“96. The following main recommendations are to be made: - Communities already registered under the 1977 Law may be automatically recognised and acquire legal personality. This rule should also be applied to the religious communities that have been de facto recognised as legal entities. - Discriminatory citizenship and territorial requirements for registration of religious communities should be removed. - The formal requirements for registration should be limited to those necessary to identify the religious community and to verify whether it meets the conditions for registration foreseen in the law. Unjustified requirements as information on “mode of action (...) used by the community to perform religious rites” or “basic religious texts of the religious community in authentic wording” should be removed.”

However, despite the conclusions made by authoritative international experts, the State of Montenegro has so far failed to guarantee the religious organizations of the Serbian Orthodox Church the possibility of automatic inclusion in the state register with the preservation of their succession rights and the rights to the property belonging to them historically.

3. In some cases, representatives of the Montenegrin Orthodox Church, supported by the government, together with radical-minded individuals, including in the presence and with the support of the police, prevented clerics and believers of the Montenegrin Archbishopric of the Serbian Orthodox Church from entering the churches, thus disrupting religious services¹. There exists a video footage showing how the leader of the group and his supporters are holding Cetinje monastery under siege. They intended to evict 30 monks, 80 seminarists and 20 professors and claim the monastery for themselves. This was one of the most violent episodes of the decade. They claim that the Serbian Orthodox Church is somehow foreign and illegal in the newly created state, that it should be disowned of its property, its clerics should be deported and replaced by themselves and their supporters.
4. In July 2011 the Ministry of Internal Affairs of Montenegro started persecuting the clergy, monastic communities, workers of the Church and their families by treating the Church as an illegal business entity, claiming that it is not properly registered. The Church is under a great pressure from the Government regarding different issues, but this issue is the most pressing one. This political pressure is directed especially against citizens of other countries that work for the Church in Montenegro. To date, there are 55 individuals and their dependents that work for the Diocese of Budimlje and Niksic which are directly hit by this issue.

The state tries to justify their refusal to issue permits to clerics of the Serbian Orthodox Church by the fact that the Church failed to fulfill the requirement to undergo state registration. Thus, the Government of Montenegro uses the refusal to issue residence permits as a way to force the religious organizations of the Serbian Orthodox Church to apply for inclusion in the register, which in turn will lead to the loss of their rights (succession) in relation to restitution and registration of their property, previously confiscated by the Communist state.

Numerous complaints of the clerics and subsequent court rulings testify to the groundlessness and artificial nature of the state’s refusals to grant residence permits, which is actually repressive in nature.

¹ http://spc.rs/eng/group_albanians_tried_stop_metropolitan_amfilohije_officiate_liturgy_svach_near_ulcinj
<https://www.youtube.com/watch?v=kmnMtHPphis>
<https://www.youtube.com/watch?v=IWXgG80JkY0>

II. Backgrounds of violations of rights and freedoms of orthodox Christians in Montenegro

During the 90's with newly created states, newly created national identities also sprung up, and newly created countries started reinterpreting their past. Contrary to other countries, Montenegro did not go through change of political elites from communism to democracy. People that were in power during communism are still in power, similar to Belarus. Yesterday's communists became today's nationalists.

With creation of Montenegrin sovereignty, some politicians thought it would be a good idea to have a new national church organization that would serve as a confirmation of their legitimacy and newly created national identity. The problem was, these political elites, originating atheist background did not care much about religion nor did they consider religious freedoms and feelings of majority of the population that just went to church to pray as they always did.

Using the old law on religious communities from communist era, as well as other methods commonly used during that era, they created a quasi-religious group that was registered in a police station in Cetinje in 2000. The group was comprised of few former priests and several hundred supporters and it was called the "Montenegrin Orthodox Church". It was backed with disproportionately large public funding and political support and it was even given some instruments of state power. The main activity of this group is breaking and entering into remote rural churches, „reclaiming them“, sometimes violently clashing with local rural folks. Regular citizens consider these people are committing sacrilege, and try to defend their churches.

Political elites behind this violent group created it for the purpose of subjugating the existing organization of the Serbian Orthodox Church and depriving its members of rights to assembly and religious freedoms, so the ultranationalist agenda could be advanced.

With regard to the aforementioned, we urge the State of Montenegro to ensure the effective fulfilment of their international commitment to protect human rights, including freedom of religion or belief, and to stop the persecution and illegal pressure on Orthodox believers of the Serbian Orthodox Church.

We call on the UN Human Rights Council to take concrete measures to stop violations of the rights of believers in Montenegro and to ensure the end of the discriminatory policy towards religious organizations of the Serbian Orthodox Church in the country.

In accordance with international law, we will also send individual appeals on the issues outlined to the UN Special Rapporteur on freedom of religion or belief, as well as to the UN HRC Complaints Procedure