



# General Assembly

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## Human Rights Council

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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.

[22 August 2019]


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

GE.19-14994(E)



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## **On the position of Legal Council of the Orthodox metropolitanate of Montenegro and the Littoral - Serbian Orthodox Church regarding the threat to the rights to survival of churches and religious communities**

### **The case of the Draft Law on freedom of Religion adopted by the government of Montenegro on May 16, 2019**

At its 121<sup>st</sup> session held on 16 May 2019, the Government of Montenegro has determined the Draft Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities in Montenegro. Before the Draft Law was determined, and even after this stage up to now, the Government of Montenegro has never initiated a public, continuous and institutional dialogue with churches and religious communities in Montenegro. The Metropolitanate of Montenegro and the Littoral and the Dioceses of the Serbian Orthodox Church in Montenegro submitted their objections within a 50-page report, to which we received no response, and these objections were obviously not taken into consideration.

The Article 62, paragraph 1 of the Draft 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 (nationalization) of property held by the religious communities. The consequences of the possible adoption and implementation of the Draft Law which confiscates the religious facilities that were never under the ownership of the state – leaving the believers and priests without their prayer facilities, inciting religious violence and hatred and hindering the right to the freedom of religion or beliefs – in the complex Montenegrin society may be catastrophic.

The 2004 OSCE Guidelines clearly condemn abovementioned as it is an unacceptable practice of states which "use such laws to restrict religious communities from operating religious facilities" where "the justifications for restrictions may appear to be neutral, but are selectively enforced for discriminatory purposes ". This is also unambiguously confirmed in the practice of the European Court of Human Rights, which condemned any form, not only of direct confiscation, but in particular, indirect, *de facto* and confiscation of property by legislative means (amongst others, cases: Marckx case, 1979; Sporrang 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).

Provisions mentioned above are not based on any international instrument, nor on the Constitution or on the existing legislation of Montenegro. The existing Law on State Property of Montenegro ("Official Gazette of Montenegro" No. 21/2009 and 40/2011) does not stipulate that the State of Montenegro is the owner of sacred, religious buildings and land belonging to them. In addition, Montenegro has a Law on Expropriation as well as the Law on Property Relations which are applied when there is a dispute over ownership right, guaranteeing multilevel judicial protection to each legal entity. The matter mentioned above cannot be a subject of regulation in the Law on Freedom of Religion or Belief or in the Law on Legal Position of Religious Communities, so the provisions of Articles 62, 63 and 38, paragraph 2 of the Draft Law should be removed.

In the meantime, a high state officials (President of Montenegro, President of the Government of Montenegro, Minister of Human and Minority Rights etc.) keep stating in public that the secular state of Montenegro should, through the adoption of the Draft Law on Freedom of Religion, become the sole and exclusive owner of temples, monasteries and other property otherwise lawfully belonging to the Churches and religious communities.

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 regime after the Second World War. At this moment, religious communities are discriminated, because they are excluded from the Montenegrin Law on Restitution (2004) so they are only legal entity not recognized as eligible to receive restitution or indemnification for the property that was seized from them by the communist regime.

Furthermore, Article 19 of the Draft 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”. 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!*).

To conclude, the most alarming issues regarding Montenegrin Draft Law on Freedom of Religion are: (1) confiscation (nationalization) of religious property, (2) annihilation of the previously obtained legal status of religious communities, (3) systematic discrimination between the churches and religious communities, (4) narrowing the scope of freedom of religion and belief and disabling the equal status and rights of priests and religious officers, including the prohibition of the religious teaching within the elementary schools, and (5) unilateral drafting procedure cleansed from every kind of public, institutional and/or inclusive dialogue.

It should be emphasized that in recent years, the priesthood of the Metropolitanate of Montenegro and the Littoral and other Dioceses of the Serbian Orthodox Church in Montenegro has been subject to various acts of discrimination, hate speech, and even individual attacks. State authorities have not only failed to take measures to protect the priests and sanction the perpetrators, they have begun labeling the clergy of the Orthodox Metropolitan as enemies of the state. This characterization is unacceptable because it is completely untrue and, even more so, because it is extremely degrading and dangerous.

It is necessary the provisions of Articles 62 and 63 of the Draft Law to be deleted and a real dialogue on Law on Freedom of Religion to be opened in Montenegro. Otherwise, if adopted as it is unilaterally proposed, Draft Law is going directly to provoke hatred and serious conflicts that would include the entire population of Montenegro.

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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