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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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.

[3 February 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.



On The Insufficiency Of The Legal Status Of The Serbian Orthodox Church In Montenegro

The NGO Public Advocacy[1] draws the attention of the UN HRC, as well as respected representatives of international organizations and experts, to some aspects of the current situation of churches in Montenegro:

1. About protest actions caused by attempts to expropriate church property

According to numerous media reports[2] : «Hundreds of backers of Montenegro's pro-Serb opposition took to the streets of the capital Podgorica on Thursday, (December 2019), rallying against a law they say would strip the Serbian Orthodox Church there of its property.

Ahead of a vote on the draft Law on Religious Freedoms, expected later on Thursday or on Friday, Serbian Orthodox clergy and believers held a service on a packed bridge near parliament, watched by police who had sealed off city center roads and approaches to the government building.

The law envisages that religious communities in the tiny Adriatic state would need to prove property ownership from before 1918, when predominantly Orthodox Christian Montenegro joined the Kingdom of Serbs, Croats and Slovenes, the predecessor of the now-defunct Yugoslavia...”

Despite the adoption by the Montenegrin Parliament of the law that was met with outcry, further developments, including numerous protests by believers of the SOC, statements by Metropolitan Amfilohije of the Montenegrin-Littoral Eparchy of the SOC, as well as support for protest movements by the political party led by the current Prime Minister of Montenegro Zdravko Krivokapić, resulted in the removal from the controversial law of the provisions that prescribe the establishment of state ownership of the immovable property, which is in actual possession of religious organizations of the Montenegrin-Littoral Eparchy of the SOC.

2. On the insufficient protection of the rights of ownership of religious organizations of the SOC in Montenegro

Despite the amendments made to the controversial law on freedom of religion or belief and legal status of religious communities, as well as the abolition of articles providing for registration of the title of state ownership of church property in the state cadastre (which was regarded by the SOC as an expropriation attempt), the legislation of this country still fails to enable religious organizations to register the title of ownership of the property having been in their possession for a long historical period.

In fact, the church property was expropriated by the state much earlier and was never canceled, while the attempt to pass the law that sparked protests was just a means to legally enshrine, via modern legal instruments, the confiscation, which was carried out earlier by the communist authorities.

Today, religious organizations of the SOC are facing a number of difficulties in exercising their rights in Montenegro. The Venice Commission for Democracy Through Law[3] , which gave its assessment to the draft Law on Religious Freedom in 2018, established the following: “The Serbian Orthodox Church in Montenegro is registered neither as an NGO nor as a religious community under Article 2 of the 1977 Law and does not have formal legal personality. However, in the context of the issuing of temporary residence permits to foreigners to perform religious services in Montenegro, the Serbian Orthodox Church obtained on 22 August 2016 a document from the Ministry of the Interior, stating that as the Metropolitanate of Montenegro and the Littoral and other Orthodox eparchies of the Serbian Orthodox Church already existed at the time when the 1977 Law entered into force, it did not have the obligation to notify the authorities of Montenegro under Article 2 of that law of the establishment of a religious community.”

Thus, the absence of the legal status of the religious organizations of the SOC, sufficient for operations in state cadastres and registers, makes it virtually impossible to register their title rights to real estate for a single reason – the lack of legal personality.

The second problem is the statutory legal norms in the legislation of Montenegro, whereby church immovables that constitute the cultural heritage is state property (social property).

In accordance with the conclusion of the Venice Commission[4] : «According to the information provided, in 1941, all property was nationalised under the communist regime. In the 1960s, state property in Yugoslavia legally became “social property” which – when necessary – incorporated aspects of both private and state ownership, emphasizing the social nature of production and distribution.

From 1991 onwards, during the war which led to the disintegration of the Yugoslav state, several sacred properties which according to the authorities are part of the cultural heritage of Montenegro, were registered in the real estate cadaster in the name of the Serbian Orthodox Church, in some cases in the name of the Metropolitan bishop and in some cases even in the name of individual priests – allegedly without a valid legal basis.

The authorities explained that under the Montenegrin domestic law, a valid basis for a claim of ownership – a legal title – is either one of these four grounds: a legal contract (for instance a sale and purchase agreement); heritage; a court decision; or a decision by a state authority concerning the transfer of property. Registration with the cadaster is a condition for establishing ownership and should only take place if either of the four legal entitlements is provided.

The registered title with the cadaster creates a rebuttable presumption of ownership, an assumption taken to be true unless contested and proved before the courts otherwise.

In addition, under domestic law and domestic case-law, the acquisition of social property through actual possession is not permitted.

60. In the authorities’ view...those immovables are part of the cultural heritage of Montenegro and ought not to have been inscribed in the name of the religious communities, because under the prevailing legal principles and rules of Montenegro, they legally belong to the state.”

Consequently, temple buildings and other immovables are in fact still recognized by the Montenegrin authorities as temporary “possession”, rather than the official property of the Montenegrin communities of the SOC, while there is no legislation in the country on the return (restitution) of church property that was actually seized from churches by the communist authorities; nor are there any grounds for registering rights to temples, which are historically owned by the SOC (there are neither prescription rights (“squatter’s rights”) nor restitution rights).

Therefore, the repeal of amendments to the controversial law on freedom of religion does not worsen the situation of the SOC in Montenegro, but does not significantly improve it either.

In this regard, we recommend that the international community call on Montenegro to adopt legislation on the transfer of ownership of church property to their historical owners, as well as to grant the SOC communities legal personality and restitution grounds for registering ownership of church property in the state immovable property cadastre.

[1] www.protiktor.com

[2] <https://www.reuters.com/article/us-montenegro-protest-idUSKBN1YU0WC>

[3] CDL(2019)018