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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**MONTENEGRO**

**LAW ON FREEDOM OF RELIGION OR BELIEFS  
AND LEGAL STATUS OF RELIGIOUS COMMUNITIES**

**As adopted on 24 December 2019**

**LAW ON FREEDOM OF RELIGION OR BELIEFS AND LEGAL STATUS OF  
RELIGIOUS COMMUNITIES**

**I BASIC PROVISION**

**Article 1**

Freedom of thought, conscience and religion, guaranteed by the Constitution and the confirmed and published international agreements, shall be exercised in line with this Law.

The state shall guarantee unimpeded exercise of the freedom of thought, conscience and religion.

**Article 2**

Freedom of thought is absolute and inviolable.

**Article 3**

Freedom to manifest one's religion or beliefs shall be subject only to such limitations that are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The degree of this limitation shall be proportionate to the legitimate aim referred to in Paragraph 1 of this Article, and public authority shall ensure not to resort to more restrictive limitation if the same legitimate aim can be achieved with a less restrictive measure.

**Article 4**

Freedom of religion or belief protects theistic, non-theistic and atheistic beliefs, as well as the right, acting in line with one's own conscience, not to manifest any religion or belief.

Freedom of religion or belief includes the right of a person, acting in line with his own conscience, either alone or in community with others, in public or in private, to manifest his religion or belief in prayer, sermon, customs, practice, or in some other manner, the right to adopt or change religion or belief, freedom to participate in religious teaching and education, or teaching and education that correspond with one's belief, as well as the right to foster and develop religious tradition and tradition in line with one's belief.

**Article 5**

Freedom of conscience includes the right of an individual to refuse, in line with the law, military service or other obligation involving the use of arms (conscientious objection).

**Article 6**

Religious community is a voluntary, non-profit association of persons belonging to the same religion, established for the purpose of public or private manifestation of religion, exercise of religious ceremonies, which has its structure, bodies, internal rules and religious teaching.

For the purpose of this Law, community of beliefs is a voluntary, non-profit organization established to pursue certain common or general goals or interests arising from the common beliefs.

#### **Article 7**

Religious communities are churches, communities of believers and other institutional forms of religious action.

Religious community is free in holding religious service.

Religious community shall decide freely, particularly on the following:

1. Internal organization, education, composition, powers and functioning of the bodies thereof;
2. Appointment and powers of its religious servants and other religious workers;
3. Rights and responsibilities of its believers, on condition that it does not interfere with their religious freedom;
4. Association with or participation in inter-religious organizations with the seat in Montenegro or abroad.

#### **Article 8**

Actions of the religious communities shall not be directed against other religious communities and religions if such actions are inappropriate or insulting, and shall not harm other rights and freedoms of believers and citizens.

In its actions, religious community shall be subject only to such limitations stipulated by the law that are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others, whereas such limitations shall be proportionate to these values.

#### **Article 9**

In Montenegro, no religion shall have the status of a state religion.

Relations between the state and the religious communities shall be based on mutual understanding and cooperation, particularly in the area of charitable, social and health-related, educational and cultural activities.

The state and religious communities promote tolerance, dialogue and respect between believers from different religious communities, as well as between believers and non-believers.

#### **Article 10**

Particular issues of a common interest for Montenegro and for one or more religious communities may be regulated by an agreement concluded between the Government of Montenegro (hereinafter: the Government) and the religious community.

#### **Article 11**

Religious community shall manage independently its property based on autonomous regulations, in line with the law.

#### **Article 12**

Resources that represent cultural heritage of Montenegro, over which a religious community has ownership or easement rights, shall not be alienated, moved or taken out of the country without the consent of the Government.

Prior to adopting the decision referred to in Paragraph 1 of this Article, the Government shall seek the opinion of the religious community.

#### **Article 13**

No one shall be forced to or impeded in any way from becoming or remaining a member of a religious community, or from participating or not participating in the manifestation of religion or belief.

No one shall be impeded, for the reasons of belonging or not belonging to a religious community, in the exercise of rights granted by the law.

#### **Article 14**

All forms of indirect or direct discrimination based on religion or beliefs and incitement of religious hate and intolerance shall be prohibited.

Adherence to a certain religious community as a legitimate requirement for employment in a religious community or its organizational form shall not be considered discrimination, in the sense of this Law, if adherence to a religious community represents an irreplaceable requirement and a reasonable justification for posing this requirement for employment.

#### **Article 15**

Collection, processing and protection of data regarding religion or beliefs of individuals or groups shall be done in line with the law regulating personal data protection issues.

#### **Article 16**

Terms used in this Law to refer to physical persons in masculine gender shall also include the same terms in feminine gender.

#### **Article 17**

Supervision over the implementation of this Law shall be exercised by the public administration authority responsible for human rights and freedoms (hereinafter: the Ministry).

## **II REGISTRATION AND RECORDS OF RELIGIOUS COMMUNITIES**

#### **Article 18**

Religious community shall obtain the status of a legal person by being entered into the register of religious communities (hereinafter: the Register), kept by the Ministry.

The Register shall be comprised of a database and a collection of documents.

Contents and manner of keeping of the Register, as a public record, shall be prescribed by the Ministry.

#### **Article 19**

Registration of a religious community or part of the religious community whose religious center is abroad shall not be mandatory.

Religious community, or part of the religious community whose religious center is abroad, shall decide freely whether they will request to be entered into the Register or not.

#### **Article 20**

A religious community may register if it has at least three adult believers who are Montenegrin citizens and reside in Montenegro or citizens of another state or stateless person who have been granted permanent residence in Montenegro, in accordance with the law.

Religious community may be registered if it has minimum 3 adult believers who hold Montenegrin citizenship and have residence in Montenegro, or citizens of another state or persons without citizenship whose permanent residence in Montenegro was approved, in line with the law.

#### **Article 21**

Application for registration of a religious community shall be submitted to the Ministry by the person authorized to represent the religious community.

Application from Paragraph 1 of this Article shall include:

- 1) Name of the religious community that must differ from the names of other religious communities to the extent that allows for avoiding confusion or mistake in the identification due to resemblance with the name of another registered community;
- 2) Seat and address of the religious community in Montenegro.

The following shall be enclosed with the application referred to in Paragraph 1 of this Article:

- Founding Act if the religious community is newly established, with the data on persons referred to in Article 20 of this Law (personal name, evidence of citizenship and residence, i.e. permanent residence for foreigners), with the original signature thereof;
- Data on the person authorized to represent the religious community (personal name, evidence of citizenship and residence, i.e. permanent residence for foreigners), with the original signature thereof.

In the event that several religious communities claim to have the right to use the same or similar name, or that more persons claim to be authorized to represent a religious community, or that a religious community challenges the authorization of a particular person to represent it, the Ministry shall decide on this in accordance with a law regulating the administrative procedure.

#### **Article 22**

The Ministry shall refuse to register the religious community if the person authorized to represent the religious community fails to submit the application for registration in line with Article 22 of this Law.

A lawsuit may be filed with the Administrative Court of Montenegro against the decision referred to in Paragraph 1 of this Article.

#### **Article 23**

Organizational part of the religious community active in Montenegro, with the religious center abroad, which was not previously registered with the competent public authority in

Montenegro, shall enclose with the application referred to in Article 21 of this Law the decision of the competent authority of that religious community to be entered into the Register.

#### **Article 24**

Religious communities that are reported and registered with the competent public authority in Montenegro, in line with the Law on legal status of religious communities (Official Gazette of SR Montenegro no. 9/77) and are active in Montenegro on the date of coming into force of this Law, shall be entered into the inventory of existing religious communities (hereinafter: the Inventory), kept by the Ministry, by submitting an application for entry into the Inventory by the persons authorized to represent them.

The Ministry shall prescribe the contents of the Inventory.

#### **Article 25**

The domain of registration or entry into the Inventory of a religious community in Montenegro shall be within the borders of Montenegro.

The seat of the religious community registered or entered into the Inventory for the territory of Montenegro shall be in Montenegro.

Part of the 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.

#### **Article 26**

The Ministry shall establish whether the requirements stipulated in this Law for the entry of the religious community into the Register or the Inventory are met within 30 days from the date of receipt of the complete application and necessary documentation referred to in Articles 21 and 23 of this Law.

If the religious community meets the requirements referred to in Paragraph 1 of this Law, the Ministry shall adopt the decision on entry into the Register or the Inventory.

#### **Article 27**

Religious community shall file a notice with the Ministry of any change of data referred to in Article 21 of this Law, within 30 days from the date when the change took place.

Registration of changes shall be done in line with the provisions of this Law regarding registration of a religious community.

Besides the religious communities, their organizational parts may also be entered into the Register, upon request of the religious community, as well as associations of religious communities, under the conditions and in the manner stipulated in this Law regarding registration of religious communities.

#### **Article 28**

This Law shall not prevent or limit the establishment or operation of those associations of citizens and other forms of civil society organizations that hold the status of a legal entity or without the status of a legal entity, established for the purpose of exercising freedom of thought, conscience, religion or belief, and it shall not prevent the operation of non-registered religious communities or the ones that are not recorded in the Inventory.

Non-registered religious communities and the ones that are not recorded in the Inventory shall not have the legal status of religious communities that are registered or recorded in line with this Law and shall not acquire and exercise rights that, in line with the legal order of Montenegro, belong exclusively to the registered or recorded religious communities, as legal entities.

#### **Article 29**

The manner of establishment, status, bodies, financing and other issues relevant for the operation and activities of the organizations that are not religious communities in the sense of this Law, and that are established for the purpose of expressing the freedom of thought, conscience or belief, shall be exercised in line with the law regulating the legal status of non-governmental organizations.

#### **Article 30**

Entry into the Register or Inventory may be denied to a religious community or its operation may be prohibited if:

- 1) it incites racial, national, religious or other type of discrimination and violence or encourages or incites racial, national, religious or other type of hate, intolerance, strife or persecution or in some other way harms or offends human dignity;
- 2) the purpose, goals and manner of its religious action are based on violence or use violence that imperils life, health or other rights and freedoms of persons belonging to that or some other religious community, as well as other persons.

Provisions of this Article shall also apply to the non-registered or non-recorded religious communities, if the reasons referred to in Paragraph 1 of this Article exist.

#### **Article 31**

The Ministry shall decide on denying the entry of a religious community into the Register or the Inventory by a Decision.

It is possible to file a lawsuit with the Administrative Court of Montenegro against the Decision referred to in Paragraph 1 of this Article.

#### **Article 32**

The State Prosecutor's Office shall instigate the procedure for the prohibition of operation of a religious community, if the reasons referred to in Article 30, Paragraph 1 exist, by filing a motion for the prohibition of operation of a religious community with the relevant court, if the legitimate goal in the interest of public security, protection of public order, health or morals, or the protection of rights and freedoms of others, could not have been achieved with more lenient limitations measures.

Prior to the adoption of the decision on the prohibition of operation of a religious community, the court may leave an appropriate deadline to the religious community to bring its actions in line with the legal order and public morals.

If within the specific deadline specified by the court the religious community meets the requirement of the court by bringing its actions in line with the legal order and public morals, the competent court may suspend the procedure for the prohibition of operation of the religious community.

### **Article 33**

The Ministry shall delete the religious community from the Register or the Inventory if:

- 1) the religious community itself decides to end its activity;
- 2) the activity of the religious community is prohibited in line with the provisions of this Law, on the basis of a final court decision.

A religious community shall be deleted from the Register or the Inventory based on the decision of the Ministry.

It is possible to file a lawsuit with the Administrative Court of Montenegro against the decision of the Ministry referred to in Paragraph 2 of this Article.

### **Article 34**

The property of the religious community deleted from the Register or the Inventory, upon discharge of liability, shall be decided upon in the manner stipulated in the acts of the religious community.

If the acts of the religious community do not define the manner of action, property of the religious community shall become the property of Montenegro.

## **III RIGHTS AND RESPONSIBILITIES OF RELIGIOUS COMMUNITIES AND THEIR BELIEVERS**

### **Article 35**

Religious community shall ensure resources for the performance of its activity from the revenues based on its own property and religious services, endowments, legacies, funds, donations and other contributions from physical and legal persons, resources from the international religious organizations that it is a members of, resources from the Budget of Montenegro and local self-government units, as well as from other affairs and activities on a non-profit basis, in line with the law.

Religious community may have the funds approved from the state budget and the local self-government budget for the activities promoting spiritual, cultural and state tradition of Montenegro, as well as for the support to social, health-related, charitable and humanitarian activities of a particular interest.

Religious community shall keep the record of the revenues referred to in Paragraph 1 of this Article, in line with the law and autonomous regulations of the religious community.

### **Article 36**

Control of legality of acquisition of funds of the religious community and control of legality of earmarked use of resources of the religious community from the state budget and the local self-government budget shall be performed by the competent authorities, in line with the law.

### **Article 37**

Property of the religious community shall be used for the exercise of religious ceremonies, construction and maintenance of religious buildings, as well as for other social, health-related, cultural, charitable, educational purposes, in line with the law and autonomous regulations of the religious community.



Religious community shall be held liable for its obligations with its overall property, in line with the law, except for the property necessary for the performance of religious ceremonies.

#### **Article 38**

Immovable and movable goods owned by the religious community shall be entered, i.e. registered to the name of the religious community or the organizational part of the religious community whose religious center is abroad, but which holds the status of a legal person with the seat in Montenegro.

The right of easement over movable and immovable goods owned by the state that the state has entrusted to the religious community for use shall also be registered to the name of the religious communities and organizational parts referred to in Paragraph 1 of this Article.

#### **Article 39**

Religious community may collect voluntary contributions based on its autonomous regulations, in line with the law.

#### **Article 40**

Religious community shall pay taxes, contributions and other duties, in line with the law.

Religious community may be fully or partially exempt from tax and other obligations, in line with the law.

Physical and legal persons who give contributions to the religious community may be exempt from relevant fiscal obligations, in line with the law introducing the relevant public revenue.

#### **Article 41**

Religious servants shall have the right to health and pension and disability insurance, in line with the law.

Religious community may establish institutions for social, that is, health and pension and disability insurance of the religious servants, in line with the law.

Religious communities shall register religious servants who exercise the rights referred to in Paragraphs 1 and 2 of this Article, in line with the regulations defining payment of contributions.

Religious community referred to in Paragraph 3 of this Article may also have funds secured in the state budget for health and pension and disability insurance of the religious servants, in line with the law.

If the funds for the purpose referred to in Paragraph 4 of this Article are secured in the state budget, the Government shall define the amount of funds, whereas the religious communities with a small number of believers may be subject to the principle of affirmative action.

#### **Article 42**

Religious community shall have the right to build religious structures and engage in building adaptation and reconstruction of existing ones, in line with the law.

Construction, building adaptation and reconstruction of religious structures shall be carried out based on permits and consents stipulated by the law and regulations defining the area

of construction of buildings and protection of cultural resources, and with the professional supervision in line with the law.

In the development of spatial plans, the competent public administration authority, i.e. local self-government authority shall also consider the expressed needs of the religious community for the construction of a religious structure.

Public authorities responsible for spatial planning and construction of buildings shall not consider the applications for construction of religious structures that do not have the consent of the responsible authorities of the religious community in Montenegro, in line with the law and the autonomous regulations of the religious community.

#### **Article 43**

Religious community shall have access to public broadcasting services and other media, as well as the right to independently perform its own informative and publishing activity on a non-profit basis, in line with the law.

#### **Article 44**

Within its social, cultural, charitable and humanitarian activity, the religious community may establish relevant institutions in line with the law.

#### **Article 45**

Religious ceremonies shall be executed in the religious structures.

Religious ceremonies may also be executed outside the religious structures in places accessible to the citizens, without approval, with the previous announcement to the public administration authority responsible for internal affairs, in line with the law regulating the right to public assembly.

If the religious ceremonies are executed at the request of the citizens (family saint day, wedding, baptism, confirmation, circumcision, confession, consecration, etc.) it is not necessary to report them as stipulated in Paragraph 2 of this Article, unless these ceremonies are executed in a public place and pose a risk to the security of people and property.

#### **Article 46**

Religious servant exercising a religious ceremony may receive compensation, that is, reward for the religious ceremonies from the person at whose request the ceremony is being executed, on the basis of the autonomous regulations of the religious community.

The religious community shall keep a record of the revenues referred to in Paragraph 1 of this Article, in line with the law and the autonomous regulations of the religious community.

Data on the identity of the person who requested the religious ceremony shall not be entered into the record referred to in Paragraph 2 of this Article.

#### **Article 47**

Religious spiritual care for believers who serve in the Army of Montenegro and the police force shall be exercised in line with the act of the competent public authority that regulates in more detail the rules of service.

#### **Article 48**

A person in detention or serving a prison sentence, as well as a person placed in the Institute for juveniles or institutions for placement of children with behavioral problems shall have the right to religious spiritual care, either individual or in community with others, in line with the act of the public authority responsible for the area of judiciary.

#### **Article 49**

A person placed in a health institution or social welfare institution shall have the right to receive religious spiritual care, either individual or in community with others, in line with the house rules of that institution.

#### **Article 50**

Religious community shall process personal data about believers in line with the law governing personal data protection.

### **IV RELIGIOUS TEACHING AND RELIGIOUS SCHOOLS**

#### **Article 51**

Religious teaching may take place in religious buildings or in other buildings appropriate for that purpose.

In order for juveniles to participate in religious teaching it is necessary to obtain the consent of the parent or guardian, as well as the consent of the juvenile if he is 12 years old or older.

Religious teaching with students may only take place during the period when students do not have classes at school.

#### **Article 52**

Parents shall have the right to engage in religious teaching of their own child in line with their own religion or beliefs, while respecting the physical and psychological integrity of the child.

#### **Article 53**

Schools and educational institutions shall observe the rights of pupils and students to religious holidays, in line with the law.

#### **Article 54**

Religious community may establish religious schools at all levels of education, except for primary school, which is compulsory according to the law, as well as dormitories to accommodate persons studying in those institutions. Religious community shall independently define the curriculum of the religious school, contents of the textbooks and manuals, and define the requirements for the teaching staff.

The curricula, as well as the contents of the textbooks and manuals in religious schools shall not be contrary to the Constitution and the law.

#### **Article 55**

Harmonization of the curricula and contents of the textbooks and manuals of the religious schools with the Constitution and the law shall be exercised by the public administration authority responsible for education.

Responsible person in the religious school shall put at the disposal of the responsible authority referred to in Paragraph 1 of this Article all the necessary data for the purpose of supervision, and correct the noted irregularities within the deadline stipulated by that authority.

#### **Article 56**

Religious school established in line with this Law may implement publically applicable curricula, if it obtained the license in line with the regulations in the area of education.

Religious school that is licensed or accredited as an educational institution shall have the right to be financed from the state budget, in proportion to the number of students, in line with the law.

#### **Article 57**

Teaching in the religious school may be provided by a person who holds the work permit in line with the law, as well as the accreditation or approval from the religious community that establishes the religious school.

### **V PUNITIVE PROVISIONS**

#### **Article 58**

A fine ranging from 2,000 to 20,000 euro shall be imposed for the misdemeanour offence on a legal entity:

- 1) that forces or impedes in any way another person from becoming or remaining a member of the religious community or from participating or not participating in the manifestation of religion or beliefs (Article 13, Paragraph 1);
- 2) that prevents other person, due to belonging or not belonging to a religious community, from exercising the rights that belong to that person in line with the law (Article 13, Paragraph 2);
- 3) that establishes a religious school for primary education (Article 54, Paragraph 1).

A fine ranging from 200 to 2,000 euro shall be imposed on the physical person and the responsible person in the legal entity for the misdemeanor offence referred to in Paragraph 1 of this Article.

A fine ranging from 300 to 6,000 euro shall be imposed on an entrepreneur for the misdemeanor offence referred to in Paragraph 1, Items 1 and 2 of this Article.

#### **Article 59**

A fine ranging from 200 to 2,000 euro shall be imposed for the misdemeanor offense on the physical person:

- 1) parent or guardian engaged in religious teaching contrary to the decision of the child (Article 51, Paragraph 2);
- 2) religious servant who engages in religious teaching contrary to Article 51, Paragraphs 1 and 3 of this Law.

## **VI TRANSITIONAL AND FINAL PROVISIONS**

### **Article 60**

Secondary legislation for the implementation of this Law shall be adopted within 6 months from the date of coming into force of this Law.

### **Article 61**

A religious community registered in line with the Law on legal status of religious communities (Official Gazette of SR Montenegro no. 9/77) may submit an application for entry into the Inventory in line with this Law, within nine months from the date of coming into effect thereof.

The religious community that fails to act in line with Paragraph 1 of this Article shall not be considered a recorded religious community in the sense of this Law.

Religious community referred to in Paragraph 2 of this Law shall have the right to file an application for registration in line with this Law.

### **Article 62**

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.

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.

With respect to the existence of evidence of the facts referred to in Paragraphs 1 and 2 of this Article, the means of proof and the rules of evidence shall be applied in accordance with the Law on Administrative Procedure and, in subsidiary terms, with the Law on Civil Procedure.

### **Article 63**

The public administration authority responsible for property issues shall identify religious buildings and land owned by the state, in the sense of Article 62 of this Law, make an inventory thereof and submit a request for registration of ownership rights of the state over that real estate in the real estate cadaster within one year from the date of coming into force of this Law.

Public administration authority responsible for cadaster affairs shall register the request referred to in Paragraph 1 of this Article within 15 days from the date of submission of the request, and shall inform without delay the religious community that uses the facilities and land referred to in Paragraph 1 of this Article.

### **Article 64**

Once the decision to register state property rights in the real estate cadastre in accordance with Article 62, Paras. 1 and 2 of this Law becomes final, the religious community shall continue to use the facilities and land subject to registration until the decision of the state body competent to decide on easement rights, use and disposal of these facilities and land.

**Article 65**

The Law on legal status of religious communities (Official Gazette of SR Montenegro no. 9/77) shall cease to be valid as of the date of coming into force of this Law.

**Article 66**

This Law shall come into force on the eighth day from the date of being published in the Official Gazette of Montenegro.

## **EXPLANATORY NOTE**

### **I. CONSTITUTIONAL BASIS FOR ADOPTION OF THE LAW**

The constitutional basis for the adoption of the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities is contained in the provision of Article 16, Paragraph 1, Item 1 of the Constitution of Montenegro, which stipulates that, in accordance with the Constitution, the law regulates the manner of exercise of human rights and freedoms, when this is necessary for their exercise.

### **II. REASONS FOR ADOPTION OF THE LAW**

With the renewal of its independence in 2006, Montenegro acquired the right and the obligation to regulate the corpus of religious rights and freedoms in its territory, that is, to regulate the position of religious communities and their relations with the state.

At the constitutional level, it did so in 2007, and at the sub-constitutional level, the Law on the Legal Status of Religious Communities of 1977 is still in force (Official Gazette of SR Montenegro, No. 9/77, 26/77, 29/89, 39/89, Official Gazette of the Republic of Montenegro No. 27/94, 36/03).

Bearing in mind that Montenegro operates today in a significantly different legal, political and social system, and that it is in the process of pre-accession negotiations for EU membership, this implies an obligation to align its national legislation with the *acquis*.

The new legal framework should represent an optimal solution that will, in accordance with the constitutional guidelines, respect the most important international standards in this field and at the same time observe the social and religious specificities of Montenegro.

### **III. COMPLIANCE WITH THE EU ACQUIS AND THE CONFIRMED INTERNATIONAL CONVENTIONS**

The Proposal of the Law on Freedom of Religion or Belief and Legal Status of Religious Communities is harmonized with the European legislation, as well as the confirmed international agreements of the UN and the Council of Europe:

- Universal Declaration of Human Rights
- Covenant on Civil and Political Rights
- Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of all Forms of Discrimination Against Women
- International Convention on Elimination of all Forms of Racial Discrimination
- Conventions on the Rights of the Child

- European Convention for the Protection of Human Rights and Fundamental Freedoms
- Protocol no. 1 to the European Convention of Human Rights
- Framework Convention for the Protection of National Minorities (Art. 4(1), 5, 6, 7, 8, 12 and 17)
- Convention on Preventing and Combating of Violence Against Women and Domestic Violence
- Charter of Fundamental Rights of the European Union
- Recommendations of the European Commission Against Racism and Intolerance

At its session of 16 May 2019, the Government of Montenegro, adopted the Proposal of the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities. In a letter of 17 May 2019, the Minister for Human and Minority Rights, Mehmet Zenka, requested the European Commission for Democracy through Law (Venice Commission) of the Council of Europe to give its opinion of the Law Proposal (CDL-REF (2019) 014).

In the period from 23 to 24 May 2019, a delegation of the Venice Commission, comprised of three rapporteurs, together with the Deputy Secretary of the Venice Commission Simona Granata Menghini and a representative of the Secretariat of the Commission, Ziya Caga Tanyar, visited Montenegro. The delegation met with the Deputy Prime Minister and the Minister of Justice, the Minister for Human and Minority Rights, the Minister of the Interior, the Minister of Foreign Affairs, the President of the Parliament, representatives of the parliamentary majority and the opposition, the Protector of Human Rights and Freedoms, the Director-General of the Directorate for Relations with Religious Communities in the Ministry of Human and Minority Rights, Director-General for Multilateral Relations at the Ministry of the Interior, President of the Supreme Court, NGO representatives, representatives of religious communities, President of the Association of Lawyers, as well as the representatives of the academia.

Following the visit by the experts, on 24 June 2019, the Venice Commission submitted to the Ministry of Human and Minority Rights an Opinion on the Law Proposal, which was adopted at the Plenary Session of the Commission, held on 21-22 June 2019 (Opinion No. 953/2019).

In view of the above, the suggestions given in the Opinion of the Venice Commission were fully incorporated into the Proposal of the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities.

#### **IV. EXPLANATION OF THE BASIC LEGAL INSTITUTES**

Article 1 of the Law Proposal guarantees the freedom of thought, conscience and religion.

Article 2 of the Law Proposal guarantees to every person the freedom of thought as an absolute right, that is, the right that does not allow any limitation, while in line with the



relevant case law and the highest legal standards, freedom of expression of one's religion may be limited.

In accordance with the relevant provisions of the European Convention, such a limitation is possible in the following situations: the interest of public security, protection of public order, health or morals, or protection of the rights and freedoms of others (Article 3).

Article 4 of the Law Proposal stipulates that freedom of religion protects theistic, atheistic and non-theistic beliefs, as well as the right, acting in line with one's own conscience, not to manifest any religion or belief.

Article 5 of the Law Proposal regulates of the right of an individual to refuse military service or other obligation involving the use of arms, in line with the relevant legislation (conscientious objection).

Article 6 of the Law Proposal contains the definition of a religious community as a voluntary, non-profit association of persons belonging to the same religion, established for the purpose of public or private manifestation of religion and exercise of religious ceremonies. The law recognized to all religious communities their structure, bodies, internal rules and the right to religious teaching. The provisions of Paragraph 2 of this Article define that a community of beliefs is a voluntary, non-profit organization established to pursue certain common or general goals or interests arising from the common beliefs.

Provision of Article 7 of the Law Proposal defines that religious communities are churches, communities of believers and other institutional forms of religious action. Religious community is free in holding religious service and has the right to decide freely, particularly on the issues related to internal organization and functioning of its bodies; appointment and powers of its religious servants; rights and responsibilities of its believers; and other issues relevant for the functioning of the religious community.

Article 8 of the Law Proposal stipulates that actions of the religious communities must not be directed against other religious communities and religions if such actions are inappropriate or insulting, and must not harm other rights and freedoms of believers and citizens. Paragraph 2 stipulates that in its actions, religious community is subject only to such limitations stipulated by the law that are necessary in a democratic society in the interest of public safety, public order, health or morals, or for the protection of the rights and freedoms of others, whereas such limitations must be proportionate to these values.

Article 9 of the Law Proposal regulates the relations between religious communities and the state that are based on the principles of mutual tolerance and respect and mutual understanding and cooperation.

Article 10 of the Law Proposal leaves the possibility to regulate particular issues between the state and the religious communities by special agreements.

Article 11 of the Law Proposal stipulates that the religious community manages independently its property based on its autonomous regulations.

Article 12 of the Law Proposal defines that resources that represent cultural heritage of Montenegro, over which a religious community has ownership or easement rights, cannot be alienated, moved or taken out of the country without the consent of the Government, with the previously obtained opinion of the religious community

Article 13 of the Law Proposal stipulates that no one will be forced to or impeded in any way from becoming or remaining a member of a religious community, or from participating or not participating in the manifestation of religion or belief, and that no one will be impeded, for the reasons of belonging or not belonging to a religious community, in the exercise of rights granted by the law.

Provision of Article 14 of the Law Proposal guarantees prohibition of indirect or direct discrimination against all categories of persons.

Article 15 of the Law Proposal stipulates that the law regulating personal data protection will apply accordingly.

Article 16 of the Law Proposal ensures gender equality in the use of language through the introduction of the clause that all provisions of the law must apply equally to men and women in the way that the terms used in this Law to refer to physical persons in masculine gender include also the same terms in feminine gender.

Article 17 of the Law Proposal stipulates that the public administration authority responsible for the issues of human rights and freedoms supervises the implementation of the law.

Chapter II of the Law Proposal regulates the issue of registration and records of religious communities.

Article 18 of the Law Proposal says that the religious community obtains the status of a legal person by being entered into the Register kept by the responsible public administration authority, and the contents and manner of keeping of the Register are prescribed by the competent Ministry.

Article 19 of the Law Proposal stipulates voluntary character of registration of the religious community or part of the religious community whose religious center is abroad, while Paragraph 2 of this Article defines that the religious community or part of the religious community whose religious center is abroad decides freely on whether it will request to be entered into the Register.

Provisions of Articles 20 and 21 of the Law Proposal specify the requirements, that is, the content of the application for registration.

Article 22 of the Law Proposal defines that the dissatisfied party may instigate the proceedings before the Administrative Court against the decision of the Ministry refusing registration.

In Article 23 of the Law Proposal it is stipulated that an organizational part of the religious community active in Montenegro, with the religious center abroad, which was not

previously registered with the competent public authority in Montenegro, must enclose additionally the decision of the competent authority of that religious community to be entered into the Register.

Provisions of Article 24 of the Law Proposal stipulate that those religious communities that were previously registered and are active in Montenegro on the date of coming into effect of this Law are entered into the inventory of existing religious communities, and that the contents of that Inventory and the previously mentioned Register are prescribed by the competent public administration authority.

Article 25 of the Law Proposal stipulates the domain of registration or entry into the Inventory of the religious community in Montenegro.

Article 26 of the Law Proposal stipulates the deadlines for decision-making on applications for entry of the religious community into the Register or Inventory.

Provisions of Article 27 of the Law Proposal stipulate the obligation of the religious community to inform the Ministry of each change of data in line with this Law, within 30 days from the date when the change took place.

Article 28 of the Law Proposal guarantees freedom of association to other organizations and associations established for the purpose of exercising freedom of thought, conscience, religion or belief. Paragraph 2 of this Article defines that those religious communities that are not registered or recorded in the Inventory in line with this Law cannot acquire or exercise rights that belong to the registered and recorded religious communities, as legal entities.

Provisions of Article 29 of the Law Proposal defines that the law regulating legal status of non-governmental organizations applies accordingly to the organizations established for the purpose of expressing freedom of thought, conscience or belief, but that are not religious communities.

Articles 30 and 31 of the Law Proposal stipulate the reasons for denying entry into Register or Inventory or prohibition of operation, and the procedure of decision-making and legal remedy in case of denial of entry into the Register or Inventory.

Article 32 of the Law Proposal regulates that the procedure for prohibition of operation is instigated by the state prosecutor's office. Paragraph 2 of this Article leaves the possibility to the religious community, prior to deciding on the prohibition of operation, to bring its actions in line with the law.

Provisions of Article 33 of the Law Proposal define the manner of deletion and consequences of deletion from the Register or Inventory and that the law regulating administrative procedure applies accordingly.

Provisions of Article 34 of the Law Proposal stipulate that the property of the religious community deleted from the Register or the Inventory, upon discharge of liability, will be decided upon in the manner stipulated in the acts of the religious community. If the religious

communities failed to define the manner of action in this case, their property becomes state property.

Chapter III regulates the rights and duties of the registered and recorded religious communities and their believers.

Provision of Article 35 of the Law Proposal stipulates that religious community ensures resources for the performance of its activity from the revenues based on its own property and religious services, endowments, legacies, funds, donations and other contributions from physical and legal persons, resources from the international religious organizations that it is a members of, resources from the Budget of Montenegro and local self-government units, as well as from other affairs and activities on a non-profit basis, in line with the law. Paragraph 2 of this Article states that the religious community may have the funds approved from the state budget and the local self-government budget for the activities promoting spiritual, cultural and state tradition of Montenegro, as well as for the support to social, health-related, charitable and humanitarian activities of a particular interest.

Article 36 of the Law Proposal states that control of legality of acquisition of funds and earmarked use of resources of the religious community from the state budget and the local self-government budget shall be performed by the competent authorities, in line with the law.

Provisions of Article 37 of the Law Proposal define that religious community shall be held liable for its obligations with its overall property, in a way that sacral buildings and movable assets necessary for religious ceremonies shall not be subject to enforcement.

Article 38 of the Law Proposal stipulates the manner and type of registration and the right of use of movable and immovable property.

In Article 39 of the Law Proposal it is defined that religious community may collect voluntary contributions based on its autonomous regulations, in line with the law.

Article 40 of the Law Proposal stipulates that the religious community is obliged to pay taxes, contributions and other duties, in line with the law, with the possibility to be exempt from tax and other obligations if the legal requirements are met.

The provision of Article 41 of the Law Proposal regulates the right to health, pension and disability insurance. Paragraph 2 of this Article authorizes religious communities to establish institutions for social, i.e. health, pension and disability insurance of religious servants in line with the law. Paragraph 4 of this Article stipulates the possibility of allocating funds from the state budget for health and pension and disability insurance of the religious servants, in line with the law.

The provision of Article 42 of the Law Proposal gives the right to religious communities to build religious buildings and engage in building adaptation and reconstruction of existing ones if they meet certain requirements in line with the law.

Article 43 of the Law Proposal stipulates that the religious community has access to public broadcasting services and other media, as well as the right to independently perform its own informative and publishing activity on a non-profit basis, in line with the law.

The provision of Article 44 of the Law Proposal gives the possibility to religious communities to establish relevant institutions in line with the law.

Articles 45 through 50 of the Law Proposal give the possibility to execute religious ceremonies inside, as well as outside the religious buildings. Under certain conditions, religious and spiritual care may also be provided to the believers in the police and the Army of Montenegro, as well as to the persons in detention or serving prison sentences or in the health institutions.

Chapter IV of the Law Proposal regulates the issues of religious teaching and religious schools.

Article 51 of the Law Proposal gives the possibility to conduct religious teaching not only in religious buildings, but in other appropriate buildings, as well. Paragraph 2 of the same Article stipulates that the consent of the parent or guardian is necessary, if the person is a juvenile, and the consent of the juvenile as well, if the minor is 12 years old or older.

Article 52 of the Law Proposal defines the right of the parents to engage in religious teaching of their own child in line with their own beliefs, while respecting the physical and psychological integrity of the child.

The provision of Article 53 of the Law Proposal stipulates that schools and other educational institutions must enable the students to practice their religion during religious holidays.

Article 54 of the Law Proposal gives the possibility to religious communities to establish religious schools at all levels of education, except for primary school, and gives them the possibility to establish dormitories to accommodate persons studying in those institutions.

Article 55 of the Law Proposal stipulates the authority of the public administration authority responsible for education in relation to the harmonization of the curricula and contents of the textbooks and manuals of the religious schools with the Constitution and the law.

According to the provision of Article 56 of the Law Proposal, a religious school that is licensed or accredited as an educational institution has the right to be financed from the state budget, in line with the law, while Article 57 stipulates that teaching may only be provided by a person who holds the work permit and has the accreditation from the religious community

Chapter V of the Law Proposal stipulates the fines for violation of provisions of this law for legal and physical persons (Articles 58 and 59).

Chapter VI of the Law Proposal defines transitional and final provisions.

Provision of Article 60 of the Law Proposal stipulates the obligation to adopt secondary legislation for implementation of this law within 6 months from the date of coming into effect of this Law.

Article 61 of the Law Proposal defines the deadlines for takeover of data on religious communities from the existing records and the deadlines for entry into the Inventory in line with this Law.

Provision of Article 62 of the Law Proposal defines that 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, will constitute state property. Paragraph 3 stipulates in more detail that with respect to the existence of evidence of the facts, the means of proof and the rules of evidence will be applied in accordance with the Law on Administrative Procedure and, in subsidiary terms, with the Law on Civil Procedure.

Provisions in Article 63 of the Law Proposal stipulate the obligation of the public administration authority responsible for property issues with regard to the inventory of buildings and land in line with this Law. Paragraph 2 defines that public administration authority responsible for cadaster affairs must register the request referred to in Paragraph 1 of this Article within 15 days from the date of submission of the request, and must inform without delay the religious community that uses the facilities and land referred to in Paragraph 1 of this Article

Article 64 defines that once the decision to register state property rights in the real estate cadastre in accordance with Article 62, Paras. 1 and 2 of this Law becomes final, the religious community continues to use the facilities and land subject to registration until the decision of the state body competent to decide on easement rights, rights of use and disposal of these facilities and land.

Provisions of Articles 65 and 66 define the termination of validity of the existing and coming into effect of this law.

## **V. ASSESSMENT OF FINANCIAL RESOURCES FOR THE IMPLEMENTATION OF THE LAW**

Additional financial assets from the state budget are not necessary for the implementation of this Law.