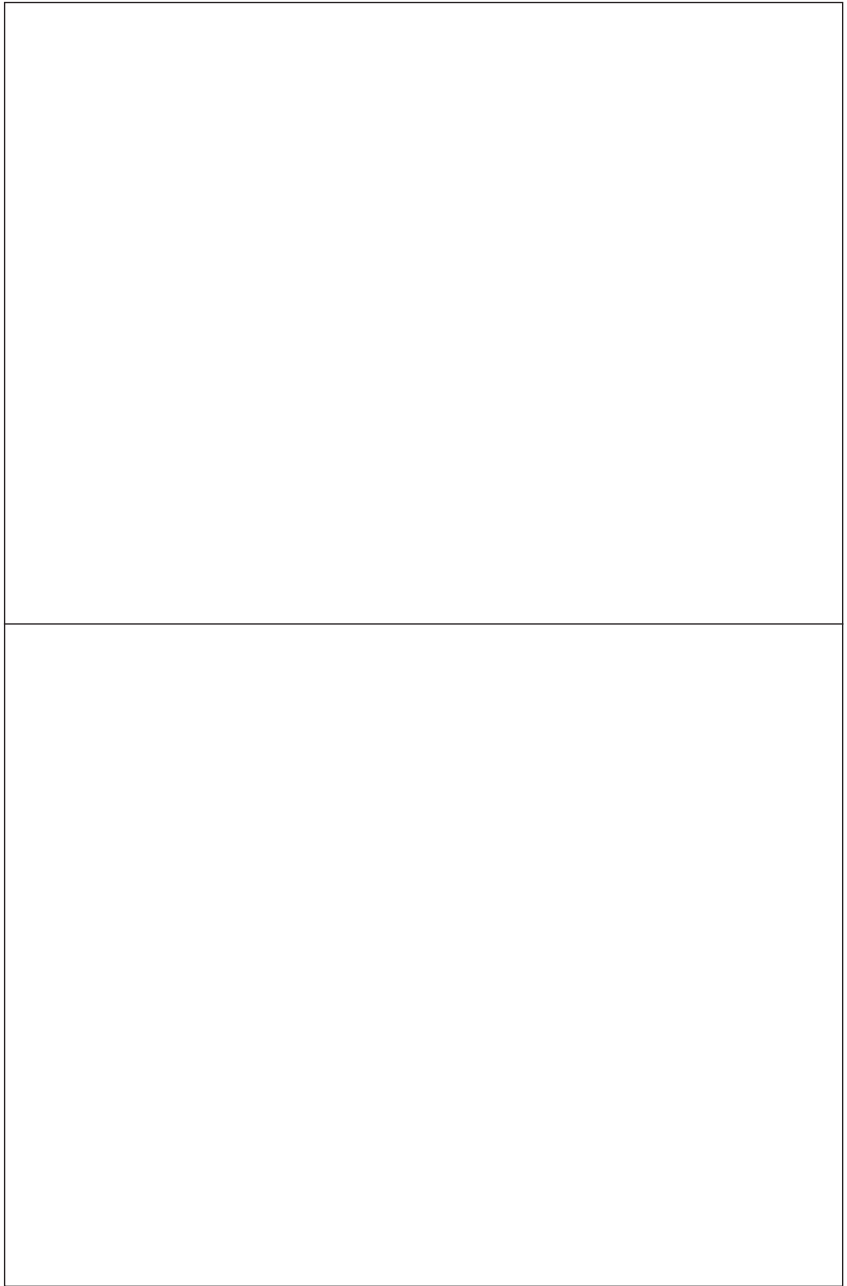


Gerhard Robbers

The Montenegrin Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities



Nomos



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Foreword

The European Court of Human Rights has underlined that freedom of religion or belief is one of the foundations of a democratic society. It is ‘one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.’ Freedom of religion or belief is seriously endangered when churches, temples, monasteries, and other religious premises owned by religious communities are arbitrarily taken away by the State.

This study analyses the 2019 ‘Law on Freedom of Religion or Belief and Legal Status of Religious Communities of Montenegro’ in view of international human rights instruments and in the light of Montenegro’s possible accession to the European Union. It tries to contribute to the flourishing of freedom of religion or belief, rule of law, and peaceful coexistence in a pluralistic society.

Gerhard Robbers, April 2021

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A. Executive Summary

Several provisions of the Law violate international instruments such as the European Convention on Human Rights, the International Covenant of Civil and Political Rights, and the UN Universal Declaration of Human Rights as well as general standards of international law and practice. The Law does not meet the standards of rule of law required for the accession of Montenegro to the European Union.

1. The provisions on registration violate freedom of religion or belief (in particular Article 9 ECHR) as well as the right to access to court (in particular Article 6 ECHR).
 - a) The requirement of re-registration is an excessive burden.
 - b) The determination of religious communities' seat constitutes an unnecessary interference with the internal religious organization.
 - c) The Law could establish an undue obligation to register or need to re-register.
2. The deprivation of religious property violates the guaranty of property (in particular Article 1 of the First Protocol to the ECHR) as well as the freedom of religion or belief (in particular Article 9 ECHR).
 - a) The assertion that the property used by religious communities on 1 December 1918 was State property appears to be unlikely and lacks evidence in historical facts.
 - b) The Law constitutes unjustified interference with ownership rights of religious communities and individuals, in any event of rights of use.
 - c) The Law is unclear and does not meet standards of rule of law.
 - d) The Law does not strike a fair balance between the interests at stake.
3. The regime of cultural heritage violates freedom of religion or belief (in particular Article 9 ECHR).
 - a) The regime is excessive.
 - b) The regime contradicts the prohibition of a State religion.
4. Treaty law leads to discrimination (in particular Article 14 ECHR read together with Article 9 ECHR).
5. Several other provisions of the Law also raise serious concerns.

B. General Remarks

1. This legal opinion examines the “Law on Freedom of Religion or Belief and Legal Status of Religious Communities of Montenegro” (in the following referred to as “the Law”). It is an academic study which has been commissioned by friends and colleagues in Serbia.
2. The Law has been published in the Official Gazette of Montenegro as No. 74/2019 on 30 December 2019.¹ It entered into force on 7 January 2020, the eighth day from the date of being published in the Official Gazette of Montenegro (Article 66 of the Law).
3. This review is based on the translation into English which is exhibited on the Montenegrin Government website.² The text is copied as exhibited on the website and cited leaving the original orthography untouched. Obvious inconsistencies and discrepancies with the Montenegrin version of the law have been disregarded for the purpose of this review, and the official text in Montenegrin language has been used.
4. A draft version of the Law has been reviewed by the Venice Commission.³
5. The following review concentrates on the most salient issues of the Law. These are registration of religious communities and property matters. A number of other problematic provisions are in a more general approach also addressed.
6. The examination is based in particular on international treaties which have been ratified by Montenegro, such as the European Convention on Human Rights, the International Covenant of Civil and Political Rights, and the UN Universal Declaration of Human Rights. Reference is made also to general standards of international law and practice.

1 <http://www.gov.me/en/homepage> (14 March 2020).

2 <http://www.gov.me/en/homepage> (10 May 2020).

3 European Commission for Democracy through Law (Venice Commission), Strasbourg, 24 June 2019 Opinion No. 953 / 2019 CDL-AD(2019)010 Or. Engl., Montenegro Opinion on the Draft Law on Freedom of Religion or Beliefs and Legal Status of Religious Communities, Adopted by the Venice Commission at its 119th Plenary Session (Venice, 21–22 June 2019).

C. Analysis

I. Registration

1. The Law

7. The Law establishes a system of registration and recording of religious communities in Articles 18 – 34. Provisions relating to legal personality status are scattered among these articles.
8. Pursuant to Article 18 Section 1 of the Law, religious communities obtain the status of a legal person by being entered into the register of religious communities.
9. According to Article 24 of the Law, religious communities retain their existing legal personality if they meet certain conditions. These conditions are that they are reported and registered in Montenegro in line with the 1977 Law on the Legal Status of Religious Communities,⁴ are entered upon application into an inventory of existing religious communities, and were active in Montenegro on the date of coming into force of the Law. Furthermore, pursuant to Article 25 Section 3 of the Law, a part of a religious community the religious centre of which is abroad, and which operates in Montenegro, obtains legal personality in Montenegro upon entry into the Register or the Inventory.
10. Article 28 Section 2 of the Law provides that 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 the 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.
11. Section 3 of Article 25 of the Law implies that the Serbian Orthodox Church as well as foreign religious communities cannot obtain the status as a legal person if they do not register or join the Inventory. Religious communities which previously held the status of a legal person lose this status if they do not apply for registration or being entered in the Inventory. The same occurs if their application is rejected. They

4 Official Gazette of SR Montenegro no. 9/77.

C. Analysis

thus have to re-register to further enjoy the rights attached to this status.

12. The Law requires re-registration for religious communities which have already been registered under the 1977 law.⁵ If they do not register in the Register or are listed in the Inventory, they lose their status as legal entities. Listing in the Inventory amounts to a special kind of registration. Both kinds, registration in the Register as well as listing in the Inventory constitute re-registration.
13. Re-registration requires application, rights of representation, and providing documents. It is unclear which requirements exist for entry into the Inventory, since pursuant to Article 24 Section 2 the Ministry shall prescribe the contents of the Inventory. As of 11 January 2021, these rules have not yet been published. Re-registration can be refused.
14. Article 25 Section 2 of the Law requires the seat of a religious community which is registered or entered into the Inventory for the territory of Montenegro to be in Montenegro. It thus creates further new criteria for re-registration of religious communities registered under the 1977 law which have their seat abroad. This applies at least to the Serbian Orthodox Church which has its seat not in Montenegro as well as to dioceses of the Serbian Orthodox Church parts of which are on Montenegrin territory. The latter applies to the Eparchy of Mileševa – Bishop Unit in Pljevlja with its seat in the Republic of Serbia and to the Eparchy of Zahumlje and Herzegovina, parish of Herceg Novi – Bishop Unit for Trebinje and Dubrovnik with its seat in Bosnia and Herzegovina.

2. Access to Court – Article 6 § 1 ECHR

15. The regime of re-registration has to be examined in view of the right to access to court as enshrined in Article 6 § 1 ECHR.
16. Article 6 § 1 ECHR reads:
 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or

⁵ Official Gazette of SR Montenegro no. 9/77.

part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

a) Legal personality status

aa) The case Catholic Church of Canea

17. The ECtHR has held in the case *Catholic Church of Canea v. Greece* that deprivation of legal personality status impairs the very substance of a church's right to a court and therefore foremost constitutes a breach of Article 6 § 1 ECHR.⁶ In the same case, the European Commission of Human Rights had found also a violation of freedom of religion or belief as enshrined in Article 9 ECHR.
18. The Church of Canea had been treated as a legal person for a long time without any doubts concerning this legal status being raised by the State authorities, registration was therefore considered by the European Court and Commission of Human Rights to be unreasonable. The legal personality of the Greek Catholic Church and of parish churches had never been called in question since the creation of the Greek State either by administrative authorities or by courts. Those churches had acquired, used and transferred movable and immovable property, concluded contracts, taken part in transactions and enjoyed tax exemptions. Settled case-law and administrative practice had, over the course of the years, created legal certainty, both in property matters and as regards representation of Catholic parish churches in legal proceedings. The church could reasonably rely on that.

bb) The status of the Serbian Orthodox Church

19. In Montenegro, the situation of religious communities which previously had held the legal personality status but are required to re-regis-

⁶ ECtHR, *Case of Canea Catholic Church v. Greece*, 25528/94, 16 December 1997, § 42.