

HIDDEN ASPIRATIONS

(Legal Analysis of a Document of Government of Montenegro)

Ladies and Gentlemen,

I will try to give contribution to the debate about the preservation and promotion of human rights, and inform you on the experience of the Orthodox believers and their canonical Church in Montenegro.

My report will be concentrated on a very important topic for Orthodox Christians in Montenegro. It is the *Information On The Need For Adoption Of The Draft Law On Freedom Of Religion* (hereinafter: *Information*), which, as stated on the website of the Government of Montenegro, was forwarded to the Government by the Directorate for Relations with Religious Communities within the Ministry for Human and Minority Rights (hereinafter referred to as *the Directorate*). Also, I shall briefly comment on the terminology defining the names which the future law should bear concerning the legal relationship of the state to the churches and religious communities in Montenegro.

At its 73rd session the Government of Montenegro (hereinafter: *the Government*) was presented on 26 June 2014 with the above *Information*. On this occasion, the Government passed a decision on the adoption of the *Proposal For Amendment Of The Programme Of The Government Of Montenegro* for the 2014.

And all these legal procedures, correspondence and internal normative activity are not and can not be disputed (it is a matter of the way the Government works), but what is debatable is what is essentially being prepared and what is essentially aspired to, and that is to legally decapitate and confuse the identity of Serbian Orthodox Church (hereinafter: SOC) in Montenegro. The reasons for this observation of mine are as follows.

The *Directorate* correctly notes that Montenegro is a multi-religious and multi-ethnic country, but also that it defines itself as a state that embraces civic concept. Fine. Accordingly, it is considered that the national and religious diversity is Montenegrin "civilizational potential." Again, fine. On the other hand, it expresses the desire that the normative acts, which are necessary to be adopted as soon as possible, must be harmonized with ratified international documents: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), with its additional protocols. That's fine, too. However, in the very Constitution of Montenegro, Article 46, "guarantees the right of every person to change his or her religion or belief and freedom, either alone or in community with others, in public or private, to express his religion or belief in worship, teaching, practice and observance, and that no one is obliged to declare their religious or other beliefs." The Constitution, therefore, has very well normatized the freedom of

religion. However, the state of Montenegro still interferes directly in the said constitutionally guaranteed rights, which belong also to the SOC, because on many occasions it has not allowed (and even today there are such examples) SOC clergy to enter the Orthodox churches, with which it unlawfully restricts private property, and prevents the free expression of religion, beliefs, thoughts, and the like. Also, the *Information* mentions the **Anti-Discrimination Law** as modern civilizational heritage of Montenegrin legal system, particularly Article 17, which states that "discrimination is considered any distinction, unequal treatment or bringing in unequal treatment of persons or groups of persons on grounds of religion or belief, belonging or not belonging to a religious community". The said example of Government interference in Montenegro and its restriction of the rights guaranteed (for example, property rights) directly discriminates SOC, because it does not act so against any other church or religious community in Montenegro.

It also states that "penalties are stipulated for contempt for religious freedom" and that "the official who commits this offense will be punished with imprisonment up to three years." Although there is even video footage of aggressive treatment of the SOC by state authorities of coercion, and many other physical evidence, no one has been punished for it, and it is reasonably considered that the cited statutory provision is a dead letter.

The Law on the Legal Status of Religious Communities Act 1977 ("*Off. Gazette of Montenegro*", No. 9/77) is still in force Montenegro according to which religious communities acquire legal entities *sui generis* "in the procedure of application to the competent national authority". However, it further states that in Montenegro there are "registered" 20 religious communities. Any serious lawyer would agree that "application" and "registration" are not synonymous, because they have different purposes in legal life, which produce different effects, and therefore cannot have identical connotations. It is possible to make an *application* for something that in the social life exists as a fact, and thus the *application* itself to the competent authority is of declaratory and informational character, while *registration* in the legal terminology refers to the establishment of a new legal entity and a new legal life, which will produce social consequences only from the time of registration, and hence *registration* is legal act of constitutional character. By the act of registration SOC would, therefore, negate its previous existence, social and religious continuity and heritage in the territory of present-day Montenegro.

The authors of *Information* do not notice discrimination when they say that "only Montenegrin-Littoral Metropolis has not been registered," and that "by this act it denies the state supremacy." Lamenting over the fact according to the Metropolitan's explanation "that it had been established before the applicable law on the legal status of religious communities, namely, that the state cannot interfere with the church's vested rights, bearing in mind that it was established in 1219."

Analyzing this passage, we conclude the following: 1) it is not true that only the Montenegrin-Littoral Metropolis is not registered, because on the territory of Montenegro, there are three Serbian Orthodox Dioceses (Budimlje-Nikšić, Zahumlje-Herzegovina and Milesevska); 2) it is frivolous to consider non-application of a centuries-existing fact an act of denial of "state supremacy," because, first, the state does not have supremacy over the church, because in secular and civil societies, as it is, I hope, Montenegro, church and state are completely separate and the constitutional definition can only help each other, and, secondly, such an attitude is just mindless aspiration of the state to subjugate the canonical Orthodox Church in Montenegro; 3) It is a material fact that the Church was founded in the year 1219, and that, therefore, it is older than the state of Montenegro, and it is a legal fact that the state can not interfere with the vested rights of the church (as, for example, with the status and ownership rights to, say, cultural heritage of SOC). To my knowledge SOC has not prevented the state of Montenegro to present any Orthodox monastery as part of its cultural heritage, but to proclaim, illegally and unconstitutionally, the church's cultural and spiritual heritage for the state (or social) property, that indeed is not possible.

In support of contradictions contained in *Information* it is clear from the fact that "so far no religious community in Montenegro has been prohibited or restricted to work", which is contradictory to the principle of non-discrimination, because if no religious community is prohibited or restricted to work, then why do so with SOC? If not issuing residence permits for clergy or preventing Serbian Orthodox clergy to enter into possessions of the SOC, and that through intervention of the police, is not limiting the work, then the discrimination in the legal sense of the word is understatement.

The author of *Information* believes that giving "certain privileges, such as tax relief, is a violation of the principle of secularity," but fails to "inform" the government that the blatant reference to the destruction of Orthodox church on the mountain Rumija constitutes prevention of expression of one's religious feelings, hate speech and illegal claim on someone else's property, and thus direct state interference and violation of the principle of secularity.

Several sections that a part of the state apparatus outlined in the *Information* point very openly to Government's aspiration that in the future in Montenegro there shall be no exit from the transitional socio-political process:

1) It is stated that "the legal instruments in this area are not used to full capacity, especially regarding the devastation of sacred objects, their use for non-religious purposes, and non-transparent outflow of funds from Montenegro." With this we agree in principle, because reading the text above it is to be seen why many times the legal text remained a dead letter, that the intrusion of the police unit in the Serbian Orthodox monasteries and preventing the Serbian clergy from taking possession of the Serbian Orthodox Church's property, as well as stoning the Montenegrin metropolitan Dr. Amfilohije

Radović in the 1990's, the use of sacred sites for non-religious purposes "(the only question is by whom and to what purpose it is used), as well as that "non-transparent outflow of funds from Montenegro" is lucid observation of the author of *Information*, which corresponds to the latest reports of the EU representatives in Montenegro, where I think it would be responsible for the Government to explicitly specify who is illegally and non-transparently "draining" money from Montenegro, where, and for what purpose this "drained" money is used. This, I believe, would be very useful for the trust of the citizens of Montenegro in the entire state system.

2) It also emphasizes the fact that "the impact of the presence of religious communities in the society and public life since 1992 has been all the more pronounced and is outside the private sphere, which should determine the responsibility of religious communities in the legal system." This statement should be probably read and keep in mind the knowledge that Montenegro is the only republic of communist Yugoslavia where there has not been a complete change in the social system and the establishment of a modern democratic milieu, the evidence is also the applicable **Law On The Legal Status Of Religious Communities** ("*Off. Gazette of Montenegro*", No.9/77), which is a product of the socialist political and legal climate in which freedom of thought and public expression of that opinion, and freedom of religious worship were greatly limited and controlled and directed by the state. The Constitution of Montenegro guarantees everyone the right to private opinion and publicly expressed attitude, and therefore "strong need" expressed in the *Information* for "determination of responsibility of religious communities," is unconstitutional because the very Constitution of Montenegro, particularly Montenegrin legal regulations, define the activities considered anti-state and threatening to the legal order of the sovereign state of Montenegro, which applies to all Montenegrin citizens, and, by extension, to those who act as representatives of churches and religious communities.

3) The *Information* is vague, and therefore risky, because it states in part, "the tendency of some religious communities to actively participate in certain social events as holders of political initiative." As the SOC in Montenegro is committed to consistently respect the principle of separation of the church and state, convinced that the most fair ancient principle is "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's", it would be considered a serious approach by the Government or by any of its departments or subdepartments to say which religious communities interfere in the affairs of state and which religious communities have aspirations toward a political role?

Montenegro has signed contracts with some religious communities: 1. Basic Agreement between Montenegro and the Holy See (24 June 2011), 2. Contract governing the relations of common interest between the Government and the Islamic community in Montenegro (30 January 2012) and 3. Agreement

on regulation of mutual interest between the Government and the Jewish community in Montenegro (31 January 2012). The fact that with such agreements the Government has legally defined relationships with certain religious communities in Montenegro is not disputable for the SOC, but the question is why has the government's action bypassed the SOC, when the latest census recorded that Orthodox believers in Montenegro account for over 72% of the total population?

A propos the claims that "Montenegrin-Littoral Metropolis denies state supremacy" I would like to inform you that the same Metropolis has repeatedly communicated to the Government of Montenegro a list of their representatives to participate in the drafting of the new law on the legal status of churches and religious communities, but all of the church's efforts in this regard remained ignored by the Montenegrin authorities.

Finally, the *Information* contains a proposal that the new law, which, supposedly, is to regulate the status of churches and other religious communities in the state of Montenegro, should be called **The Law On Freedom Of Religion**. If the status of the SOC in Montenegro were such as it naturally and consequently to the historical spirit of Montenegro should be, probably there would be not much to be standardized in that law. Today, however, it is legitimate to ask a number of questions relating to the proposed name of the law.

Namely, the very name of the law shows that the subject of regulation will be the very freedom of religious worship or belief, which is important, but does not deal with the essence of the problems imposed on SOC in the state of Montenegro. It is hard to expect that the law thus named will define obligations of the state towards the SOC regarding the return of illegally seized property, the legal status of the clergy, the status of centuries-old ancient monasteries, churches and other clerical buildings have had in Montenegro, that it will determine the position of the state in relation to SOC, that it will determine the extent to which a state official can go in terms of interfering with the rights of the Church (especially the self-determination and self-organization) and the like.

The current **Law on the Legal Status of Religious Communities** ("*Off. Gazette of Montenegro*" 9/77), although the expression of an obsolete social system, with its very name reflects the essence of the problem - the relationship of the state to churches and other religious communities and specifically the legal relationship, as very sensitive, which has inherited the separation of the state and the Church and their mutual help and respect of one's internal affairs.

Thank you for your attention.

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