LAW ON FREEDOM OF RELIGION AND ITS IMPLICATIONS ON THE EU ACCESSION OF MONTENEGRO

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INTRODUCTION

The situation in Montenegro after the adaptation of the Law on Freedom of Religion and Legal Status of Religious Communities has been defined by massive protests, civil unrest and tense political situation. The main stakeholders are not just the biggest religious institutions in Montenegro – the Serbian Orthodox Church (SPC- Srpska Pravoslavna Crkva) but also the major political parties and citizens who were coming out in the streets of all major cities of Montenegro in consecutive weeks after the law was adopted on 27th December 2019. Major protests in Montenegro went on for three months until restrictions on public gatherings were introduced in March as a measure to curb the spread of the COVID-19 pandemic. The Law was published in Montenegro’s Official Gazette (No. 74/2019) on 30th December and came into force on 8th January 2020. Evidently, the legislative procedure in the Parliament of Montenegro (Narodna Skupština) purposely took place during the festive season, as Cristian Orthodox believers of the SPC celebrated Christmas on 7th January. However, the plan of Montenegro’s ruling elite assembled within the Democratic Party of Socialists of Montenegro (DPS - Demokratska partija socijalista Crne Gore) to pass the Law beyond the radar of the wider public, failed dramatically. DPS is the legal successor of the Communist party of Montenegro in former Yugoslavia, its president Milo Đukanović is also the President of Montenegro, and DPS along with its collation partners had the power in the country since the dissolution of Yugoslavia in 1991, including the incumbent government
(2016-2020) until the general elections on August 30th this year. The sheer scale of civil protests in Montenegro is unprecedented not just in the modern Montenegrin state after it gained independence in 2006, but has never been recorded in its history. The protests assembled in litije - Orthodox processions, occurring every Thursday and Saturday amassed in some occasion tens of thousands of people in a nation whose population is just above 630,000, according to the 2011 census. The members of the Parliament of the opposition in the 2016-2020 Parliament gathered around the biggest opposition platform, the alliance of political parties Democratic Front (DF - Demokratski Front), even physically assaulted those MPs who were in favor of the Law, mainly from the ruling party of DPS, and were subsequently expelled by the use of physical force from the Parliament. It seems that this Law has driven a wedge of relentless division in this old nation with a newly regained statehood. Undoubtedly, the Law has an immense importance for the future development of the country, and it seems that both sides – the opponents and the supporters of the Law - have irreconcilable positions. The adoption of the Law and the subsequent protests also drew the attention of the whole region of the Western Balkans and wider, including the big players - the United States, the European Union, as Montenegro has opened all of the 33 negotiating chapters with the EU, and the Russian Federation, to this small Balkan state. For this reason, the legal foundation of this law, its political consequences, its impacts on the religious organizations in Montenegro; its synchronization with the conventions of the Council of Europe, and coming out of all these questions, the central question of this paper - its impact on EU accession of Montenegro, have all to be analyzed.

HISTORICAL OUTLOOK OF THE EASTERN ORTHODOX CHURCH IN MONTENEGRO

In order to understand the contemporary clash between the state and the Church in Montenegro, a deeper insight in the history of the Orthodox Church on the territory of present-day Montenegro is required. Orthodox Christian believers were for centuries, even before and then during the occupation by the Ottoman Empire, under the authority of the Patriarchate of Peć, in present-day Kosovo. Peć was for centuries an integral part of the Serbian medieval polity and is just miles away from the northeastern border between Kosovo and Montenegro. The Patriarchate of Peć was abolished by
the Ottoman Sultan Mustafa III in 1766 and the Patriarchate was then reestablished in 1920 in Belgrade. Upon the creation of the Kingdom of Serbs, Croats and Slovenes in 1918, where the territory of present-day Montenegro was included, the Ecumenical Patriarch of Constantinople, who ranks as primus inter pares and embodies the highest authority within Eastern Orthodox Churches, granted the tomos of autocephaly (decree of ecclesial independence) to the Serbian Orthodox Church. This meant that the Serbian Orthodox Church, with its Seat in Belgrade, had at that point encircled its religious authority over Christian Orthodox believers in the whole territory of the newly founded Kingdom. This also meant that all of the Christian Orthodox believers within the borders of the modern Montenegrin state were practicing their religion within the SPC.¹

Nowadays, the territory of Montenegro is covered by three eparchies (territorial diocese - Eparhija) and one Metropolitanate of the SPC - Metropolitanate of Montenegro and the Littoral (Crnogorska-Primorska Mitropolija), whose head Metropolitan bishop Amfilohije Radović is also the head of the SPC in Montenegro. Amfilohije Radović's official title is "Archbishop of Cetinje and Metropolitan of Montenegro and the Littoral", and as the leader of the Orthodox Church in Montenegro found himself at loggerheads with the undisputed political leader of Montenegro for the past 30 years, Milo Đukanović.

The early years of the Orthodox Church on the territory of the newly founded state whose name in 1929 changed to the Kingdom of Yugoslavia, are of fundamental importance for understanding the ongoing dispute between the state and the Church in Montenegro. The fact that the Orthodox Church in Montenegro was never established as autocephalous Eastern Orthodox Christian Church recognized by the Ecumenical Patriarch in Constantinople, nor was canonically recognized by the other Orthodox Christian Churches under the name of Montenegrin Orthodox Church, deeply connects the national identities of the Montenegrins and Serbs. This fact also brings in a particular the complexity for the process of completion of the national identity of the nation which has gained its independence just 14 year

¹ See the Overview on the Law against the Serbian Orthodox Church in Montenegro on https://eclj.org/religious-autonomy/eu/overview-on-the-law-against-the-serbian-orthodox-church-in-montenegro
ago. This also means that the Serbian Orthodox Church is the only legal church in Montenegro from the perspective of Eastern Orthodox Churches’ canonical law. Considering this canonical legality, a vast majority of Montenegrins identify themselves with the Orthodox Church under the authority of the SPC, just like the Serbian minority in Montenegro. The fact that the Law on Freedom of Religion was interpreted by the SPC and by Archbishop Amfilohije Radović as a direct threat and an attack on the Orthodox Church in Montenegro, has mobilized Christian Orthodox believers of both Montenegrin and Serbian ethnicity, who comprise almost 75% of the total population of Montenegro, against it. Consequently, many of these believers turned against the Government of Montenegro and the embodiment of political power in the country president Milo Đukanović because of the adoption of the Law. Furthermore, both President Aleksandar Vučić, an undisputed leader of Serbia whose Serbian Progressive Party (SNS - Srpska napredna stranka) won a landslide victory on the general elections held on 22nd June, and Milo Đukanović, were trying to seize the conflict between the SPC and the Montenegrin state to their favor.²

THE LEGAL FOUNDATION OF THE LAW AND ITS IMPACTS ON THE RELIGIOUS ORGANIZATIONS IN MONTENEGRO

Under the provision of the new Law³, all properties including churches, monasteries and church land could face eviction in case the SPC cannot submit a documented prove of its ownership over these properties. In other words, all religious organizations in Montenegro, according to the Law, have to prove how they came to own the properties they currently own and hold possession of. This provision of the Law seems specifically targeted against the SPC – hence its fierce opposition and fight against the Law – as the SPC holds by far the most valuable properties in Montenegro. Just one

² See about the fight between Montenegro and Serbia over the Orthodox monasteries in Neue Zürcher Zeitung article, 13 March 2020 https://www.nzz.ch/international/montenegro-und-serbien-streiten-ueber-kloester-und-kirchen-lid.1546029
A parcel of land in Buljarica owned by the SPC near the coastal city of Petrovac and located on the picturesque Montenegrin coast which in 2019 attracted over 2.5 million of tourists, has its value estimated in millions of euros and could attract huge foreign investment.\(^4\)

The Law with its 66 articles was for the majority of its content acceptable for the SPC, as it in this majority part resembles the internationally recognized standards that define position of religion and religious communities in different states. However, articles of the Law that define provisions required for verifying of the ownership rights of religious communities, namely articles 61, 62 and 63, sparked an outcry of the SPC and of the opposition in Montenegro.\(^5\)

The most disputed provision of the Law is articulated in the following formulation of the 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 the joint investment of the citizens by 1 December 1918, for which there is no evidence of ownership, shall constitute state property.”\(^6\) These provisions of the article 62 mean that the SPC would lose ownership of vast majority of its properties, as the presence of the Orthodox Church in Montenegro dates a millennium back in history, and it would be hard or even impossible for SPC to provide evidence of ownership.

The reason for this is to be identified in the historical consequences in which SPC found itself in Montenegro for almost a millennium. Today’s territory of Montenegro was almost completely occupied for centuries by the Turkish Ottoman Empire, which was also the center of Islamic Caliphate, apart from a thin strip of land in the Bay of Kotor and the city of Budva. The Orthodox Church in Montenegro, as a keeper of Orthodox Cristian faith and both Serbian and Montenegrin national identities and cultures, was faced by

\(^{4}\) *Vijesti* daily newspaper, 6 January 2020 https://www.vijesti.me/vijesti/drustvo/bacili-oko-na-crkvenu-zemlju

\(^{5}\) https://www.thetablet.co.uk/blogs/1/1575/how-attacks-on-religious-freedom-threaten-the-church-in-montenegro

\(^{6}\) Proposal for the Law on Freedom of Religion or Belief and Legal Status of Religious Communities, Part VI Transitional and Final Provisions
mistreatment and in many cases by persecution by the Ottomans. During the Ottoman rule, many Orthodox Church properties were confiscated, later to be returned in some case, many churches faced annihilation in fires, set purposely or incidentally, and by other elements of nature, in which their archives and libraries were either lost or transferred to other locations, thus losing their record in many cases. Three of the Montenegro’s most important Orthodox monasteries date centuries back to the past: Ostrog Monastery back to 1671; Cetinje Monastery, named by the Old Royal Capital of Montenegro Cetinje and the see of the Metropolitanate of Montenegro and the Littoral was founded in 1484 in pre-Ottoman period. It faced annihilation by the Turks in 1692 during the Morean War, only to be burned in blaze 22 years later; Morača Monastery was founded back in 1252, it was burned by the Ottoman Turks in 1505 and later in history faced Turkish assaults in a number of occasions.

The division between those whose support president Milo Đukanović and the Law and those who support Archbishop Amfilohije Radović who wants to protect the SPC and its properties, serves also as a disguise for the ruling regime who can distract the wider public in Montenegro and observers from the outside from the overwhelming problem of corruption, organized crime and powerful narco cartels, and focus the attention on the dispute about ownership of SPC’s properties. Milo Đukanović’s opponents also claim that the President want to empower the Montenegrin Orthodox Church (CPC - Crnogorska pravoslavna crkva), established in 1993 and not recognized by other canonical Orthodox Churches, as a church under his and control of the Montenegrin state.7

Montenegro’s government was trying to portray the opponents of the Law and those who support the SPC in its intentions to uphold the ownership over its properties as enemies of the state and traitors of Montenegrin independence which had been achieved just 14 years ago.8 Supporters of the SPC were also pictured as collaborators who serve foreign powers, primarily Serbia who, according to accusations from Podgorica, stands behind the SPC and its stubborn opposition to the Law. The Government was using similar methods as those used during the October 2016 general election when it accused Serbian and Russian operatives of collusion to topple then Prime

7 Vijesti daily newspaper, 15 March 2020 https://www.vijesti.me/kolumne/patrijarh-dukanovic
Minister Đukanović though an alleged coup d’état. Claims of this coup were never sufficiently proven. In March 2020 Montenegrin police even apprehended a Serbian citizen employed as lay person in Ostrog Monastery who was in possession of “classified” documents, military dispatch with plans of sabotage – commando raids against Montenegro – much resembling to classifications during the alleged coup in October 2016 on election day.9

THE LAW IN THE LIGHT OF MONTENEGRO’S ACCESSION TO EU

In January 2020, a member of the European Parliament Tomáš Zdechovský from the Czech Republic (KDU -ČSL, part of the European People’s Party) has posed a question to the European Commission on the Law, stating that "if Montenegro’s plan to nationalize the Serbian Orthodox Church’s property is passed, a dangerous precedent will be set that could be used by the Kosovo state authorities to nationalize hundreds of incredibly important monuments of incalculable value."10 Zdechovský then asked the European Commission to consider the suspension of accession of Montenegro to the EU.

Still, apart from random criticism of certain politicians, journalist or NGOs in Europe, the Law has not attracted much attention nor criticism in the European Union. What enticed the interest of the intentional community were the litigies and the tense political situation in the country, which in some occasions turned to street violence.

Although the European Commission or other EU institutions did not take its official position on the draft Law, the European Council did. The Council’s European Commission for Democracy through Law, colloquially known as the Venice Commission, issued its Opinion on Montenegro’s draft Law of Freedom of Religion or Beliefs that was adopted at the 119th Plenary Session of the Commission in Venice in June 2019, half a year before the draft was adopted. The Opinion of the Venice Commission was in general positive about the draft Law, but offered no clear position on the disputed articles 61,62 and 63. The Opinion on article 62 states that “these draft

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9 Cafe del Montenegro, 13 March 2020 https://m.cdm.me/politika/kod-srpskog-drzavljanina-zaposlenog-u-ostrogu-pronadene-povjerljive-vojne-depese/
provisions and their historical and factual background are rather vague and unclear. During the meetings, the interlocutors met by the Venice Commission delegation provided various, sometimes contradictory interpretation. It is of the essence that their meaning is clarified in the course of the legislative process.”\textsuperscript{11} The Opinion also said that “the draft law should clearly mention that the change in the title over religious property will not automatically affect the pre-existing right to use such property. The state has at any rate the right to impose strict conditions on the use of the property in order to protect the cultural heritage.”\textsuperscript{12} The Opinion of the Commission was not critical of the draft Law, but left space for concerns. However, it seems that the main concern of the Opinion is that regarding the protection of the cultural heritage of Montenegro, rather than the right of ownership of property.

The disputed articles of the Law met criticism among some legal experts because the Law implies that the owner of properties, i.e. the Church, should prove its ownership even though this ownership is registered in the cadaster. The fact of the registered ownership in the cadaster represents an assumption (“presumptiones iuris tantum”) that this legal entity is the owner of the property. The ownership of this legal entity can only be disputed by the other party claiming to be the owner by providing evidence of his ownership, by lodging the revindication claimant to prove his right of ownership (“actio rei vindicatio”).\textsuperscript{13} Taking these legal concerns into account as well as the political tensiony the Law has stirred, the European Commission could consider reassessing its neutral position on the Law, as well as taking this into account before closing the Chapter 23 Judiciary and Fundamental Rights in accession negotiations with Montenegro.

\textsuperscript{12} Ibid., Conclusions, p. 22
\textsuperscript{13} Vijesti daily newspaper, 23 December 2019 https://www.vijesti.me/kolumne/415026/nema-preknjizbe-vlasnistva-bez-sudskog-postupka
CONCLUSION

The Law on Freedom of Religion or Belief made a huge impact on Montenegrin society. It did not only provoke massive protests and political tensions in Montenegro, it also had a decisive impact on the 30th August general elections. For the first time since gaining independence, the whole of the opposition has unified with a single mission of ending the 30-year rule of the Democratic Party of Socialists of Montenegro (DPS). Since DPS and Milo Đukanović were ruling the country undisputedly for 30 years\textsuperscript{14}, Montenegro was often perceived as an autocratic regime.\textsuperscript{15} Opposition, though highly fragmented and extremely heterogeneous, managed to form the major coalitions of parties. Over all, these coalitions assemble parties representing incompatible ideologies and values, from the pro-Serbian parties advocating for stronger links with Russia, to pro-European parties who claim that the ruling DPS elite is an obstacle to EU accession. Pro-Serbian parties are at loggerhead with the ruling DPS since their foundation, and pro-European parties claim that the wide spread corruption, corny capitalism and inability of DPS to curb organized crime are the main factors of Montenegro’s’ sluggish progress toward the EU. All these political parties saw the adoption of the Law as an attack on the Orthodox Church in Montenegro and stepped in to support the Church, some out of sincere affection for the SPC, others as mere opportunists seeking ways to topple DPS’ rule. The Law undoubtedly acted as the common denominator for all who sought to terminate DPS’ dominance and as a catalyst for changes that Montenegro is craving for. In years that followed the independence referendum Montenegro in 2006, it has not been able to build a civil society and a political culture needed to join the club of European countries. Until the adoption of the Law, the opposition in Montenegro was pretty disorientated and the DPS could wait until the 2020 general elections with ease. However, the Law gave a new impetus to the DPS’ opposition in all parts of Montenegro’s society and significantly contributed to the opposition’s victory on the 30th August general election. Notwithstanding, the thin

\textsuperscript{14} Der Spiegel, 29 August 2020 https://www.spiegel.de/politik/ausland/montenegro-milo-djukanovic-laesst-ein-neues-parlament-waehlen-a-e1b2298b-b025-4e7b-a5cc-6a6c180771c0
\textsuperscript{15} Euractiv 29 August 2020, https://www.euronews.com/2020/08/29/montenegro-is-heading-the-same-way-as-belarus-not-enough-is-being-done-to-avoid-disaster-v
majority of 41 seats for the opposition in 81 seats Parliament, means that the transition period from the 30-year old rule of the DPS could take indefinite time.