

Association for the Advancement of political, cultural and economic Cooperation between
Montenegro, the Republic of Serbia and Republika Srpska

Podgorica, Montenegro

H.E. Ahmed Shaheed

UN Special Rapporteur on Freedom of Religion or Belief

Your Excellency,

Encouraged by your invitation to, inter alia, civil society organisations to submit contributions to your thematic report on the elimination of intolerance and discrimination based on religion or belief and the achievement of a sustainable development goal 16, we are free to inform you about drastic forms of intolerance and discrimination in legislation and practices in Montenegro, as well as about the effects of such discrimination. Although the focus of your interest is on minority religious communities, as well as on vulnerable groups such as women and girls, indigenous peoples, and refugees and migrants, we are still of the opinion that developments in Montenegro, since the adoption of the new Law on Freedom of Religion or Belief and the Legal Status of Religious Communities, due to the discriminatory effects of that law, the practice of extreme intolerance shown by the Montenegrin authorities towards the Serbian Orthodox Church dioceses in that state and the potential escalation of the crisis, deserve your special attention and care and it is a negative example that should be reflected in your report for the 75th session of the UN General Assembly.

At the very beginning of our contribution, we would like to draw your attention to a few, in our opinion, extremely important facts in the context of which the information we will provide in this text could be considered. Montenegro is a multiethnic and multi-confessional society with a predominant Orthodox majority. Of the 620,029 inhabitants, according to the 2011 census, 72.07% declared themselves to belong to the Orthodox religion, 19.11% declared themselves as members of the Islamic religion, 3.44 of them belonged to the Roman Catholic religion, while members of other religions and atheists were 5.38%. Historically, the emergence and development of Montenegrin statehood is linked to the theocratic order, since the Orthodox metropolitans of Cetinje from the Petrović-Njegoš dynasty were at the same time the spiritual and secular leaders of Montenegro from the 17th to the middle of the 19th century. Today's Metropolitanate of Montenegro and the Littoral of the Serbian Orthodox Church is a continuation of the Metropolitanate headed by Montenegrin rulers, while the organisation of the Orthodox Church in Montenegro dates back to the past and exactly in 2019 a significant jubilee -

8 centuries of existence and activities of the Serbian Orthodox Church in Montenegro was marked. Montenegro acquired international legal personality in 1878, and in 1918 it became part of the Kingdom of Serbs, Croats and Slovenes, later the Kingdom of Yugoslavia. After the Second World War, Montenegro was a federal unit within the Socialist Federal Republic of Yugoslavia (SFRY), and after the dissolution of that state, it continued to be a federal unit in the two-member FRY, later renamed the State Union of Serbia and Montenegro. In socialist Yugoslavia, from 1946 to 1953, there was no legal regulation that governed the position of churches and religious communities. All existing churches and religious communities continued their existence and activities, and they were recognised as legal entities. The first legal regulation in the socialist Yugoslavia governing the legal status of churches and religious communities was passed at the federal level in 1953, and in respect of legal personality, it provided only for newly formed religious communities to be registered with municipal internal affairs bodies. During the 1970s, also during the socialist order, federal units within the SFRY passed their own laws, which basically took over the same solution referred to in the 1953 law - they only provided for newly formed religious communities to register with the local internal affairs body. It was the same in Montenegro. The matter of freedom of religion and the legal status of religious communities in that period in Montenegro was regulated by the Law on the Legal Status of Religious Communities of 1977. Since this law was adopted during the socialist regime in which antireligion figured as an implicit attribute of the ruling ideology, it is not surprising that the 1977 law did not explicitly provide for the existing churches and religious communities to maintain the continuity of legal personality. However, it implicitly granted them such a status by a provision according to which only newly established religious communities applied to the competent authority, i.e. according to which religious communities that existed and operated in Montenegro at the time of the entry into force of that law were not obliged to apply for registration with the competent state authority.

In 2006, Montenegro voted in a referendum to leave the state union with Serbia. Since gaining independence, Montenegro has concluded the Concordat with the Holy See, which has the character of an international treaty, as well as agreements on the regulation of relations of common interest that the Government of Montenegro has signed with the Islamic Community and the Jewish Community. These agreements guarantee legal continuity and ownership of property to these churches and religious communities and their organisational units. The Government of Montenegro did not conclude an appropriate agreement with the dioceses of the Serbian Orthodox Church in Montenegro, despite their principled readiness and desire to regulate issues of common interest in a uniform and essentially identical way as in the case of other churches and religious communities.

Although the 1977 Law was outdated in a number of its provisions, it was not amended until 2019. In 2015, the Montenegrin authorities prepared a draft law that was vehemently criticised by the Venice Commission of the Council of Europe in its draft opinion. After the initial failure of the authorities in 2015, there was hope that the Government of Montenegro

would study the presented objections of the Venice Commission and come up with a better and more professionally prepared Draft in front of religious communities and other interested parties. However, unfortunately, that was not the case. Instead of approaching this task responsibly and systematically in cooperation with the beneficiaries of future solutions and through a transparent and inclusive public consultation, the Montenegrin authorities have created a new and fierce climate of antireligion that is especially directed towards the Serbian Orthodox Church and its ecclesiastical entities in Montenegro. At this place, it is extremely important to point out certain political messages that were heard from the highest state positions, and which corresponded to the establishment and publication of the Bill on Freedom of Religion or Belief and the Legal Status of Religious Communities. The paradigm of such a political milieu is expressed in the statement of the President of Montenegro, who pointed out at the congress of the ruling party Democratic Party of Socialists (DPS) at the beginning of June 2019 that the moment had come to correct the great historical injustice from the beginning of the 20th century, and that, therefore, they would work diligently to restore autocephaly of the Montenegrin Church, *at any cost*. In that way, the Montenegrin authorities presented to the public the state project of creating a new and special Orthodox Church in Montenegro! Apart from the fact that such state interference with the autonomous position of churches and religious communities is inadmissible from the standpoint of all international standards of human rights and fundamental freedoms, especially in the state that is secular according to its Constitution and where there is a separation of state and religious organisations, particularly worrying is the fact that the President announced the establishment of such so-called Montenegrin Orthodox Church at the expense of the dioceses of the Serbian Orthodox Church in Montenegro. This has been additionally accompanied by his statements about how the Serbian Orthodox Church allegedly implements the Greater Serbia policy in Montenegro, which implies its anti-state actions! The essence of such efforts and attempts to create a new state Orthodox church organisation that would bring together members of the Montenegrin nation, among other things, is reflected in the violent reduction of the Serbian Orthodox Church exclusively to the church organisation of the Serbian nation, and thus the minority church organisation.

In a very sensitive atmosphere, in December 2019, the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities was adopted. The law is a blatant example of direct and indirect discrimination, illegal restriction of freedom of religion, violation of the autonomy of churches and religious communities, and state confiscation of property, which is exclusively directed against the dioceses of the Serbian Orthodox Church in Montenegro. At this place, we would like to draw your attention to two, in our opinion, most drastic types of violations of freedom of religion and discrimination on religious grounds.

The newly adopted Law on Freedom of Religion or Belief and the Legal Status of Religious Communities essentially denies the legal personality of churches and religious communities that operated in Montenegro at the time of the previous Law of 1977, according to which they were not obliged to apply for registration with the competent authorities because they

existed and operated in the territory of Montenegro long before the adoption of that law. Such churches and religious communities need to apply for registration, so they are essentially forced to register in order to gain new legal personality. This clearly suggests the intention of the state authorities to deny the enjoyment of freedom of religion in the community to believers belonging to those churches and religious communities, because *ex lege* loss of legal personality of such churches and religious communities means that they could not enjoy and exercise numerous rights and would represent a serious breach of legal certainty. Such solutions are discriminatory, as they apply exclusively to the Metropolitanate of Montenegro and the Littoral and other Serbian Orthodox Church dioceses in Montenegro, since the legal personality of the Roman Catholic Church, the Islamic Community and the Jewish Community, which were also not registered under the 1977 Law, is explicitly recognised by treaties and agreements concluded with the state. Such solutions are contrary to the Joint Guidelines of the Venice Commission and the OSCE/ODHIR on the Legal Personality of Religious or Belief Communities, which explicitly stipulate that the state, in case the new laws do not protect the vested interests, must demonstrate objective reasons that would justify a change in existing legislation, and show that the proposed legislation does not interfere with freedom of religion or belief more than is strictly necessary in light of those objective reasons.¹ In the case of the newly adopted Law, such objective reasons are neither demonstrated, nor essentially exist, while, on the other hand, the interference with freedom of religion or belief is extremely wide, because the Serbian Orthodox Church dioceses in Montenegro will either be deprived of legal personality, or, if they submit an application for registration, be considered new legal entities, which implies a series of uncertainties and open questions regarding their property and legal transactions concluded so far.

The extent of interference with freedom of religion or belief is clear not only from the fact that the provisions of the Law result in the loss of legal personality, but also from the fact of prescribing that, as the cultural heritage of Montenegro, all religious buildings and land for which there is no evidence of the right of ownership of religious communities are state property, although they were built or provided from public revenues or by joint investment of citizens before 1918! Apart from introducing an exceptional dose of legal uncertainty, because, in the conditions when there were no cadastral books, it is not possible to provide proof of ownership for centuries-old religious buildings, such a solution of the Law directly violates particularly the rights of dioceses of the Serbian Orthodox Church in Montenegro, because ownership of the property of other churches and religious communities which traditionally operate in Montenegro and which have concluded agreements with the state, is guaranteed by those agreements!!! In this way, the Law directly contradicts the views of the institution of the UN Special Rapporteur on Freedom of Religion or Belief, according to which the transfer of property of churches and religious communities to the state, especially in the context of registration, is clearly not in line

¹ European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODHIR) Joint Guidelines on the Legal Personality of Religious or Belief Communities adopted by the Venice Commission at its 99th plenary session (Venice, 13-14 June 2014), par.36

with international standards of freedom of religion or belief.² Regardless of the possibility for churches and religious communities to use potentially the religious buildings that would become state property, it is clear that any state regulation of their use could hinder the free expression of religion or belief. If we add to that the context in which the Law was adopted, which was explicitly formulated by the President of Montenegro, in whose words the state project is clearly indicated regarding creation of a new Orthodox Church in Montenegro, which would be the state church of ethnic Montenegrins who fully and freely express their religion or belief within the dioceses of the Serbian Orthodox Church in Montenegro, it is so clear that the basic goal of such solutions is actually the confiscation of property of the dioceses of the Serbian Orthodox Church in Montenegro and its transfer to the ownership and/or joint use of a new state church.

After the adoption of the Law, mass protests began in Montenegro in the form of peaceful religious processions (lities) that gathered hundreds of thousands of believers demanding the repeal of the Law. Instead of seriously considering the legitimate demands of the protest, and especially the criticism that the Law was not in line with international standards of freedom of religion or belief, the Montenegrin authorities expressed a high degree of intolerance and misunderstanding in their statements, accusing the Serbian Orthodox Church dioceses in Montenegro of anti-state action, for the alleged spread of Greater Serbian nationalism, and the culmination of such outbursts of intolerance and denial of the autonomous structure of the Serbian Orthodox Church dioceses in Montenegro were the statements of the Montenegrin Prime Minister that Montenegro was exposed to a brutal attack due to mass gatherings and that the Serbian Orthodox Church dioceses in Montenegro, as the seat of the Serbian Orthodox Church is in Belgrade, appropriated Montenegro in the religious ideology sense and denied Montenegrin independence! During the coronavirus epidemic, the Montenegrin authorities rudely and discriminatory restricted freedom of religion by applying certain measures selectively and disproportionately to the detriment of believers in the Serbian Orthodox Church dioceses in Montenegro, although peaceful prayer protests – lities were temporarily suspended by organisers before the first cases of coronavirus appeared, which was undoubtedly an act of their distinct social and civic responsibility. At the time of the epidemic, Montenegro did not declare a state of emergency based on which it could restrict the rights guaranteed by the Constitution and international treaties, including freedom of religion or belief. According to the Constitution of Montenegro, even without declaring a state of emergency, freedom of religion or belief may be restricted if it is necessary to protect human life and health, but only by law. In Montenegro, however, even before the official declaration of the epidemic, which was legally a state of emergency, an Order was issued in order to take temporary measures to prevent the new coronavirus from entering into the country, to suppress and prevent its transmission, and by which the religious communities were ordered to adapt their activities to the current epidemiological situation and to perform religious rites without the presence of believers!!! Therefore, even before the official declaration of the epidemic, an order was issued by the

² UN Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief , 22 December 2011, A/HRC/19/60

executive power, which restricted the freedom of religion or belief to the extent that it implied the performance of religious rites without believers. Subsequent toughening or mitigation of measures did not adequately take into account various aspects of freedom of religion or belief and the legitimate interests of churches and religious communities and believers who were treated unequally in relation to other categories of the population – for example, legal and natural persons performing construction works could organise work by respecting epidemiological measures and social distance between employees and other measures of protection and health at work, and pet owners were exempted from all-day validity of measures prohibiting the movement during their implementation. Culmination of restriction of freedom of religion or belief, discrimination and selective approach, as well as demonstration of intolerance and even brute force of the authorities towards the Serbian Orthodox Church in Montenegro was a call for questioning and police detention of the Metropolitan of Montenegro and the Littoral who performed religious service in the temple without believers who stood outside the temple, as well as the deprivation of liberty of the Bishop of Budimlje-Nikšić and eight priests of the Serbian Orthodox Church who, having performed the service in the temple that was allowed and performed in compliance with the measure of mandatory distance, were accused of, despite the ban on gatherings, leading the religious processions (lities), and in essence it was a spontaneous scatter of believers after the service as the vast majority of these people were in front of the religious building where the service was performed. All the events described were accompanied by an incredible amount of blasphemy in the government-controlled media and hate speech instigated by the government officials.

Your Excellency,

Having in mind everything that has been presented, we stand on the position that Montenegro, unfortunately, on a global scale, has become the most drastic example of intolerance and discrimination on the grounds of religion. The Law on Freedom of Religion or Belief and the Legal Status of Religious Communities, adopted in 2019, is worded in a way that allows the state interference with the affairs and organisation of religious entities, discrimination against the Serbian Orthodox Church dioceses in Montenegro, deprivation of their legal personality and confiscation of their property for state creation of some new Orthodox church organisation. The epidemic of the coronavirus has been grossly abused by the Montenegrin authorities for illegal interference with freedom of religion or belief. The Serbian Orthodox Church believers in Montenegro who are exposed to gross intolerance and hate speech are deeply concerned about such developments. Therefore, we believe that drawing the attention of the UN General Assembly to the current situation in Montenegro through your thematic report could contribute to calming tensions and affirming the dialogue through full respect for freedom of religion or belief. Highly appreciating your contribution to the protection of the unimpeded exercise of freedom of religion or belief and the fight against intolerance and discrimination on

the grounds of religion, we hereby express our readiness to continue to inform you of further developments and, if necessary, to request further actions in accordance with your mandate.

Please accept, Excellency, the assurances of our highest consideration.

Podgorica, Montenegro

29.06.2020.

Vladislav Bojović

President of the Association