



REGARDING THE GROWING TENSIONS IN SERBIA-MONTENEGRO RELATIONS

The Center for Euro-Atlantic Studies from Belgrade (CEAS) hopes that despite Christmas and New Year holidays on the one hand, and complex developments in the Middle East on the other, the Western international community will find the resources to pay adequate attention and to the growing tensions in relations between the Republic of Serbia and Montenegro. They have been provoked by the adoption of the controversial Law on Freedom of Religion or Belief and the Legal Status of Religious Communities, which will take effect in Montenegro on January 8, 2020.

The law is particularly problematic in parts concerning the property of major traditional religious communities, primarily the Serbian Orthodox Church, given that the issue of property relations concerning other traditional religious communities in Montenegro has been regulated by the government through special bilateral agreements with those religious communities (the Catholic Church and the Islamic community in Montenegro, for example). Tensions have exposed other weaknesses in the position of Serbs and/or Orthodox Christians in Montenegro, about which little is spoken in the appropriate manner¹.

As a think tank whose manifest emphasizes the prime principle of precedence of individual over collective rights, without disregard for the rights which individuals can only achieve through collective action, we believe that the said law is problematic and that its adoption process has not been implemented in good faith. Of course, this also applies to the unacceptable bullying by the so-called democratic opposition in the Montenegrin Parliament.

We remind representatives of the Western international community who comment on developments in the Western Balkans or directly participate in decision-making that a large number of Orthodox faithful in both countries are celebrating Christmas on January 7. In Montenegro, a considerable number of Orthodox believers have been demonstrating against the new law for days, mostly in a peaceful and dignified manner, and there have been demonstrations in Serbia too, with some unacceptable but sporadic and contained features, like an attempt to set Montenegro flag on fire². Dangerous misinformation began to circulate about Montenegro's deployment of Kosovo police units in easing tensions, and the issue of NATO's competence arose (as if Montenegro was not itself a NATO member), all of which requires attention and adequate response, regardless of complex circumstances elsewhere in the world.

¹ Vucic: I'm not going to Montenegro. B92. January 2020. Available at:

https://www.b92.net/eng/news/politics.php?yyyy=2020&mm=01&dd=04&nav_id=107741

² Serbian Ambassador refused to receive a protest note from Montenegro. B92. January 2020. Available at:

https://www.b92.net/eng/news/politics.php?yyyy=2020&mm=01&dd=03&nav_id=107740

Years-long selective approach in the analysis of the situation and regulations concerning collective rights of Serbs and/or Orthodox Christians in Montenegro, to which the West often closes its eyes, should not be justified by a conduct of Serbian ethnic "leaders" in Montenegro, nor by the attitude of the Serbian Orthodox Church towards the Montenegrin statehood. Politicization of ethnicity and tribalisation, the processes that lead to the autocracy of collective identities and hinder the true democratization of the region, that are now also used as a channel for the malign influence of third parties, both state and non-state, have been largely contributed by the Western international community, sometimes with the best intentions of ending conflicts. CEAS has written extensively on this, as well as on the problems of identity policies in the Region in its report *Basic Instinct - For More NATO in the Western Balkans*.³ Absurdly, this is accepted by many liberal circles in the region, as well as by those in the West who present themselves as experts in the region, in all other cases except *de facto* in the case of the Serbian or Orthodox right to exercise collective identity. The former must not be arbitrarily denied, just because it was abused in the 1990s.

We are keenly aware, as we constantly point out in our reports, that the Serbian "ethnic leaders" in Montenegro are politically active and are ostensibly democratic, yet tying their fate to the undemocratic regimes like the one currently governing Russia, and are not shying away from the dangerous hybrid operations to undermine indisputable Montenegrin independence or NATO membership. Unfortunately, they have the support of the self-proclaimed democratic opposition in Serbia. They have recently asked elected MPs in the Montenegrin parliament to refrain from voting on the said law, arbitrarily or purely on the grounds of their ethnic or religious affiliation, which is absolutely unacceptable and we most strongly condemn it. The matter governed by the aforementioned law is certainly a matter which the state and the legitimately elected citizens' representatives in the parliament should regulate, only better than it is done now. Equally dangerous are their calls out to the members of the law enforcement in Montenegro not to act under current laws and within legitimate command chains, but arbitrarily depending on who the law is being applied to.⁴

The disputed law is being passed in the extremely complicated regional and global circumstances since, in a complex and decentralized system of relations between the Orthodox churches, the Ukrainian Orthodox Church recently managed to gain independence from the Russian Orthodox Church by the decision of the Ecumenical Patriarchate (with the seat in Istanbul), which clearly can have implications on the outcome of the possible agreement between Belgrade and Pristina, an agreement the West supports for a good reason and expects to be reached in due time. It must be taken into consideration that one of the major elements of a possible compromise multidimensional agreement would be the position of the Serbian Orthodox Church in Kosovo, which certainly gives official Belgrade legitimacy to have a clear public stance on developments in Montenegro⁵, as well as on the position of Serbs elsewhere in the region. It is better that this position is articulated and enforced by official Belgrade, currently in the process of European integrations, rather than by the official Moscow.

³ CEAS Report. Basic Instinct. September 2017. Available at: <https://www.ceas-serbia.org/sr/publikacije/6504-ceas-new-report-basic-instinct-the-case-for-more-nato-in-the-western-balkans>

⁴ Andrija Mandić for "Novosti": Police cancel obedience to Milo. Večernje novosti. January 2020. Available at: <https://www.novosti.rs/vesti/planeta.300.html:840178-ANDRIJA-MANDIC-ZA-NOVOSTI-Milu-policija-otkazuje-poslusnost>

⁵ "Pristina would like to implement Podgorica scenario, such preparations are underway". B92. January 2020. Available at: https://www.b92.net/eng/news/politics.php?yyyy=2020&mm=01&dd=06&nav_id=107748

The entry into force of this law, as well as interpretation of the causes and reasons behind the emerging tensions, are taking place at a time when the leaders of Serbia, Northern Macedonia and Albania are making historic strides, trying to help the region, that is both normatively and politically fragmented and geographically and demographically small, respond wisely to the challenges of the twenty-first century by facilitating the movement of people, goods, services and capital, and responding jointly to emergencies, through the Mini Schengen initiative. It would also be a pity for the West if this initiative falls through because of the deteriorated relations between regional actors, that may also occur due to the biased and superficial approach of some Western and regional pro-Western actors, who tend to go ahead and automatically blame Serbia for everything.

We remind that Greece and Northern Macedonia have recently displayed much greater historical accountability and maturity by reaching difficult compromises on equally complex relations between Orthodox churches, mainly with believers from their countries, than Montenegro is showing now. Serbia and Northern Macedonia have their own challenges because of the relationship between respective churches, but they are being addressed in a less drastic way. Government of Montenegro also handled bilateral relations with some other religious communities in a similar way, especially concerning property issues, legal status and taxes. That would be an appropriate way to handle issues with Serbian Orthodox Church in Montenegro too. We emphasize that CEAS respects the secularity and equality of all religious and other communities before the law and considers the rights defined by the constitution, as the treaty of all citizens, and the primacy of the state undeniable, in comparison to the "longevity" of community's existence in some part of the territory of that state.

We would like to remind in this context that, in the last few years, the Republic of Serbia has made significant strides regarding the return of the property of Jews⁶ and the Jewish community in Serbia, with the support of the US Government.

We hope that the West will continue to show its commitment to support further genuine stabilization and democratization of the Western Balkans by not reporting and judging the events of 2020 through the black and white glasses of the 1990s, including the current ones which threaten to seriously jeopardize the sound relations between Serbia and Montenegro and destabilize the region. This black and white approach in which the Serbs are always guilty for everything was damaging even in the 1990s, when it was more grounded, but now it could seriously undermine the twenty years of painful but genuine efforts of the Serbian people in the region and the state of Serbia to confront their mistakes and not repeat them, a process assisted strongly by the West. To whom exactly would it be of interest and why?

Therefore we are particularly encouraged by the recent statements of the Serbian President Aleksandar Vučić and Anthony Godfrey, the new US ambassador to Serbia, quoted below:

“It is our obligation to respect the state of Montenegro, to understand the needs and requirements of the Serbian people.... The Serbs have matured as people and realized that we should not come together because we are against someone else, but because we are to be there for ourselves.”

⁶ Senate passes bill to help Holocaust survivors obtain restitution
Serbia is one of the pioneers in adopting similar law. East West Bridge. February 2018. Available at:
<http://www.ewb.rs/editone.aspx?id=457>

“My job as an ambassador is not to win a popularity contest in Serbia, but to explain US policies to the government and the people of Serbia, to help Washington understand what is happening in Serbia now, not what took place in 1999. To help Washington better understand that those days are over and that Serbia is moving forward.”

Many in the country and the region are still looking at Serbia from the said biased perspective, citing the often historically incorrect analyzes and arguments, as is best to be seen in the recent Appeal 88⁷ signed by public figures who have automatically accused official Belgrade for the growing tensions with Podgorica. It is an issue of concern that many of the signatories are influential in important circles in the West, so we hope that the West will pay closer attention to current events, their real causes and reasons.

In 2020, after numerous extraditions to The Hague Tribunal and the process of confronting the past, that Serbia is more or less pursuing while others are lagging behind, a benevolent attitude towards "romantic young nationalisms" such as Kosovan, Bosniak or Montenegrin, in comparison to "evil" Serbian nationalism, can no longer have legitimacy. The same applies to undemocratic overemphasizing of minor differences for the purpose of creating new collective identities. The fact that Serbia is leaning towards Russian Federation for various reasons, or that the Serbian political representatives in Montenegro themselves are looking up to Moscow, does not mean that there is no need to competently assess the real legal position of the Serbs in the region. Especially, the issue of collective rights must be adequately addressed in Montenegro, which is constituted as a state of all its citizens, without the constituent people, which we consider to be a progressive and appropriate approach, and it would be a pity to jeopardize this, and yet the threat now comes from the official Montenegro.

Last but not least, we sincerely hope that for the sake of maintaining peace and the continuation of democratization and settlement of outstanding open issues like formalization of relation between Belgrade and Pristina, the political West will for the foreseeable future, in addition to the aforementioned, also bear in mind the recent assessment of the controversial law adopted in Montenegro by Sergej Flere, professor at the University of Maribor (Slovenia)⁸, that we consider very useful for further debate and action. Here are some relevant excerpts:

“It is true that the Council of Europe’s Venice Commission did not provide many objections to this legal project and did not offer imperative instructions regarding the contentious issue (determining the ownership of facilities in the possession of religious communities....) It stated in its last opinion of May 2019 that it was not entirely clear how the administrative state body is going to determine ownership and that it was doubtful whether it could be properly carried out. However, the Venice Commission is not interested in the entirety of religious freedom issue, but only in the nomotechnical formal aspects.

However, the exercise of religious freedom is of interest to the European Court of Human Rights, in relation to Article 9 of the European Convention, which guarantees religious freedom (and possibly other articles relating to freedom of property, non-discrimination,

⁷ Appeal against Belgrade’s Threats to Peace in Montenegro and the Region. Petitions online. December 2019. Available at: https://www.peticije.online/apel_za_osudu_ugroavanja_mira_u_crnoj_gori_i_regionu_od_strane_beograda_appeal_against_belgrades_threats_to_peace_in_montenegro_and_the_region

⁸ Montenegrin church autonomy within the Serbian Orthodox Church. Danas. January 2020. Available at: <https://www.danas.rs/dijalog/licni-stavovi/crnogorskoj-crkvi-autonomija-unutar-spc/>

etc.). In today's Europe the case law of this Court is a relevant benchmark for evaluating the laws governing religious matters in the European countries.

There are two serious deficiencies in the law in terms of change of ownership of religious communities' property:

*The law does not take into account that during the entire century (since the abolishment of the independent state of Montenegro) the possessor or the owner of the Serbian Orthodox Church facilities contributed to their maintenance, their additional construction, their safekeeping, and that on those grounds he acquired certain civil rights, which can exceed in scope even the rights of the original title holder. The property itself, its maintenance over such a long time span, especially if the possession was in good faith, could result in significant rights.

*In particular, the European Court emphasizes that freedom of religion applies not only to individual belief but also to collective acts of faith, that religious life flows in the community, that collective and outwardly expressed religious life is legitimate, as long as it does not seriously threaten other rights. That is what the Christians would call "the testimony of faith."

This does not mean that religious communities necessarily have to own the facilities in which religious life takes place, but the confiscation of property rights of a religious community inevitably impairs and diminishes the freedom of religion of the members of that community. This clearly stems from the numerous judgments of the European Court of Human Rights, although the case of this nature never existed in its jurisprudence

Therefore, today it is considered that restricting the scope of religious freedoms is unacceptable, unless there are special reasons for this, such as endangering health, and on rare occasions the Court would allow exemption for reasons of public safety.

In fact, in the Montenegrin case, it is possible to restore the so-called naked property (*nuda proprietas*) while the Serbian Orthodox Church usufructs rights would remain intact, thus not jeopardizing the freedom of believers. However, the Law does not mention that.

The Montenegrin case is more paradoxical in that it envisages return of the property to the state, the property that allegedly belonged to the state church (which used to be a part of the state, so it is allegedly returning to the original owner).

Meanwhile, a civilizational shift took place. The principle of separation of the church and state was introduced.

Applying this principle only in exceptional revolutionary cases, church property was transferred to the ownership of the state, while the rule is the opposite: that property rights follow the institution in which the religious life, which that property serves, is exercised.

Actually, it is possible that the state authorities believe it is good to have this law in your pocket for future negotiations on a "real" solution. This is a very risky plan, because the other party would be given too many arguments of state arbitrariness."

Center for Euro-Atlantic Studies,
Belgrade, 8 January 2020