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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW (*)
ON FREEDOM OF RELIGION
OF MONTENEGRO

THE LAW ON FREEDOM OF RELIGION¹**I.
GENERAL PROVISIONS****Article 1**

The freedom of religion guaranteed by the Constitution shall be exercised in accordance with this Law.

The freedom of religion shall include: the right of an individual to either alone or in community with others, in public or private manifest religion or belief through worship, teaching, practice and observance, the right to change religion, the freedom to participate in religious instruction and education, as well as the right to preserve and develop the religious tradition.

Freedom of religion shall protect theistic, non-theistic and atheistic beliefs, as well as the right not to manifest any religion or belief.

The state shall guarantee unrestricted exercise of freedom of religion.

Article 2

Freedom of religion shall include the right to refuse the performance of military or other obligations involving the use of weapons (conscientious objection).

The right to conscientious objection shall be exercised in accordance with the regulations governing the area of security and defense.

Article 3

Citizens of the same religion shall have the right to manifest their religion by establishing the religious community.

A religious community is voluntary, non-profit association of persons of the same religion, established for the purpose of public and private manifestation of religion, performance of religious rites and religious affairs and which has its own structure, organs and internal rules.

Article 4

A religious community shall be free to perform religious rites and religious affairs.

A religious community shall decide independently, in particular on the following:

- 1) internal organization, establishment, composition, powers and functioning of its organs;
- 2) appointment and powers of its religious officials and other religious workers;
- 3) the rights and obligations of its believers, provided they do not interfere with their religious freedom;

¹ Text provided by the authorities of Montenegro

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4) linking with or participation in interreligious organizations located in Montenegro or abroad.

Prior to the appointment, i.e. announcement of the appointment of the highest religious leaders, a religious community shall confidentially notify the Government of Montenegro (hereinafter: the Government) about that.

Article 5

A religious community shall independently manage its property and funds based on its own autonomous regulations, in accordance with the law.

Article 6

Goods representing the cultural heritage of Montenegro, and on which the right of ownership or right to use is owned by a religious community shall not be sold or taken out of the state without the consent of the Government.

Article 7

A religious community shall act in accordance with the legal system of Montenegro, public order and morality.

The activity of a religious community must not be directed against other religious communities and religions, or to the detriment of other rights and freedoms of believers and citizens.

Political activities of a religious community and the abuse of religious feelings for political purposes shall be prohibited.

Article 8

No one shall, in any way, be forced to become or remain the member of a religious community or to participate or not participate in manifesting religion.

No one shall, because of the membership in a religious community, be prevented to use the rights to which he is entitled by the law as the citizen.

Article 9

Any form of direct or indirect discrimination based on religious beliefs or manifestation of those beliefs and incitement of religious hatred and intolerance shall be prohibited.

Article 10

Collecting and processing data on religious beliefs of an individual shall be performed in accordance with the law governing the protection of data on personality.

Article 11

Territorial configuration of a religious community registered and operating in Montenegro shall not extend outside of Montenegro.

The headquarters of a religious community registered and operating in Montenegro must be in Montenegro.

Article 12

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Individual issues of common interest for Montenegro and one or more religious communities may be regulated by the agreement concluded between the Government and the religious community.

Article 13

Supervision of the application of this Law shall be performed by the organ of the state administration responsible for the issues of human rights and freedoms (hereinafter: the Ministry).

II.

REGISTRATION OF A RELIGIOUS COMMUNITY

Article 14

A religious community or organizational part of a religious community which is located abroad (hereinafter: a religious community) shall acquire legal personality by registration in the register of religious communities (hereinafter: the Register), kept by the Ministry.

The contents of the Register, as public records, shall be determined by the Ministry.

The Register shall consist of a database and a collection of documents. The database shall be kept in electronic form.

Article 15

A religious community can be registered if it has at least 50 adult believers who are Montenegrin citizens and have permanent residence in Montenegro.

Article 16

The application for registration of a religious community shall be submitted to the Ministry by the legal representative of the religious community.

The application referred to in paragraph 1 of this Article shall contain:

- 1) the name of the religious community, which must be different from names of other religious communities and must not contain the official name of other state and its features;
- 2) the headquarters and address of the religious community in Montenegro;
- 3) the information on religious and other facilities used to perform religious rites and religious affairs;
- 4) the information on religious schools and homes for accommodation of persons attending the schools, social and humanitarian institutions, as well as informative and publishing activities of the religious community.

To the application referred to in paragraph 1 of this Article shall be enclosed:

- The decision on the establishment, with information on the persons referred to in Article 15 of this Law (name, personal identification number or identification card number, proof of citizenship and permanent residence), with their personal signature;

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- Information on the representative of the religious community (name, personal identification number or identification card number, proof of citizenship and permanent residence), with his personal signature; and
- Description of the basis of belief and autonomous regulations relating to its internal and territorial organization and mode of action in Montenegrin language or language in official use which is used by the religious community to perform religious rites and religious affairs;
- Basic religious texts of the religious community in authentic wording.

Article 17

Organizational part of a religious community that operates in Montenegro, which is located abroad, which so far has not been registered with the competent authorities in Montenegro, shall enclose to the application referred to in Article 16 of this Law, the decision of the competent authority of that religious community for entering into the Register.

Article 18

The Ministry shall determine whether the requirements prescribed by this Law for registration of the religious community are fulfilled, within 60 days as of receiving proper application and the required documentation referred to in Articles 16 and 17 of this Law.

If the religious community fulfils the requirements for registration, the Ministry shall issue a decision on entering into the Register.

Article 19

The Ministry shall refuse to register a religious community if the person authorized to represent the religious community does not file an application for registration pursuant to Article 16 paragraphs 2 and 3 of this Law.

The decision of the Ministry on refusal of entry in the Register shall be final and may be subject to an administrative dispute.

Article 20

The religious community shall notify the Ministry of any change of data referred to in Article 16 paragraph 2 and 3 of this Law, within 30 days of change.

Registration of all changes shall be performed in accordance with the provisions of this Law on the registration of a religious community.

Article 21

To a registered religious community shall be prohibited to operate, if:

- 1) it acts contrary to the legal order and public morals, encourage national, religious or other discrimination and violence or incites national, racial, religious or other hatred in order to provoke intolerance and persecution;
- 2) the purpose, objectives and methods of its religious activity are based on violence or use violence endangering the life, health or other rights and freedoms of this or other religious community, as well as other persons in a way that endangers human dignity,
- 3) it is found to carry out activities for profit, contrary to this Law.

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A state organ or organ of the state administration which find the existence of the reasons referred to in paragraph 1 of this Article shall within the competent court, without delay, initiate proceeding for prohibition of operation of the religious community.

In the case referred to in paragraph 2 of this Article, shall be applied *mutatis mutandis* the provisions of the law regulating the activities of non-governmental organisations.

The provisions of this Article shall also apply to unregistered religious community if the reasons referred to in paragraph 1 items 1 and 2 of this Article exist.

Article 22

In case of issuance of an order for investigation against a religious official for the criminal offense prescribed by the Criminal Code, the competent court shall notify the religious community.

Article 23

The Ministry will delete a religious community from the Register, if:

- 1) the religious community itself decides to dissolve;
- 2) by the final court decision is found the responsibility of the religious community for a criminal offense and is imposed the sanction of dissolution of a legal person;
- 3) the religious community ceases to exist in accordance with the provisions of this Law;
- 4) the competent organ finds that the data or enclosures to the application for the registration are incorrect;
- 5) based on a judicial decision is prohibited to the religious community to operate on the grounds referred to in Article 21, paragraph 1 of this Law.

The religious community shall be removed from the Register by the decision of the Ministry.

The decision of the Ministry referred to in paragraph 2 of this Article shall be final and may be subject to an administrative dispute.

Article 24

On the property of a religious community which is removed from the Register, after settlement of debts, shall be decided in the manner prescribed by the acts of the religious community.

If the acts of the religious community do not provide for the manner of acting, the property of the religious community shall become the property of Montenegro.

Article 25

On issues not regulated by this Law, shall apply the provisions of the law governing administrative procedure.

III.
**RIGHTS AND OBLIGATIONS OF REGISTERED RELIGIOUS COMMUNITIES
AND THEIR BELIEVERS**

Article 26

A religious community shall provide funds, for carrying out its activities, from the incomes of its own property, donations and other contributions of natural and legal persons, funds of international religious organizations of which it is member and from other legal affairs and activities on non-profit basis, in accordance with the law.

On the incomes referred to in paragraph 1 of this Article the religious community shall keep the records.

Article 27

For its obligations a religious community shall be liable with its entire property, in accordance with the law.

The property of a religious community shall be used only to perform religious rites and religious affairs, construction and maintenance of religious facilities and in charity.

Article 28

Immovable and movable goods that are owned by a religious community shall be entered, i.e. registered on behalf of religious legal persons located in Montenegro.

On behalf of the religious legal persons referred to in paragraph 1 of this Article shall be entered as well the right to use the immovable and movable property owned by the state.

Article 29

A religious community can collect donations on the basis of its autonomous regulations, in accordance with the law.

No one can be forced or prevented to give donations referred to in paragraph 1 of this Article.

Article 30

A religious community shall pay taxes, contributions and other fees, in accordance with the law.

A religious community may be fully or partially exempt from tax and other obligations, in accordance with the law.

Natural and legal persons who make donations to a religious community may be exempted from respective taxes, in accordance with the law introducing respective public income.

Article 31

A religious official shall have the right to health and pension and disability insurance, in accordance with the law.

A religious community may establish institutions for social, i.e. health and pension and disability insurance of religious officials, in accordance with the law.

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The religious community shall be obliged to register religious officials who exercise rights under paragraphs 1 and 2 of this Article, in accordance with the regulations governing the payment of contributions.

The funds from the state budget for health and pension and disability insurance of religious officials may also be provided to the religious community referred to in paragraph 3 of this Article, in accordance with the law.

If in the state budget the funds are provided for the purpose referred to in paragraph 4 of this Article, the Government shall determine the amount of funds, where on a religious community with a small number of believers may apply the principle of positive discrimination.

Article 32

To a religious community may be granted funds from the state budget and local self-government budgets for activities promoting spiritual, cultural, national and the state tradition of Montenegro, as well as for supporting social, health and humanitarian activities of special interest, provided that they are performed without any form of discrimination.

Article 33

A religious community shall have the right to build religious facilities and perform renovation and reconstruction of existing ones, in accordance with the law.

Construction, renovation and reconstruction of religious facilities shall be performed on the basis of permits and approvals required by the law and regulations governing the area of construction of facilities and protection of cultural goods, and with the professional supervision of a competent organ of the government administration.

A competent organ of the government administration or local self-government shall, when developing spatial plans, consider also the expressed needs of a religious community for the construction of a religious facility.

The organs of the state administration competent for affairs of spatial planning and construction of facilities shall not consider requests for the construction of religious facilities that do not have the approval of the supreme organs of a religious community in Montenegro.

Article 34

A religious community shall have access to public broadcasting services and other media, and the right to independently conduct its own informative and publishing activity on non-profit basis, in accordance with the law.

Article 35

A religious community, within its social and humanitarian activities, may establish relevant institutions in accordance with the law.

Article 36

Religious rites and religious affairs shall be performed in religious facilities.

As an exception to paragraph 1 of this Article, religious rites and religious affairs may be performed even out of religious facilities in places accessible to citizens, without approval, with prior notification to the organ of the state administration competent for internal affairs, in accordance with the law.

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For religious rites that are performed at the request of citizens (family saint, wedding, baptising, circumcision, confession, consecration and the like) the notification referred to in paragraph 2 of this Article shall not be required, unless these rites are performed in a public place.

Article 37

A religious official who performs a religious rite or religious affair may receive compensation, i.e. reward for religious affairs and religious rites, from the person at whose request the ritual, i.e. affair is performed, on the basis of autonomous regulations of the religious community.

About incomes referred to in paragraph 1 of this Article a religious community shall keep the records.

Article 38

A religious community shall have the right to religious spiritual care of its believers who are serving the Army of Montenegro and the police.

The manner of exercising the rights referred to in paragraph 1 of this Article shall be governed by the instruction of the competent organ of the state administration.

Article 39

A person who is in detention or serving a prison sentence, as well as the person who is in a juvenile institution or correctional home shall have the right to individual and collective religious spiritual care.

The manner of exercising the rights referred to in paragraph 1 of this Article shall be governed by the instruction of the organ of the state administration competent for the area of judiciary.

Article 40

A person who is placed in a medical institution or a social care institution shall have the right to individual and collective religious spiritual care, according to the house rules of that institution.

Article 41

Supervision of the legality of the acquisition and purposeful spending of funds of a religious community shall be performed by the competent organs, in accordance with the law.

IV.

RELIGIOUS INSTRUCTION AND RELIGIOUS SCHOOLS

Article 42

Religious instruction shall be conducted only in facilities in which are performed religious rites and religious affairs.

Participation of a minor in religious instruction shall require the consent of parents, i.e. guardians, as well as his consent if he is older than 12.

The religious instruction with pupils shall be performed only at the time when pupils do not have classes at school.

Article 43

Parents shall have the right to conduct religious instruction of their child in accordance with their religious beliefs, respecting its physical and psychological integrity.

Article 44

For education of religious officials a registered religious community may establish religious schools at all educational levels except primary education, as well as establish homes for accommodation of persons who are studying in these institutions.

The religious community referred to in paragraph 1 of this Article shall independently establish an educational program of the religious schools, the content of textbooks and manuals, determine the conditions for teaching staff.

Educational programs, as well as the contents of textbooks and manuals in religious schools shall not be in conflict with the Constitution and the law.

Article 45

Supervision in relation to compliance of educational programs and content of textbooks and manuals with the Constitution and the law shall be performed by the organ of the state administration competent for the affairs of education.

A responsible person in a religious school shall be obliged to make available all the information necessary for supervising organ referred to in paragraph 1 of this Article, as well as to correct irregularities within the deadline set by this organ.

Article 46

A religious school established in accordance with this Law may perform publicly valid educational programs, if it obtained a license in accordance with regulations in the field of education.

A religious school that is licensed, i.e. accredited as an educational institution, shall be entitled to funding from the state budget, in proportion to the number of pupils, in accordance with the law.

Article 47

Teaching in religious schools may be performed only by Montenegrin citizens.

As an exception to paragraph 1 of this Article, a foreigner can teach in religious schools under conditions specified by a separate law.

**V.
PENALTY PROVISIONS****Article 48**

A fine of EUR 500 to EUR 20,000 shall be imposed for a misdemeanour on a legal person:

- 1) acting contrary to Article 7 of this Law;

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- 2) who in any way forces another person to become or remain the member of a religious community, to participate or not participate in manifesting religion and not to use the rights to which he is entitled by the law as the citizen (Article 8);
- 3) who forces or prevents another person to give donations to a religious community on the basis of its autonomous regulations (Article 29 paragraph 2);
- 4) who establishes a religious school for primary education (Article 44 paragraph 1).

A fine of EUR 30 to EUR 2,000 shall be imposed for the misdemeanour referred to in paragraph 1 items 2 and 3 of this Article, on a natural person and responsible person.

A fine of EUR 150 to EUR 6,000 shall be imposed for the misdemeanour referred to in paragraph 1 item 2 of this Article, on an entrepreneur.

Article 49

A fine of EUR 30 to EUR 2,000 shall be imposed for a misdemeanour on a natural person:

- 1) who is parent or guardian performing religious instruction contrary to the decision of the child (Article 42 paragraph 2);
- 2) who is religious official performing religious instruction contrary to Article 42 paragraphs 1 and 3 of this Law.

VI.

TRANSITIONAL AND FINAL PROVISIONS

Article 50

The regulation referred to in Article 14 paragraph 2 of this Law shall be delivered within 30 days as of the date of entry into force of this Law.

Article 51

From the organ of state administration competent for internal affairs the Ministry shall take over the data on religious communities that were registered with that organ until the entry into force of this Law, within 30 days as of the date of entry into force of this Law.

A religious community that is registered in accordance with the Law on the Legal Status of Religious Communities (Official Gazette of Socialist Republic of Montenegro, no. 9/77), shall be obliged to harmonize its acts and submit the application for registration in accordance with this Law within six months as of the date of its entry into force.

A religious community which does not act in accordance with paragraph 2 of this Article shall not be considered to be the registered religious community within the meaning of this Law.

Article 52

Religious facilities and land used by the religious communities in the territory of Montenegro and for which is found to have been built or obtained from public resources of the state or have been in state ownership until 1 December 1918, as the cultural heritage of Montenegro, shall be the property of the state.

Religious facilities for which is found to have been built on the territory of Montenegro from joint investments of the citizens until 1 December 1918, shall be the property of the state.

Article 53

The organ of administration competent for property affairs shall be obliged to within one year as of the date of entry into force of this Law, determine the religious facilities and land that, within the meaning of Article 52 of this Law, are the state property, to make a list of them and submit an application for registration of the state ownership rights on that immovables in the immovables cadastre.

The organ of administration competent for cadastre shall be obliged to perform the registration of rights referred to in paragraph 1 of this Article within 60 days as of submission of the application.

Article 54

On the date of entry into force of this Law, the Law on the Legal Status of Religious Communities (Official Gazette of the Socialist Republic of Montenegro, no. 9/77) shall cease to be valid.

Article 55

This law shall enter into force eight days as of its publication in the Official Gazette of Montenegro.