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FREEDOM OF RELIGION OR BELIEF RELATED TO INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE (TANGIBLE AND INTANGIBLE)

In the period of last few years in Montenegro the right of citizens to freedom of religion or belief was not in accordance with international standards and it refers both to its legal aspect and implementation. In Montenegro this issue is guaranteed by the Constitution and a few laws. There are several laws and the most important law is the Law on Legal Position of Religious Communities. This Law is completely out of date as it was passed in 1977 during the time of former SFRY and during the time when the communist ideology was the official one. The first and elementary step regarding the monitoring of this right shows that Montenegrin authorities have not been ready to observe this right according to the constitution or even the Law that is very problematic in some of its provisions. For example, according to this law there is an obligation that all the churches and religious organisations and communities are registered (before they start to work) and the body in charge of registration is the Ministry of Interior at municipality level. All the churches, communities and religious organisations in Montenegro met this requirement apart from Serbian Orthodox Church. The Montenegrin Helsinki Committee considers this as an act of discrimination i.e. putting Serbian Orthodox Church in privileged position. As a matter of fact, when an MP, Krsto Pavicevic asked the government about this several times in the last few years the answer was that Serbian Orthodox Church had a special legal status. It was concluded by the Committee and others that the government put Serbian Orthodox Church in the position of an official state church, which is not possible according to Montenegrin constitution. According to Montenegrin constitution Montenegro is defined as a secular state and the constitution provides strict division between the state and churches, religious communities and organisations. Apart from what has been said, in many other cases such as law implementation, court verdict implementation, the authorities allowed non-effective implementation when Serbian Orthodox Church is in question. We will provide a brief summary of such cases such as St Petka Church case, Rumija case etc. Some representatives of Serbian Orthodox Church explained their position by saying that the state laws and court verdicts are not valid for them but only the heavenly and God's laws. It is believed (the Committee shares this belief as well) that we could recognise the use of religion for political purposes as far as

different levels of authorities (including Serbian government and para-government institutions) are concerned and their attitude towards the right to freedom of religion or belief.

Intentional Destruction of Cultural Heritage. In the monitoring period the problem of preservation of tangible and intangible cultural heritage has become more serious. This problem has existed for a long time (particularly present in the last 15 years). The government and other institutions did not show the capacity or political will to solve the problem. The Committee thinks that there are enough elements that the problem can be characterised as mass and systematic deliberate destruction of tangible and intangible cultural heritage in Montenegro. Apart from Montenegrin Helsinki Committee, many other respectable Montenegrin organisations and associations as well as respectable individuals, among which Montenegrin PEN Centre, Matica Crnogorska, Prince Nikola II Petrovic Njegos, criticised the government and asked it to stop the destruction and to repair what could be repaired. This is clear violation of domestic laws but also international law, such as UNESCO conventions and the documents of other international organisations. In many cases, people from the structure of Serbian Orthodox Church, its organisational structure from Montenegro, were involved in it. However, the Committee thinks that there is a reasonable doubt that official Serbia stands behind this intentional destruction of cultural heritage in Montenegro (government but also para-government institutions). Namely, the targets of attacks are the elements of Montenegrin cultural heritage that witness the historic continuity of Montenegrin cultural, spiritual, religious and any other identity and tradition. The reason for this is Serbian Orthodox church (particularly what is in the background of it) that advocates the creation of Greater Serbia and within this it wants to show that Montenegro, even when it was independent was one of Serbian states, and that Montenegrins do not have any ethnic distinction but that they are the purest Serbs (some kind of Arians). The destruction of cultural heritage is also a part of strategy of assimilation of Montenegrin against their own will. When we analyse the heritage that was the target of attacks and the destruction we can see that it is the heritage from the earliest periods of Montenegrin history, particularly the heritage from the time of Doclea and Zeta, the first state organisations of today's Montenegrin citizens. The cultural heritage from the time shows significant different from the Serbian heritage from the same period. The activity of Serbian Orthodox Church was particularly obvious as it wanted to take some churches from early Christian period although they belong to the churches of Western type, as the first Eastern type organisation was established in 1219.

Out of many significant cases of cultural heritage destruction (tangible and intangible) we will give a brief summary of St Petka Church case and Rumija case. The Rumija case that caused a lot of negative attention of both local and international public eventually moved the Montenegrin government to action and in September 2005 it put the report about the situation of cultural heritage in Montenegro in the government procedure. The Ministry of Culture and the Media did the report and the work on it lasted for a long time. At the end of October the government considered the report and adopted the conclusion so that the destruction should be stopped and cultural heritage protected in Montenegro.

Unfortunately, the effects and the results of the implementation of this government programme are not still visible.

Rumija case. On June 18, 2005, the army forces of the former Union of SiCG (a helicopter unit) damaged archeological site on the top of Rumija mountain which is more than 2000 old and placed a metal building – a church on this place, allegedly at the request of Serbian Orthodox Church. Rumija is the highest mountain on the coast near the town of Bar. On the top of the mountain there was a pile of stones (tumulus) which was unexplored archeological site. According to expert opinion it was a grave of a high-ranked person from the Illyrian period. The site is estimated 2,500 years old. Therefore, the described activities of the army were against both local and international law. Apart from the destruction of tangible heritage, there was intentional destruction of intangible heritage. Namely, in this area, for hundreds of years there is a ceremony with religious elements here, and the people from the neighbouring area participate in it. They belong to different ethnic, religious etc. communities that have existed in the area for centuries. This cult now has a character of Christian manifestation as a very old cross is carried during the ceremony. A particular value of this ceremony is that everybody took part in the ceremony – Moslems, Catholics, Orthodox etc. – although the ceremony was held under the sign of a cross. This is a very important part of the tradition and culture of joint life that has existed in the area of Rumija mountain for years, which many people in Montenegro emphasise as one of the most valuable things in our tradition and which represents the most valuable intangible cultural heritage in Montenegro. By placing Serbian Orthodox Church there on June 18 and making it sacred on July 31, this tradition was interrupted. For a lot of members of ethnic minorities as well as for many Montenegrins, the participation in this event was unacceptable, which the organisers of the destruction, it seems, wanted to achieve. The very act of placing the metal church on archeological site was a clear political act, done by the army, an institution of the former Union of SiCG. In the pictures you could see weapons (for celebration) and there was support to persons indicted for war crimes, including genocide (the participants had T shirts with photographs of Ratko Mladic, Radovan Karadzic, Slobodan Milosevic etc.). You could see political messages on placards such as “This is Serbia” etc. It is obvious that this intentional destruction of tangible and intangible heritage on Rumija was done with political purpose in order to show that it was Serbian ethnic territory and that there was no place for minorities there. It was also an attack to the culture of joint life and solidarity that exists in the area as well as attack to the idea that Montenegro could become a citizens state of all its citizens regardless of the difference between them. The authorities reacted to this in an inadequate way. The authorities did not find any individual criminal responsibility or initiated any criminal investigation although it is their obligation according to national and international law and documents (UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, for example). The case is still pending.

St Petka case. On December 8, 1995, people from the local board of Serbian Orthodox Church, in a place called Spicansko Polje, in Sutomore, Bar municipality, removed the Catholic altar from the church of St Petka and changed the lock in order to prevent Catholic believers and priests to use the church (the church was built together in 15th

century and it was a joint property of both Catholics and Orthodox and it had two altars). The believers and priests of Catholic Church reported about this case to the police, the mayor of Bar, the Ministry of Religion and others asking for things to be put in previous condition and they requested to be allowed to use the church as they did for centuries.

The attempts to solve the problem by agreement did not succeed so the Catholic church initiated a lawsuit before municipality court of Bar in 1997. They asked the court to decide on the way of use of the joint church (both churches have half ownership). The Serbian Orthodox Church initiated a different lawsuit asking the court to decide that this church is the exclusive and the only owner of the church. It was in 1998. The dispute is resolved by the final decision of Higher Court in Podgorica which rejected the request of Serbian Orthodox Church (September 24, 2002). The same court passed a final verdict about the lawsuit initiated by Catholic Church (The Archbishopric of Kotor) about the way of using the joint church. Serbian Orthodox Church refused to accept voluntary application of the decision so the Catholic Church initiated the procedure of the court execution, so the court of Bar passed a decision on involuntary execution on May 29, 2006. After a lot of appeals, the court passed the decision that the application of the verdict was on August 7, 2006. The decision has not been applied because of illegal procedure of a judge from the Court of Bar, Srdjan Kosanic, who, contrary to national and international law, decided not to apply the verdict of the court. In this case there is a violation of the right to religion or belief, the right to cultural heritage (tangible and intangible), the right to independent and impartial court and fair trial, the right to property and peaceful enjoying of property and we can also speak about discrimination based on religion. The case is still pending. In this case the authorities did not find any individual criminal responsibility for destruction of cultural heritage (there was no investigation either).

This joint church was used by both religions for 500 years without any disputes. Besides, this kind of joint churches and their mutual use is a good tradition that is particularly characteristic for Montenegrin coast. In this region there has always been a culture of mutual life and solidarity, regardless of the fact who was in power or what the status of the territory was. Unfortunately, the most valuable intangible cultural heritage of Montenegro has been a target of attacks in the last fifteen years and the authorities did not show the capacity and political will to preserve it, to prevent every attempt of its destruction and to punish the perpetrators.

Recommendations:

1. The Republic of Montenegro should include international standards concerning freedom of religion or belief in its new Constitution and the laws that will be passed. It should also include solutions that provide that international ratified law is directly applied and has priority over national law;
2. Montenegro should sign or ratify (i.e. accede) relevant international documents on human rights that refer to the right to freedom of religion or belief

and documents that refer to the protection of cultural heritage (first of all, Convention concerning the Protection of the World Cultural and Natural Heritage of 1972, Convention of Safeguarding of the Intangible Cultural Heritage, UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage etc.);

3. The authorities of Montenegro at different levels should meet their obligations regarding solving the pending cases as well as initiate procedure for those cases that have not been initiated, so that all the cases are solved in accordance with international standards; and
4. The government of Montenegro is invited to meet the obligations from the conclusions that it adopted in October 2006 regarding destruction of cultural heritage.

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