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SERBIA: Restitution Law passed

By Drasko Djenovic, Forum 18

As Serbia and Montenegro separate, the Serbian National Assembly has passed a Restitution Law for property confiscated from religious communities. Much doubt remains about whether the Law will operate fairly, Forum 18 News Service has found. There are also concerns about how the complex legal problems involved will be resolved. This is especially the case for communities, such as Kalmykian Buddhists, with no unambiguously clear legal successor. It is also, Forum 18 has found, a problem for those – such as Adventists and Baptists - whose property was in the 1920s and 1930s formally owned by private individuals or companies, even though it was in practice owned by the church. Property such as formerly-Catholic and formerly-Methodist hospitals is barred from return. But religious communities also hope to regain some property, such as Catholic and Serbian Orthodox land given to the churches in the eighteenth century by the Habsburg Empress Maria Theresa.

As Serbia and Montenegro separate into separate countries, the Serbian National Assembly has voted through the "Law On the Restitution of Property to Churches and Religious Communities" on 25 May. The Law came into force on 10 June, and will be applicable from 1 October 2006. Parliament has stated that the Law should also apply in Kosovo, even though it is unlikely that this will happen.

Reaction to the Law has been mixed, Forum 18 News Service has found. Although the Law proclaims the principle of equal legal treatment of all religious communities, much doubt remains about whether it will operate fairly in practice (see F18News 9 May 2006 http://www.forum18.org/Archive.php?article_id=776). These doubts have been amplified by Serbia's refusal to change its controversial Religion Law, even though Serbian President Boris Tadic has asked for this Law to be amended, as it breaks the European Convention on Human Rights (see F18News 23 May 2006 http://www.forum18.org/Archive.php?article_id=785).

The main change from the draft version of the Restitution Law is in article 36, which now reads: "'From 1 May 2006 no disposal may be made of property which is the subject of restitution according to the provisions of this law, nor security or guarantees put down or lease given on that property. Legal transactions and legal acts which are in contradiction to the provisions of paragraph 1 of this article are null and void."

It is unclear how this change can be enforced, given that the Law was not in operation on 1 May. Forum 18 has not been able to discover why this amendment was made. There is a possibility that some current users of the property might have rushed to use the property before 1 May as security on bank loans, taken out while the Law was being debated by the National Assembly.

Article 6 states that property can be restored to "churches and religious communities, or their legal successors," which opens a number of complex questions. For example, the Buddhist temple in Belgrade, built in 1929, was confiscated after the Second World War and destroyed in the 1950s. The community it was built for, Buddhists from the historically Buddhist republic of Kalmykia in Russia, had fled Soviet persecution. But most of these Kalmykian people have left the country, and it is unclear whether or not the present-day Buddhist community in Serbia is the legal successor of the Kalmykian Buddhists.

The Seventh-day Adventist Church faces a related problem with their headquarters building in Belgrade, as well as with other buildings in Serbia. As the Adventists were unable to register in the 1930s in the then Kingdom of Serbs, Croats and Slovenes, their headquarters building was officially the Cultural Centre "Preporod", owned by Sasic and Company. This firm was owned by an Adventist family, and printed the Adventist magazine of that time, "Preporod". There is no doubt in anyone's mind that the building was in fact owned by the Adventists, but in law the building was confiscated not from the Adventists but from the firm of Sasic and Co., which no longer exists. It is unclear how this legal problem can be resolved under the Restitution Law.

Nenad Ilic of the Ministry of International Economic Relationships – which drafted the Law - told Forum 18 on 20 June that "such cases, when there is no doubt that the property really belonged to the church or religious community would probably lead to the property being restored under this Law." This contention has yet to be legally tested.

Many Protestant religious communities face similar problems. "The main problem is that most confiscated buildings were not officially confiscated from Protestant churches, but from private persons or associations - even if de facto the property belonged to the churches," Zdravko Sordjan of the Belgrade-based Centre for Tolerance and Inter-religious Relations told Forum 18 on 20 June.

Article 9 states that: "The subject of restitutions are properties which at the time of their expropriation were in the possession of churches and religious communities, those being: agricultural land; woods and woodland; construction sites; residential and business buildings, or the ideal parts of such buildings; apartments and business premises; movables of cultural, historical or artistic significance."

One example of the problems faced by churches in using this article of the Law, is the Serbian Baptist Union's quest to recover land in the Fruska Gora, a hilly agricultural area close to the city of Novi Sad. "Our lawyers who were able to trace two areas of land in the Fruska Gora, belonging to Novi Sad Baptist church," Zarko Djordjevic, Secretary of the Serbian Baptist Union told Forum 18 on 20 June. "We do not have legal documentation of this, and need to find a way of proving our ownership legally. The problem is that both areas of land were, before they were confiscated, technically owned by three ethnic German Baptist pastors, none of whom are still alive and only one of whom has descendents in Serbia."

The daughter of one of the pastors, Adolf Lehotsky, is a long-standing lecturer of the Baptist Theological College in Novi Sad, Professor Ruth Lehotsky. She wants to help resolve the problem of the land and told Forum 18 on 20 June about another case in the area. "I am personally emotionally touched that we have lost a Baptist graveyard in Novi Sad as well. My grandfather, Peter Lehotsky, was the last person buried there, but this graveyard does not exist anymore." (Professor Lehotsky is also the only female theological lecturer in Serbia with a doctorate.)

"We hope that we will find a legal way to prove that the two plots of land were not private property, but the property of the Baptist Church," Zarko Djordjevic told Forum 18.

Excluded from return under article 11 are properties whose return would cause "significant hindrance to the work and operation of state authorities, public health, cultural or educational institutions or other public services". This article may prevent the return of the Lutheran so-called "German Church" in Belgrade. In the late 1980s it became the BITEF theatre, having been confiscated after the Second World War. Although never formally opened as a church due to the War, it today still has a cross on the church tower. But as it was never formally opened, it was not formally recorded as a church in the Land Register. This poses the question of how, legally, the church can be proved to belong to the Lutherans even though there is no doubt that it was Lutheran property.

Also possibly barred from return under article 11 is a formerly-Methodist hospital in Novi Sad, a formerly-Catholic hospital in the Zemun district of Belgrade, and a formerly-Methodist retirement home in Srbobran. At least seven Methodist churches were also confiscated in Communist times.

Fr Franc Senk of the Catholic Archdiocese of Belgrade told Forum 18 on 20 June that "in many cases, buildings have been built on land belonging to churches. For example in the courtyard of the Belgrade Archdiocesan headquarters (which leads the Catholic Church in Serbia and Macedonia), two buildings with apartments for senior Communist officials were built."

Land belonging to Catholic churches or monasteries was also confiscated, which removed a means of support for the church. In Vojvodina, in northern Serbia, Fr Senk told Forum 18 that land confiscated from both the Catholic Church and the Serbian Orthodox Church had been given to both churches under the Habsburg Empress Maria Theresa (1717–1780) in the eighteenth century.

Fr Senk stated that the Archdiocesan headquarters is in the process of renovation – the first since it was built over a century ago - but "when we start work again, we will see what documents in the archive would help restitution claims."

(The Archdiocesan building's renovation is of some historical importance, as it was originally the Embassy of the Austro-Hungarian Empire to the Kingdom of Serbia, and hence was one of the buildings from which the beginning of the First World War was declared in 1914.)

The office of the Patriarch of the Serbian Orthodox Church told Forum 18 on 20 June that "We are glad that government has found the strength to correct the unjust acts of the past. The biggest question is what will happen to property belonging to the Serbian Orthodox Church in Kosovo, and will UNMIK and the international community have the strength to return the property of the Serbian Orthodox Church to the Church."

The Serbian Orthodox Church is also concerned about property – such as apartments in central Belgrade – it was forced to "sell" to private persons for nominal sums, such as 1 Dinar [9 Norwegian Øre, 1 (European) Cent and 1 (US) Cent]. "The church is making a list of nationalised property and collecting documentation," Forum 18 was told.

The Organisation for Security and Co-operation in Europe (OSCE) Mission in Belgrade told Forum 18 on 20 June that they do not have any official comment on the Restitution Law. (END)

For more background, see Forum 18's Serbia religious freedom survey at http://www.forum18.org/Archive.php?article_id=387 and survey of attacks on religious minorities in 2004 and early 2005 at http://www.forum18.org/Archive.php?article_id=581 and survey of attacks later in 2005 at http://www.forum18.org/Archive.php?article_id=647

A printer-friendly map of Serbia and Montenegro is available at
<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=yugosl>

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