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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MONTENEGRO

DRAFT SECRETARIAT MEMORANDUM

**ON THE COMPLIANCE OF THE REVISED DRAFT LAW
ON AMENDMENTS TO THE LAW
ON MINORITY RIGHTS AND FREEDOMS**

**as submitted
by the Ministry of Human and Minority Rights
on 9 May 2016
(CDL-REF(2016)039)**

**WITH THE OPINION OF THE VENICE COMMISSION
ON THE DRAFT LAW ON AMENDMENTS TO THE LAW
ON MINORITY RIGHTS AND FREEDOMS
(CDL-AD(2015)033)**

**Taken note of by the Venice Commission
at its 107th Plenary Session
(Venice, 10-11 June 2016)**

I. Introduction

1. Following a request on 15 June 2015 by the Ministry of Human and Minority Rights of Montenegro, an opinion of the Venice Commission on the draft law introducing amendments to the Law on Minority Rights and Freedoms of Montenegro was adopted by the Venice Commission (CDL-AD(2015)033) at its 104th Plenary Session (Venice, 23-24 October 2015)
2. The draft law was revised by the Ministry of Human and Minority Rights of Montenegro and transmitted to the Venice Commission on 04 May 2016 (CDL-REF(2016)039). The Minister asked for an assessment of the compliance by the revised draft law with the recommendations by the Venice Commission in its October 2015.
3. The present memorandum examines whether and to what extent the revised draft law follows the recommendations contained in the Venice Commission's opinion (hereinafter "opinion") of 23-24 October 2015.
4. The present memorandum is based on the English translation of the revised draft law, which may not accurately reflect the original version on all points. Moreover, a different translation has been made for the revised draft. Some of the issues raised may therefore find their cause in the translation rather than in the substance of the provisions concerned.
5. *The Venice Commission took note of this memorandum at its ... Plenary Session (Venice, ... 2016)*

II. Preliminary remarks

6. In its opinion, the Venice Commission welcomed the draft Law on Amendments to the Law on Minority Rights and Freedoms of Montenegro as a positive legislative initiative, aiming at bringing the legislation pertaining to the protection of national minorities, and its implementation, more in line with the European standards and the best practices in the field.
7. The Venice Commission acknowledged the commitment of the Montenegrin authorities to addressing the shortcomings found in the operation of the mechanism for state financial support to the activities of national minorities by, among the others, the monitoring bodies of the Framework Convention on the Protection of National Minorities. In particular, the Commission noted the authorities' willingness to make this mechanism more effective, more transparent and free from any undue influence or pressure.
8. The Venice Commission gave a generally positive opinion on the draft law. However, it noted that the proposed system was a complex and even sophisticated one and expressed concern that it might be difficult to manage it in practice. Therefore, it made five main recommendations and, throughout the text of the opinion, a series of additional recommendations.

III. Analysis of the follow-up to the key recommendations

Institutional framework (art. 8a)

9. The Venice Commission recommended specifying the functions, organization and institutional position of the “public institution” established by art. 8a of the draft law, its relations with the minority councils and the Minority Fund¹, and its supervision by the “organ of the state administration responsible with human and minority rights”. In this connection, it recommended to harmonize the wording of art. 8a with article 42č, to make it clear that they both refer to the same – already operating (since 2001) – institution, i.e. the Centre for Minority Culture Preservation and Development.

10. The new text added in art. 8a of the revised draft does not specify the functions, organization and institutional position of the Centre; it does not provide a clear delimitation of its mandate, which would help avoid undue overlapping with other institutions. In October 2015, in their comments on the draft opinion, the authorities explained that “the establishment and competences of the Centre shall be governed by its founding decision”, which should be harmonized with the revised law within 90 days as of its entry into force. The transitional provisions (article 42 č) of the revised draft indeed require harmonization of the “founding decision” of the Centre with the (revised draft) law within 90 days after its entry into force. However, this does not respond to the recommendation to provide *in the Law* clarification on the mandate, scope of action, supervision/autonomy of the Centre.

11. The revised draft law, in its art. 7, establishes a new body, the Council for Minority Nations and Other National Minority Communities, in addition to the present institutional framework of the protection of minority rights in Montenegro.

12. The Venice Commission does not dispose of sufficient information and elements to express an opinion on this new body and therefore reserves its position.

Elections to the minority councils (art. 33 para. 9)

13. In its opinion, the Venice Commission raised concerns over the fact that, under the previous draft law, the *ex officio* members of the minority councils would have taken part in the election of the other members of the minority councils. Not only would the *ex officio* members have become members by reason of their political status, but they would have also received the extra power to decide upon the election of other members.

14. The recommendation has been followed: under to the revised draft, *ex officio* members of the minority councils cannot take part in the election of the other members of the councils.

Representation of minorities in the Management Board of the Minority Fund (art. 36b)

15. The Venice Commission recommended providing for representation, in the Management Board of the Minority Fund, of each of the minority councils representing national minorities and national minority communities. The recommendation has been followed: new article 36b amends the composition of the Management Board to ensure that each minority council will have its representative in the Management Board.

¹ Fund for the protection and exercise of minority rights

16. At the same time, the new draft law adds one further representative of the Parliament of Montenegro and states that “at least one member (of the three representatives of the Parliament) represents a political party of national minority and other minority national community”, which will give one minority a stronger representation on the Management Board.

Eligibility criteria/incompatibilities (art. 36c and 36dž)

17. The Venice Commission recommended reconsidering the eligibility criteria/incompatibilities for the Management Board and the Director of the Minority Fund, which would have prevented potential candidates with useful experience (such as members of NGOs working on minority rights) from being elected as members of the Management Board or Director of the body. The recommendation has been followed, as all the exclusion clauses have been deleted.

Project evaluation. Fund’s expenditure (art. 36i)

18. The Venice Commission recommended, as a way to avoid undue influence on the access to subsidies, to entrust the Management Board of the Fund with the power to prescribe the modalities to evaluate projects and the content of the forms and any required documentation. This recommendation has not been followed, as art. 36i has not been amended and this power still lies within the Ministry.

19. The Venice Commission also recommended setting a reasonable percentage cap to the Fund’s budget for the operational expenses, in order to prevent the Board from having utter discretion over the allocation of money. The recommendation has been implemented, as the revised draft law establishes a 30% cap on the operational expenses.

IV. Additional observations

20. Further recommendations were made by the Venice Commission in its opinion. Notably, recommendations concerned:

- the issue of a possible deadlock while taking the final decision over the evaluation procedure:

The revised draft law addresses the problem of a possible deadlock in the final stage of the decision over the evaluation of projects. In case the Management Board fails to take a decision - as an appeal body - within the given deadline, the decision of Director of the Fund becomes final.

- the election of the Director of the Fund:

The Venice Commission recommended a qualified majority requirement for the Director’s election. According to the Commission, this requirement would contribute to ensuring impartiality in the operation of the Fund. This would also legitimate the increased powers given to the Director with the new amendments. The revised draft law does not address the recommendation.

- the timeframe between the announcement of competition and the deadline for submission of project proposals:

The Venice Commission recommended that a reasonably sufficient period be provided between the announcement of the competition for state support and the deadline for the submission of projects, which would contribute to the Fund's neutral operation and credibility. The revised draft law does not address the recommendation.

V. Conclusions

21. Almost all key recommendations formulated by the Venice Commission in its opinion were addressed and followed:

- the first key recommendation, namely to specify the functions, institutional position and supervision of the Centre for Minority Culture Preservation and Development, has not been followed, and lack of clarity over the institutional framework remains. The Venice Commission may not express its position on the new body created by the revised draft law (the Council for Minority Nations and Other National Minority Communities);
- the second key recommendation, concerning the role of *ex officio* members in the elections to the minority councils, has been followed;
- the third and fourth key recommendations on the representation of minorities in the Management Board and eligibility criteria have been followed;
- the fifth and last key recommendation has been partly followed, as the power to prescribe the modalities to evaluate projects still lies within the executive.