



Strasbourg, 9 May 2011

Opinion No. 630 / 2011

CDL-REF(2011)021
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW ON AMENDMENTS
TO THE LAW ON ELECTION OF COUNCILLORS
AND MEMBERS OF PARLIAMENT
OF MONTENEGRO

PARLIAMENT OF MONTENEGRO

PODGORICA

Based on Article 93 paragraph 1 of the Constitution of Montenegro, in line with the agreement and majority consent of the Council of the President of the Parliament of Montenegro, we hereby submit the PROPOSAL LAW ON AMENDMENTS TO THE LAW ON ELECTION OF COUNCILLORS AND MEMBERS OF PARLIAMENT.

MEMBERS OF THE PARLIAMENT:

1. Milutin Simović, M.Sc., president of the MP Group of DPS
2. Aleksandar Damjanović, M.Sc. president of the MP Group of SNP
3. Borislav Banović, president of the MP Group of SDP

DRAFT LAW ON AMENDMENTS TO THE LAW ON ELECTION OF COUNCELLORS AND MEMBERS OF PARLIAMENT

Article 1

Article 1 of the Law on Election of Chancellors and Members of Parliament (OGRM 4/98, 5/98, 17/98, 14/00, 18/00, 9/01, 41/02, 46/02 and 48/06) is amended and reads as follows:

"This Law regulates the following: the manner and procedure of election of councillors in parliaments of municipalities, city municipalities, the Capital and Historical Capital (hereinafter referred to as municipality), and the members of the Parliament of Montenegro; the organisation, composition and powers of authorities administering elections; the establishing of voting results and allocating of seats; the protection of suffrage and other issues of significance for organisation and carrying out of elections."

Article 2

Article 2 is amended and reads as follows:

"Persons with Montenegrin citizenship who are included in the electoral roll in accordance with the law regulating electoral roll (hereinafter referred to as voter) shall elect councillors and representatives and be entitled to be elected councillors and MPs, on the basis of their universal and equal suffrage, at free and direct elections, by secret ballot, in accordance with this law.

No one may, on whatever grounds, take voters to account for voting, or ask them to say who they have voted for or why they have not voted."

After the voting is completed, public opinion polling may be carried out with regard to voting of voters who are willing to be subject to the same.

Article 3

Article 3 paragraphs 3 and 4 are deleted.

Article 4

In Article 4 paragraph 1 and other provisions of the Law (Art. 38, 39, 42, 43, 55) the words: "political *stanka*" in different cases are replaced by the words: " political *partija*¹ in corresponding cases.

Article 5

In Article 6 and other provisions of the Law (Art. 10, 38, 39, 113) the word "citizens" and the word "citizen" in different cases are replaced by the word "voters" or the word "voter" in corresponding cases.

Article 6

In Article 8 and other provisions of the Law (Art. 38, 52, 88, 92, 99, 105, 110, 111g, 112, 113) the word "Republic", in different cases is deleted.

¹ "stanka" and "partija" both mean "party" in English.

Article 7

In Article 9 and other provisions of the Law (Art. 12, 32, 43, 48a, 51, 59, 115, 116, 117) the word "Republic" in different cases is replaced by the word: "Montenegro" in corresponding cases.

Article 8

Article 11 is amended and reads as follows:

"A voter who has turned 18 years of age, with business capacity and permanent residence in Montenegro for no less than two years prior to the polling day is entitled to elect and be elected a MP.

A voter who has turned 18 years of age, with business capacity and permanent residence in Montenegro for no less than two years and permanent residence in a municipality, or a city municipality as an electoral district for no less than six months prior to the polling day is entitled to elect and be elected a councillor."

Article 9

Article 12 paragraph 3 is deleted.

Article 10

Article 13 paragraph 1 is amended and reads as follows:

"The election of councillors or MPs shall be called by a decision passed by the authority administering calling for election."

In paragraph 3 the word "Republic" is deleted, and at the end of the text, the period is replaced by a comma, and the following is inserted: "and for councillors in the Official Gazette of Montenegro – municipal regulations, too".

Article 11

Article 14 paragraph 4 is amended and reads as follows:

"The terms of office shall be verified within 30 days after the polling day, where the Chairperson of the meeting of the relevant parliament shall make a statement and announce that by submission of the report on the election results by the competent election commission, the terms of office for newly elected councillors, or MPs have been verified."

Article 12

In Article 15 paragraph 1 the words: "Parliament of the Republic" are replaced by the words:

"Parliament of Montenegro (hereinafter: Parliament), the words "of the Republic" after the words "of the term of office of the Parliament" are deleted and the words: "President of the Republic" are replaced by the words: "President of Montenegro".

In paragraph 2 the words: "president of municipality" are replaced by the words: "President of Montenegro".

Paragraph 3 is inserted after paragraph 2, and reads as follows:

"The provisions of Article 14 paragraphs 2, 3 and 4 of this Law shall be applied in the case referred to in paragraphs 1 and 2 of this Article."

Article 13

Article 16 is deleted.

Article 14

Paragraph 2 is inserted in Article 20 and reads as follows:

"A candidate from the list of candidates may not be a member of election commissions and his term of office shall cease in such an authority upon his acceptance of the candidate nomination for a councillor or MP."

Article 15

In Article 22 and other provisions of the Law (Art. 23, 31, 32, 33, 37, 43, 46, 66, 67, 68a, 69, 69a, 74, 76, 78, 79, 82, 85, 87, 92, 93, 98, 99, 100, 108, 110, 111b, 111g, 111d, 111e, 112) the words: "Republic Election Commission" in different cases are replaced by the words: "State Election Commission" in corresponding cases.

Article 16

Article 24 is amended and reads as follows:

"Standing composition of the municipal election commission shall be appointed by municipal parliament, at proposal of the working body of the municipal parliament responsible for elections and appointments, out of candidates proposed by political parties having councillors in the municipal parliament.

Decision on appointment of municipal election commission shall be published in the Official Gazette of Montenegro – municipal regulations".

Article 17

Article 25 is amended and reads as follows:

"Municipal election commission shall be composed of: chairperson, secretary and five members in the standing composition and one authorised representative of each submitter of candidate lists.

The candidate of a political party, i.e. submitter of candidate list which won the highest number of councillor seats at previous elections shall be appointed the chairperson of municipal election commission.

If a coalition candidate list won the highest number of seats at previous elections, the candidate of the political party which won the highest number of councillor seats within the coalition shall be appointed the chairperson of municipal election commission.

The candidate of political party which won the second highest number of councillor seats or votes at previous elections shall be appointed the secretary of municipal election commission according to criteria established in the provisions of this Article for appointment of the chairperson of municipal election commission, unless otherwise envisaged by this law.

One representative of each of the two opposition political parties in the relevant parliament with the highest number of seats, or the highest number of votes in case of the same number of seats won at previous elections must also be appointed members of the standing composition of the municipal election commission.

Chairperson and members of municipal election commission in standing composition shall have their deputies appointed.

Authorised representative of the submitter of a candidate list may have a deputy.

Chairperson and members of the commission, as well as authorised representatives of submitters of lists of candidates, in case of their absence or disability to attend, shall be replaced by their deputies in performing activities and tasks.

Chairperson of the commission, his deputy and secretary, as well as members of the commission shall be appointed from out of graduated lawyers, and deputy commission members shall be, by rule, appointed from out of graduated lawyers."

Article 18

In Article 26 in paragraph 4 the words: "15 days" are replaced by the words: "20 days".

Paragraph 5 is inserted after paragraph 4 and reads as follows:

"The term of office of authorized representatives in municipal election commission shall cease on the day of establishing the final election results."

Article 19

The following words are inserted in Article 27 item 4 at the end of the text: "and organise their education (training) on procedures for the work of the Polling Board, and at the end of the text in item 13 the following words are inserted: "and about filling vacant councillor seats.

Paragraph 2 is inserted after paragraph 1 and reads as follows:

"Municipal election commission shall have its website to immediately publish its acts and information of significance for carrying out of elections, as well as interim and final voting results on every polling station."

Article 20

Article 29 is amended and reads as follows:

"State Election Commission in standing composition shall be appointed by the Parliament, at proposal of the working body of the Parliament responsible for elections and appointments, from out of candidates nominated by political parties having MPs in the Parliament.

Decision on appointment of the State Election Commission shall be published in the Official Gazette of Montenegro."

Article 21

Article 30 is amended and reads as follows:

"State Election Commission shall be composed of: chairperson, secretary and nine members in the standing composition and one authorised representative of each submitter of candidate lists.

The candidate of a political party which won the highest number of MP seats at previous elections shall be appointed the chairperson of the State Election Commission.

The candidate of political party which won the second highest number of MP seats at previous elections shall be appointed the secretary of State Election Commission.

One representative of each of the four opposition political parties in the Parliament must be appointed the members of the standing composition of State Election Commission.

Chairperson and members of the State Election Commission in standing composition shall be assigned deputies.

Authorised representative of the submitter of a candidate list may have a deputy.

Chairperson and members of the State Election Commission, as well as authorised representatives of submitters of lists of candidates, in case of their absence or disability to attend, shall be replaced by their deputies in performing activities and tasks relating to the State Election Commission.

Chairperson and members of the State Election Commission, their deputies and secretary of the Commission shall be appointed from out of graduated lawyers."

Article 22

Paragraph 5 is inserted in Article 31 and reads as follows:

"The term of office of authorized representatives in the State Election Commission shall cease on the day of establishing the final election results."

Article 23

The following words are inserted in Article 32 paragraph 1 item 13 at the end of the text: "and about filling vacant MP seats."

A new item is inserted after item 15 and reads as follows:

"15a) shall pass Rules of Procedure;"

The period at the end of the text in paragraph 2 is replaced by a comma and the following words are inserted: "as well as interim and final voting results on each polling station".

Article 24

A new Article is inserted after Article 33 and reads as follows:

"Article 33a

Chairperson and secretary of the State Election Commission may perform their duties under professional terms, subject to the decision of the Parliament.

Decision on remuneration of the Chairperson and secretary of the State Election Commission who perform their duties under professional terms shall be adopted by the committee of the Parliament responsible for administrative issues."

Article 25

Article 34 is amended and reads as follows:

"The State Election Commission shall form a service of the State Election Commission (hereinafter referred to as Service) to perform professional and administrative operations.

The secretary of the State Election Commission shall manage the Service.

The act on internal organization and systematisation of the Service shall be adopted by the Commission, at proposal of the secretary of the Commission and with prior opinion of the state administration authority in charge of human resources.

Regulations related to senior and lower grade civil servants shall be applied to the status and other rights of employees of the Service.

The Parliament shall provide the conditions for the work of the State Election Commission and the Service."

Article 26

Article 35 is amended and reads as follows:

"Polling Board shall be composed of the chairperson and four members in the standing composition and one authorised representative of each submitter of candidate lists.

Each political party represented in relevant parliament shall be entitled to the number of chairpersons of Polling Boards commensurate with proportional representation of councillor seats in the parliament, while polling stations where an individual political party would propose the candidate for chairperson of the Polling Board shall be determined by municipal election commission by drawing lots.

Two members of the standing composition of the Polling Board shall be appointed based on the proposal of the political party or coalition with majority in relevant municipal parliament.

One representative of each of the two opposition political parties in relevant parliament which won the highest number of seats or highest number of votes in case of the equal number of seats must be appointed in the standing composition of the Polling Board.

If there is only one opposition political party in the relevant municipal parliament, two representatives of such party shall be appointed in the standing composition of the Polling Board.

Chairperson and members of the Polling Board, as well as authorised representatives of submitters of lists of candidates, in case of their absence or disability to attend, shall be replaced by their deputies in performing activities and tasks related to the Polling Board."

Article 27

A new Article is inserted after Article 35 and reads as follows:

"Article 35a

Municipal election commission is obliged to pass a decision specifying which political parties are entitled to propose representatives in the standing composition of the Polling Board no later than 15 days before the polling day.

Municipal election commission shall deliver the decision referred to in paragraph 1 of this Article to all submitters of verified candidate lists within 24 hours from the time of its passing.

Right to objection or complaint against the decision referred to in paragraph 1 of this Article is admissible, in accordance with the procedure for protection of suffrage established by this law."

Article 28

A new Article is inserted after Article 36 and reads as follows:

"Article 36a

In case of simultaneous elections for councillors and MPs, Polling Boards formed to carry out elections for councillors shall perform tasks of Polling Boards for election of MPs."

Article 29

In Article 38 paragraph 2 the words: "Political parties" shall be replaced by the words "Submitters of lists of candidates referred to in paragraph 1 of this Article".

Article 30

In Article 39 paragraph 4 is amended and reads as follows:

Notwithstanding paragraph 3 of this Article a candidate list for election of MPs submitted by civic groups or political parties representing a minority nation or a minority national community may include no less than 1/3 and no more than as many candidates as are elected."

Article 31

A new Article is inserted after Article 39 and reads as follows:

"Article 39a

For the purpose of exercising the gender equality principle, there shall be no less than 20% of candidates of less represented gender in the candidate list."

Article 32

Paragraph 5 is inserted in Article 42 and reads as follows:

"The person designated as the holder of the list of candidates needn't be a candidate in the list."

Article 33

In Article 43 paragraph 2 the words: "Albanians in Montenegro" are replaced by the words: "minority nation or a minority national community ", and after the words "no less than 1,000 voters" the following words are inserted "and they shall exercise the right referred to in Article 94 paragraph 2 of this Law.

A new paragraph 3 is inserted after paragraph 2 and reads as follows:

"Candidate list for election of MPs representing a minority nation or minority national community of Croats is considered established if it supported by signatures of no less than 300 voters.

Paragraphs 3 and 4 shall become paragraphs 4 and 5.

In former paragraph 5, which is becoming paragraph 6, the words: "referred to in paragraphs 1 and 2" are replaced by the words: "referred to in paragraphs 1, 2 and 3".

Article 34

Two new items are inserted in Article 46 paragraph 2 and read as follows:

"7) extract from the constitutive and programme act;

8) application of the submitter of the list of candidates that they are taking stand in elections for authentic representation of a minority nation or a minority community."

Paragraph 4 is inserted after paragraph 3 and reads as follows:

Election application form referred to in paragraph 2 item 8 of this Article shall be established by the State Election Commission."

Article 35

A new Article is inserted after Article 47 and reads as follows:

"Article 47a

State Election Commission shall establish if the requirements for exercise of the right referred to in Article 94 paragraph 2 of this Law are complied with based on the election application, title of the list of candidates and constitutive act of the submitter of the list of candidates. "

Article 36

A new paragraph is inserted in Article 48 after paragraph 1 and reads as follows:

"The decision referred to in paragraph 1 of this Article that is passed by the State Election Commission shall also include a statement on compliance with the requirements for exercise of the right referred to in Article 94 paragraph 2 of this Law."

Former paragraph 2 shall become 3.

Article 37

Article 49a is deleted.

Article 38

Article 50 is amended and reads as follows:

"From the day of verifying the list of candidates to the completion of the election propaganda (hereinafter referred to as election campaign), the submitters of lists of candidates shall be entitled to inform the citizens about their candidates, programmes and activities,

through the national public broadcasting agency Radio –Television of Montenegro, as well as through regional and local public broadcasting agencies, in the same daily timing and/or rubrics, on daily basis, in equal duration and free of charge.

During the election campaign the submitters of lists of candidates shall be entitled to marketing promotion of their candidates and programmes and publishing of announcements of their promotional gatherings in the shows and/or columns of commercial public media, and commercial advertising space, with payment of relevant consideration and as agreed with the broadcasting agency.

Commercial broadcasting agencies are obliged to enable paid broadcasting to submitters of verified lists of candidates under equal conditions.

No property (money, technical devices, premises, equipment, etc.) of state bodies, public companies, public institutions or funds, local self-government units, or companies under ownership interest of the state may be used for presentation of lists of candidates."

Article 39

A new Article is inserted after Article 50 and reads as follows:

"Article 50a

Public officials appointed or nominated by the Government of Montenegro or elected or appointed by the local self-government, senior grade and lower grade civil servants may not take part in election campaign, or express their positions with regard to elections in public, during working hours, i.e. while on duty.

Police officers and members of National Security Agency must not take part in election campaign in any way."

Article 40

Article 51 is amended and reads as follows:

"During election campaign period Radio-Television of Montenegro, regional and local public radio-broadcasting agencies shall be obliged to provide presentation of all submitters of verified candidate lists, as well as presentation and reasoning of their election programmes, on daily basis, in equal duration and at the same time, fully free of charge and equally, within their political newscasts and in precisely defined political marketing blocks, which can be heard and watched on the entire territory of Montenegro and/or local self-governments.

Radio-Television of Montenegro, regional and local public broadcasting agencies shall not be allowed, under any conditions, to enable the presentation and reasoning of election programme of submitters of lists of candidates or their indirect advertising outside the time referred to in paragraph 1 of this Article."

Article 41

A new Article is inserted after Article 51 and reads as follows:

"Article 51a

During the election campaign period state officials and local self-government officials may make presentations as representatives of candidate lists and may, in their media presentations on electronic public, commercial and non-profit media promote election programmes and candidate lists in the fashion and in the scope as prescribed by this Law regarding media presentation of representatives of candidate lists during the election campaign.

During the election campaign period, the officials referred to in paragraph 1 of this Article are not allowed to misuse or use their media presentation in the role of the government or other public officials for advertising or indirect advertising of the candidate list and/or their election programme.

Editors, journalists and hosts of political-informative programmes, as well as cultural, documentary and sports programmes on electronic public, commercial and non-profit media are obliged, by means of their professional and impartial behaviour, not to allow indirect

advertising of election programmes of submitters of candidate lists by the officials referred to in paragraph 1 of his Article for the purpose of ensuring equal presentation of all participants to the election process during the election campaign."

During the election campaign period, media may not present comments or texts that would imply party affiliation or have party propaganda nature when reporting on the current events and work of state authorities and officials."

Article 42

Article 52 paragraph 2 is deleted.

Article 43

Article 53 is amended and reads as follows:

"During the election campaign period, Radio-Television of Montenegro, regional and local public broadcasting agencies shall be obliged to provide presenting of announcements of all promotional gatherings of submitters of lists of candidates, on daily basis, in equal duration and at the same time, fully free of charge and equally, in commercial marketing blocks, which can be heard and watched on the entire territory of Montenegro and/or local self-government."

Article 44

A new Article is inserted after Article 53 and reads as follows:

"Article 53a

During election campaign period, Television of Montenegro and Radio of Montenegro shall be obliged to provide each submitter of verified candidate list with free, equal and daily broadcasting of the following within all commercial marketing blocks and within political newscasts on a TV channel, or within a Radio programme which can be watched and heard on the entire territory of Montenegro:

- political and propaganda TV-clips or audio-clips in all political marketing blocks, the duration of which is not less than 200 seconds a day, depending on the planned number of advertising blocks of political marketing;

- Three-minute coverage of the promotional gathering, twice a day, at the time immediately after the central evening informative TV and Radio shows.

The production of contents referred to in paragraph 1 of this Article shall be the obligation of the submitters of lists of candidates being promoted.

During election campaign period, regional and local public radio-broadcasting agencies shall be obliged to provide each submitter of verified candidate list with free, equal and daily broadcasting space within commercial marketing blocks which can be watched and heard on the entire territory of the local self-government in the scope and manner referred to in paragraphs 1 and 2 of this Article."

Article 45

Article 54 is amended and reads as follows:

"Commercial broadcasting agencies media, referred to in Article 50 paragraph 2 of this Law that carry out marketing promotion of candidates and programmes of submitters of lists of candidates and which present announcements of promotional gatherings of submitters of lists of candidates, with payment of a consideration, shall be obliged to post the designation "paid election marketing" on such commercial marketing contents".

Article 46

Article 55 is amended and reads as follows:

"Presentation of participants in election campaign through public broadcasting agencies, in accordance with this Law, shall be carried out based on the rules passed by relevant authority of the public broadcasting agency.

The public broadcasting agency shall pass the rules referred to in paragraph 1 of this Article and make them accessible to the public no later than 10 days from the day of election calling."

Article 47

Article 56 is amended and reads as follows:

"During election campaign period, Television of Montenegro and Radio of Montenegro shall be obliged to organise and broadcast on weekly basis no less than two hour-and-a-half shows of confrontation of submitters of verified candidate lists and candidates from such lists within political newscast broadcasted between 8pm and 11pm, as agreed between editorial team and submitters of candidate lists.

Editors and hosts of shows referred to in paragraph 1 of this Article shall, by mutual agreement with submitters of verified candidate lists, determine the list of questions to be the topic of the show, in accordance with law and editorial criteria.

Editors and hosts of the shows referred to in paragraph 1 of this Article shall be obliged to treat all participants in confrontation shows impartially and equally."

Article 48

Article 57 is deleted.

Article 49

Article 59 is deleted.

Article 50

Article 62 is amended and reads as follows:

"During the election campaign period, all public and commercial media in Montenegro shall be obliged to publish evaluations, conclusions and decisions of competent authorities which specify that a certain public medium has violated the provisions of this Law prescribing impartial, equal and objective provision of information to citizens regarding programmes and candidates of political parties and other submitters of lists of candidates."

Article 51

"Presentation of submitters of candidate lists through commercial and non-profit broadcasting agencies shall be carried out based on the rules to be adopted by the broadcasting agency with the aim to ensure fair editorial policy and equal presentation of submitters of verified lists of candidates.

The commercial and non-profit broadcasting agencies shall adopt the rules referred to in paragraph 1 of this Article and make them accessible to the public no later than 10 days from the day of election calling."

Article 52

A new Article is inserted after Article 64a and reads as follows:

"Article 64b

By means of a special decision the Parliament shall establish a Board for monitoring the application of the Law on Election of Councillors and Members of Parliament in the part related to media (hereinafter referred to as the Board).

The Board shall have 10 members and shall be composed on parity basis out of MPs of the Parliamentary majority and Parliamentary opposition. Chairperson and Deputy Chairperson of the Board shall be appointed from out of the members of the Board.

The Board shall be established no later than 10 days from the day of calling of elections for MPs.

Proposal for appointment of the Chairperson, Deputy Chairperson and members of the Board shall be submitted to the Parliament by the working body of the Parliament in charge of election and appointments.

The Committee shall be responsible to monitor and supervise the application of the provisions of this Law related to obligations of the media in pre-election campaign, including but not limited to:

- 1) considers complaints in respect of acting of media and takes positions and passes conclusions in respect of the same;
- 2) warns media to act in accordance with this Law and eliminate potential irregularities;
- 3) publishes its positions and conclusions in public;
- 4) informs the Agency for Electronic Media and competent media authorities about the violation of the provisions of this Law by media, in order to undertake measures under their scope of competences against the media acting contrary to the Law.

The Board shall decide by majority votes of its members.

The Board shall supervise the acting of media from the day of its establishing to publication of the final election results.

Media shall immediately publish the findings and conclusion of the Board specifying that a medium has violated the provisions of this Law.

The Rules of Procedure of the Parliament of Montenegro shall be accordingly applied to issues of work of the Board not regulated by this Article."

Article 53

In Article 68 paragraphs 1 and 2 the word "self-government" is replaced by the word "government".

Article 54

Article 69 paragraph 4 is amended and reads as follows:

"The voters shall confirm the receipt of ballots by their signatures on the extract from the electoral roll."

Article 55

In Article 70 paragraph 1 the words: "shall be open at 8.00am, and closed at 9pm" are replaced by the words: " shall be open at 7.00am, and closed at 8pm ".

Article 56

Paragraph 5 is inserted in Article 72 after paragraph 4 and reads as follows:

"Police officers must not vote, or enter polling stations in uniforms, unless requested by the Polling Board chairperson to prevent direct threats to public order and safety at a polling station."

The existent paragraph 5 shall become paragraph 6.

Article 57

Article 74 paragraph 5 is amended and reads as follows:

"The colour of ballots shall be determined by the State Election Commission for election of MPs, and municipal election commission for election of councillors."

Article 58

A new paragraph 2 is inserted after paragraph 1 in Article 75 and reads as follows:

"In case several voting procedures take place at the same time, verified extracts from electoral roll shall be issued in the number equivalent to the number of voting procedures."

Former paragraphs 2, 3 and 4 shall become paragraphs 3, 4.i 5.

Article 59

In Article 80 paragraph 1 is amended and reads as follows:

"The voter shall report his first and last name to the Polling Board, and prove his identity by his ID card, or passport if it includes the unique ID number or ID card number."

Article 60

Article 81 paragraph 4 is amended and reads as follows:

"If in the course of voting any of the rules referred to in paragraphs 1 to 3 of this Article is violated, the Polling Board may be dismissed. If the Polling Board is dismissed, the voting at such polling station shall be repeated."

Article 61

In Article 85 in paragraph 1 in the second sentence the words: "its representative for absentee ballot procedure" are replaced by the words: "its two representatives for absentee ballot procedure who may not be from the same political party or coalition".

In paragraph 3 the word "representative" is replaced by the words: "one of the representatives", and in paragraph 4 the words: "Representative delivers" are replaced by the words: "Representatives deliver".

Article 62

In Article 93 paragraph 2 at the end of the text the period is replaced by a comma and the following words are inserted: "in accordance with this law".

Article 63

Article 94 is amended and reads as follows:

"Candidate lists that have won no less than 3% of the total number of valid votes in an election district shall take part in allocation of seats.

Notwithstanding paragraph 1 of this Article:

1) lists of candidates of a specific minority nation or minority national community, specified in the election application, title of the list of candidates or constitutive act of the submitter of the list of candidates, if none of them meets the requirement referred to in paragraph 1 of this Article, and individually they gain no less than 0.7% of valid votes, shall acquire the right to take part in allocation of seats as a single – collective list of candidates with the total number of won valid votes, provided that adding up to the maximum 3% of the total number of valid votes of these lists shall be recognised for allocation of seats;

2) in case none of the candidate lists of the minority nation or minority national community of the Croats meets the requirements referred to in paragraph 1 of this Article and item 1 of this paragraph, the most successful one, with no less than 0.4% of valid votes shall acquire the right to one MP seat."

The rights referred to in paragraph 2 of this Article shall be exercised by candidate lists representing a specific (the same) minority nation or a specific (the same) minority national community.

The participation of a candidate list of a specific minority nation or minority national community in the pre-election coalition with candidate lists of another minority nation or minority national community or candidate lists of political parties or civic groups not exercising the right referred to in paragraph 2 of this Article shall not deny the right referred to in paragraph 2 of this Article to other submitters of candidate lists of that minority nation or minority national community.

Article 64

Article 94a is deleted.

Article 65

Article 95 paragraphs 2 and 3 are replaced by three new paragraphs that read as follows:

"An individual list of candidates shall gain the number of seats that equals the quotients belonging to it.

Allocation of seats won by a candidate list by adding up votes to maximum 3% shall be carried out in the way that this number of votes of the collective list of candidates is divided by 1, 2, and finally by the number corresponding to the number of MPs, and such obtained quotients shall be classified by the size of the number of votes gained by individual list of candidates from the collective list of candidates.

If two or more lists of candidates gain the same quotients based on which they would be allocated one seat, it shall be determined by drawing lots which list of candidates shall be allocated this seat. "

Article 66

Article 96 is amended and reads as follows:

"The seats that a list of candidates has acquired shall be allocated to candidates according to the order from the list of candidates. "

Article 67

In Article 104 in paragraph 2 the words: "who is decided by the submitter of the list of candidates" are replaced by the words: "who is next according to the order in the candidate list.

A new paragraph is inserted after paragraph 2 and reads as follows:

"If the term of office of a councillor or MP elected from a coalition list terminates due to the reasons envisaged in Article 101 of this Law, the candidate coming next according to the order of the constituent list he belongs to shall be elected as the councillor or MP. "

The former paragraphs 3,4 and 5 shall become paragraphs 4,5 and 6.

Article 68

Article 105 paragraph 1 is amended and reads as follows:

"Early elections for councillors or MPs shall be called and held in case the Parliament is dissolved or a decision is made on shortening the term of office of the Parliament."

In paragraph 2 before the word "conducted" the words: "called and" are inserted".

Article 69

A person who is included in the electoral roll on the day this Law enters into force, but without data on citizenship or with the citizenship of any of the former SFRY Republics, the local government authority responsible for maintaining the electoral roll shall issue a notification that the electoral roll does not have the data on Montenegrin citizenship within 90 days from the date this Law enters into force.

The person referred to in paragraph 1 of this Article shall remain included in the electoral roll if he provides the evidence of Montenegrin citizenship by _____.

Article 70

The Parliament of Montenegro shall appoint State Election Commission in accordance with this Law within 60 days from the day this Law enters into force.

Municipal parliaments shall appoint municipal election commissions within the deadline referred to in paragraph 1 of this Article.

Article 71

This Law shall enter into force on the eighth day after its publication in the Official Gazette of Montenegro.

RATIONALE TO THE PROPOSAL LAW ON AMENDMENTS TO THE LAW ON ELECTION OF COUNCILLORS AND MEMBERS OF PARLIAMENT

I. CONSTITUTIONAL GROUNDS FOR PASSING THE LAW

The constitutional grounds for regulating issues that are the subject of this Law are contained in Article 16 paragraph 1 item 1 of the Constitution of Montenegro, which defines that a law, in accordance with the Constitution, should regulate the way of exercising human rights and freedoms, when required for their implementation.

The subject of this law is regulating (prescribing) the manner and procedure for exercising the right of suffrage, as one of the basic – fundamental political rights and freedoms.

II. REASONS FOR PASSING THE LAW AND PROPOSAL LAW DRAFTING PROCEDURE

The constitutional law for implementation of the Constitution of Montenegro Article 8 envisages that within three months from the day the Constitutional Law enters into force the Law on Election of Councillors and MPs, among others, should be harmonized with the Constitution.

In order to fulfil this obligation, the Council of the President of the Parliament (23rd Parliamentary term) formed a Multi-Party Working Group to develop the Proposal Law on Amendments to the Law on Election of Councillors and MPs harmonised with the Constitution. This Working Group failed to draft the Proposal Law within the given time frame and therefore the Council of the President of the Parliament of the 24th Parliamentary term re-established the multi-party working group to resume working on drafting the Proposal Law.

In the meantime, due to the failure to meet the obligations within the given time frames, amendments were made to the Constitutional Law for implementation of the Constitution even five times and the time frame for harmonisation of the election law was extended, so according to the latest amendments the time frame is set to 31 May 2011.

The Council of the President of the Parliament of the 24 Parliamentary term recommended to the multi-party working group it established that in the course of working on harmonising the election law with the Constitution it should pay special attention to the following issues: 1) suffrage, i.e. holder of the right of suffrage (citizenship holder or citizen); 2) manner and procedure for exercising authentic representation in parliaments by members of minority nations and other minority national communities and 3) incorporation of OSCE recommendations in the law, where currently possible, in relation to harmonisation with the Constitution and democratic improvement of rights and procedures in electoral procedure.

After several months of work, the Working Group failed to produce the Proposal Law, but in accordance with the agreement achieved in the Council of the President of the Parliament a part of the Working Group from Parliamentary majority produced the Draft Law that was considered by the Parliament at the sitting held on 10 March 2010 when it was concluded that the text should be submitted to the Council of Europe – Venetian Commission and OSCE to provide expert opinions, and that proposals of political parties that were not incorporated in the Draft Law should be delivered to them along with the text.

Having received the Joint opinion of the Venetian Commission and OSCE /ODIHR, the Working Group identified that the Venetian Commission and OSCE /ODIHR mostly assessed positively and supported the Draft Law and sent several recommendations aimed at clear defining and improving specific solutions, based on which the Working Group further edited the previous text.

However, unanimous agreement on the final text of the Proposal Law failed to be achieved in the Working Group, and since the time frame for harmonisation of the Law with the Constitution was running out, the representatives of DPS and SDP in the Working Group – MPs Miodrag Vuković, Ph.D. and Rifat Rastoder drafted the Proposal Law that was submitted to the Parliament.

Thereafter, the MPs of the Socialist People's Party, New Serb Democracy and Movement for Changes submitted the Proposal Law on Amendments to the Law on Amendments to the Law on Election of Councillors and MPs.

None of these proposal laws was supported by two-third majority at the sittings of the Parliament, therefore the Constitutional Law was amended and the time frame for harmonisation of the election law was extended until 31 May 2011.

The Working Group continued its work and used both proposal laws as equal texts. In the continuation of work, most issues from both proposal laws were agreed upon, but agreement on the text as a whole failed to be achieved, therefore the Working Group at the meeting of 18 February 2011 stated that it finished its work, and agreement failed to be achieved on the text as a whole due to four issues related to: 1) authentic representation of minority nations and minority national communities; 2) representation of women in candidate lists; 3) establishing a special working body to monitor the application of the Law with regard to behaviour of media in the election campaign and 4) transitional solution for exercising suffrage.

The Working Group made the conclusion to inform the Council of the President of the Parliament that it finished its work and submit it the Text of the Proposal Law for which agreement was achieved as well as non-agreed solutions for further consultations and agreements.

The Council of the President of the Parliament continued to work on agreeing the positions and after two months work, 25 meeting, on 5 May 2011 it was concluded that there was no unanimous consent on disputable issues, but three-fourth consent was achieved for these issues and it was concluded that the members of the Council from political parties that agreed upon the text should submit the Proposal Law.

In line with the mentioned, the presidents of the MP Groups of DPS, SDP and SNP are submitting the Proposal Law on the Amendments to the Law on Election of Councillors and Members of Parliament.

III. EXPLANATION OF PROPOSED SOLUTIONS

1. As to the suffrage, it is clear that the Constitution of Montenegro envisages that the subject of the right of suffrage (holder of the right to vote and the holder of the right to be elected) is the holder of Montenegrin citizenship, therefore the solution proposals related to this right envisage that any holder of Montenegrin citizenship has the right of suffrage. However, Article 69 of the draft law allows persons without data on citizenship or with the citizenship of any of the republics of the former SFRY republics to remain on the electoral roll until they provide the necessary evidence of Montenegrin citizenship.

2. As to the authentic representation of members of minority nations and minority national communities the following were considered as starting principles: 1) Montenegro is one electoral district without establishing of any special polling stations; 2) proportional electoral system; 3) uniform model for all minority nations or minority national communities and no secured seats without required number of votes. For the purpose of exercising affirmative action principle, i.e. creation of conditions for exercising the right to authentic representation, lower thresholds have been prescribed for establishing of candidate lists and participation in

allocation of seats for lists of candidates taking part in elections for authentic representation of a minority nation or minority national community.

Specific solutions related to exercise of the right to authentic representation are covered by Art. 9, 29,30,33,34,62,63 and 64 of the Proposal Law and they should not be elaborated or explained in more details.

3. As to the OSCE recommendations, significant number of recommendations was incorporated that relate to the legal (legislative) framework and election administration including but not limited to: allocation of seats according to the order from the candidate list; possibility that in addition to political parties, civic groups could stand on elections independently; ban to candidates from candidate lists to be the members of election commissions; that the threshold of 3% for participation in allocation of seats should be calculated in relation to the total number of valid votes; publishing of election results in public; scope of competencies of the State Election Commission in relation to decisions of Municipal Election Commissions; right of political parties in election coalition to appoint members in the bodies administering elections; fair allocation of presidents of Polling Boards among parties entitled to standing members; more balanced representation of political parties in bodies administering elections and increase in the number of such parties in election bodies; ensuring partial professional character of the State Election Commission; training of members of Polling Boards; restriction of conditions for dismissing Polling Boards and repeated voting and other.

At the same time, the obligations of submitters of candidate lists and media in the election campaign were clearly defined, for the purpose of achieving the principle of equality of submitters of candidate lists in the election campaign.

4. The Proposal Law contains a significant number of solutions related to legal-technical and wording adjustments of the Law to the Constitution.

IV. FINANCIAL RESOURCES

The implementation of this law does not require the provision of any additional funds in the budget of Montenegro.