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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT AMENDMENTS
TO THE CONSTITUTION
OF THE REPUBLIC
OF MONTENEGRO

Proposed amendments to the Constitution of Montenegro
(draft amendments 11 May 2011)

Proposal No. 1

The present provision:

Competencies
Article 82

The Parliament shall:

14) appoint and dismiss from duty: the Supreme State Prosecutor and State Prosecutors, the Protector of Human Rights and Liberties; the Governor of the Central Bank and members of the Council of the Central Bank of Montenegro; the president and the members of the Senate of the State Audit Institution and other officers as laid down by law;

The proposed amendment:

In Article 82 paragraph 1 item 14 the wording "and State Prosecutors" shall be deleted.

Proposal No. 2

Article 91

In Art. 91 (2), after the words "the President of the Supreme Court", the following words shall be added: "appoint and dismiss the Supreme Court State Prosecutor".

Proposal No. 3

PART THREE
ORGANISATION OF GOVERNMENT
5. COURT

The proposed amendment:

In Part Three titled "organisation of Government" the title of item 5 "COURT" shall be replaced by "JUDICIARY".

Proposal No. 4

The present provision

Permanence of office

Article 121

Judges shall be elected for life.

Judicial office shall cease if a judge: so requests; reaches statutory retirement age; and if he/she has been punished by an unconditional prison sentence.

A judge shall be dismissed from office if: he/she has been convicted for an act that makes him/her unsuitable for judicial office; he/she exercises the judicial functions unprofessionally or in a negligent manner; he/she becomes permanently incapacitated to exercise judicial functions.

A judge shall not be transferred or assigned to another court without his prior consent except where so set forth by the Judicial Council decision concerning the reorganisation of courts.

The proposed amendment:

Article 121 shall be amended as follows:

Judges shall be elected for life.

Cessation of office and dismissal from office as judge shall take place in such cases and in such procedures as prescribed by law.

A judge shall be dismissed from office if he/she has received a final decision finding him/her guilty of a crime committed with intent and through the misuse of judicial office.

Proposal No. 5

The present provision

Supreme Court

Article 124

The Supreme Court shall be the highest court in Montenegro.

The Supreme Court shall ensure a uniform application of laws by the courts.

The President of the Supreme Court shall be elected and dismissed from office by the Parliament at the joint proposal of the President of Montenegro, Speaker of the Parliament and Prime Minister.

If the proposal for the election of the President of the Supreme Court is not submitted within 30 days, the President of the Supreme Court shall be elected at the proposal of the competent parliamentary working body.

The proposed amendment

Article 124 shall be amended as follows:

The Supreme Court shall be the highest court in Montenegro.

The Supreme Court shall ensure a uniform application of laws by the courts and shall exercise such other functions as may be prescribed by law.

After Article 124 a new article shall be added reading as follows:

**“President of the Supreme Court
Article 124a**

The President of the Supreme Court shall be appointed and dismissed from office by the Parliament upon the proposal of the Judicial Council and after it has previously obtained the opinion of the General Meeting of the Supreme Court.

The President of the Supreme Court shall serve a term of office of five year.

Proposal No. 6

The present provision

**Composition of the Judicial Council
Article 127**

The Judicial Council shall have a President and nine members.

The President of the Judicial Council shall be the President of the Supreme Court.

Members of the Judicial Council shall be as follows:

- 1) Four judges elected and dismissed from duty by the Conference of Judges;
- 2) Two Members of the Parliament elected and dismissed from duty by the Parliament amongst the parliamentary majority and opposition;
- 3) Two renowned lawyers elected and dismissed form duty by the President of Montenegro;
- 4) The Minister of Justice.

The President of Montenegro shall proclaim the composition of the Judicial Council.

The mandate of the Judicial Council shall be four years.

The proposed amendment:

Article 127 shall be amended to read as follows:

“The Judicial Council shall have the following members:

- 1) six judges who are elected and dismissed by their peers at the Conference of Judges;
- 2) Two legal experts who are appointed and dismissed by the Parliament of Montenegro;
- 3) Two renowned members of the legal profession who are elected and dismissed by the President of Montenegro, and
- 4) The Minister of Justice.

The President of the Judicial Council shall be elected from among the Supreme Court judges who are members of Judicial Councils.

The composition of the Judicial Council shall be proclaimed by the President of Montenegro

“The Judicial Council shall serve a term of four years.”

Proposal No. 7

The present provision:

Competencies of the Judicial Council

Article 128

The Judicial Council shall have the competence to:

- 1) elect and dismiss judges, presidents of courts and lay judges;
- 2) issue decisions on the cessation of judicial office;
- 3) determine the number of judges and lay judges in a court;
- 4) consider the reports on the work of courts, applications and complaints of the work of courts and take a position on them;
- 5) make decisions on immunity of judges;
- 6) propose to the Government a budget for the work of courts; and
- 7) perform such other functions as may be laid down by law.

The Judicial Council shall make decisions by majority of votes of all members thereof.

The Minister of Justice shall not vote in proceedings concerning judges' disciplinary responsibility.

The proposed amendment:

Article 128 shall be amended to read as follows:

The Judicial Council shall have the competence to:

- 1) elect and dismiss judges, presidents of courts and lay judges;
- 2) issue decisions on the cessation of judicial office;
- 3) make decisions on immunity of judges;
- 4) propose to the Government a budget for the work of courts; and
- 5) perform such other functions as may be laid down by law.

The Minister of Justice shall not vote in proceedings concerning judges' disciplinary responsibility.

Proposal No. 8

The present provision:

Appointment and term of office

Article 135

The functions of the State Prosecution Service shall be performed by state prosecutors.

State prosecutors shall have one or more deputies.

The Supreme State Prosecutor and state prosecutors shall be appointed for a term of office of five years.

The proposed amendment

Article 135 shall be amended to read as follows:

“The functions of the State Prosecution Service shall be performed by the heads of state prosecution services and state prosecutors.

The Supreme State Prosecutor shall be appointed by the Parliament of Montenegro, at the proposal of the Prosecutorial Council.

The Supreme State Prosecutor and the heads of State prosecution services shall serve a term of office of five years.

State prosecutors shall be elected for life.

Proposal No. 9

The present provision

Prosecutorial Council

Article 136

The Prosecutorial Council shall ensure the autonomy of state prosecution service and state prosecutors.

The Prosecutorial Council shall be elected and dismissed by the Parliament.

The election, term of office, competencies, organisation, and manner of work of the Prosecutorial Council shall be regulated by law.

The proposed amendment

Article 136 shall be amended to read as follows:

“The Prosecutorial Council shall ensure the autonomy of state prosecution service.”

After Article 136 three new articles are added, which read as follows:

“Composition of the Prosecutorial Council

Article 136a

The Prosecutorial Council shall have a president and ten members.

The President of the Prosecutorial Council shall be elected from among state prosecutors who are members of the Prosecutorial Council.

The Prosecutorial Council shall have the following members:

- 1) five state prosecutors, elected by their peers at the extended meeting of the Supreme State Prosecution Service;
- 2) two legal experts who are appointed and dismissed by the Parliament of Montenegro,
- 3) one attorney at law who is appointed and dismissed by the Bar, and
- 4) one representative of the Ministry of Justice who is appointed and dismissed by the Minister of Justice.

The composition of the Prosecutorial Council shall be proclaimed by the President of Montenegro.

The Prosecutorial Council shall serve a term of office of four years.

Competencies of the Prosecutorial Council
Article 136b

The Prosecutorial Council shall have the competence to:

- 1) elect and dismiss state prosecutors and heads of state prosecution services,
- 2) issue decisions on the cessation of office of state prosecutors and heads of state prosecution services,
- 3) make decisions on immunity,
- 4) propose to the Government a budget for the work of state prosecution services, and
- 5) perform such other functions as may be laid down by law.

Cessation of Office and Dismissal from Office
Article 136c

Cessation of office and dismissal from office as a head of state prosecution service and as state prosecution shall take place in such cases and in such procedures as prescribed by law

A head of state prosecution service and a state prosecutor shall be dismissed from office if receiving a final decision finding him/her guilty of a crime committed with intent and through misuse of prosecutorial office.

Proposal No. 10

The present provision:

Article 151

The Constitutional Court shall make decisions by the majority vote of all judges thereof.

Constitutional Court decisions shall be published.

Constitutional Court decisions shall be binding and enforceable.

When necessary, the enforcement of Constitutional Court decisions shall be ensured by the Government.

The proposed amendment

In Article 151 after paragraph 1, a new paragraph shall be added, which reads as follows:

“Notwithstanding paragraph 1 of this Article, the Constitutional Court shall decide constitutional complaints in a panel of three judges. The panel may only decide by an unanimous vote and in full composition. Where no unanimity is reached within the panel, the constitutional complaint shall be decided by the Constitutional Court in accordance with paragraph 1 of this Article.