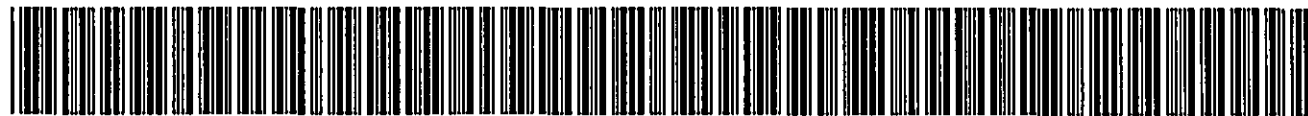


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# REPUBLIC OF MONTENEGRO

## VOTER AWARENESS ASSESSMENT LEGAL REVIEW

NOVEMBER 1997 - FEBRUARY 1998

**PREPARED BY:**

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# **REPUBLIC OF MONTENEGRO**

## **VOTER AWARENESS ASSESSMENT LEGAL REVIEW**

**NOVEMBER 1997 - FEBRUARY 1998**

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## EXECUTIVE SUMMARY

### *Voter Awareness Assessment*

On 15 November 1997, IFES sent a three-person team to the Republic of Montenegro to conduct a Voter Awareness Assessment with the following objectives:

1. Analyze the post-presidential election environment, particularly the impact of subsequent political maneuvering by republican and federal authorities regarding the legitimacy of the election results on the prospects for a peaceful transition of power and the conduct of minimally free and fair parliamentary elections in the Spring of 1998;
2. Assess on-going weaknesses in Montenegro's electoral system which threaten to undermine its actual and perceived efficiency, transparency, and integrity;
3. Determine the changing informational and educational needs of the country's citizenry, including traditionally disadvantaged groups such as ethnic minorities, women, youth, and rural dwellers in an increasingly competitive political environment and in the midst of substantive electoral reforms;
4. Identify opportunities for constructive cooperation leading into the parliamentary election cycle and in the longer term.

During the three-week mission, IFES team members held a series of consultations with more than 50 government officials, election administrators, political party leaders, student organizers, NGO activists, and media representatives in the capital city of Podgorica and coastal towns of Budva, and Ulcinj. The team was provided with considerable access to opinion leaders and decision-makers at the highest levels of Government and administrative and political structures. The reception of the IFES mission in Montenegro proved to be the antithesis of its experience in Serbia. Contrary to the environment of suspicion and antagonism under which IFES advisors worked in Serbia, their counterparts in Montenegro were able to engage in a constructive dialogue both at official and informal levels and in an atmosphere of relative transparency.

The country's government, Assembly, and political parties should be commended for their commitment to bring the country's political and electoral legislation and practice into conformity with democratic norms. Such efforts have been endorsed and should be tangibly supported -- through the provision of *systems-oriented* technical assistance -- by the international community. At the same time, it should be recognized that the very real political pressures to conduct new legislative elections at the national and municipal levels in the Spring significantly compresses the timeframe in which modifications to existing laws can be thoroughly considered and aired in public debate. Under such circumstances, the Inter-Party Working Group drafting legislation should focus its immediate efforts on priority issues which proved to be problematic during recent presidential elections and which may have contributed to the *perception*, if not the threat, of fraud. It should further commit itself to further legal and technical refinements based on a comprehensive analysis, in cooperation with legal scholars and election practitioners, of the presidential, parliamentary, and municipal election experiences.

Among the electoral issues identified by the team and priorities for consideration by the Working Group are:

- ▶ An absence of clarity and detail throughout legislation governing campaigns and elections which undermines, if not precludes, the correct and consistent interpretation of law, efficient and uniform administration of elections, and equitable adjudication of grievances;

- ▶ The exclusion of practitioners, among them legal scholars, election officials, and journalists from the process of reforming legislation on elections, voter registries, campaign financing, and public information;
- ▶ The considerable diffusion of election administrative responsibilities which leads to confusion among voters and political participants, disagreements between state structures, and an ineffective administrative system;
- ▶ The absence of a central Register of Electors, a methodical and reliable means of updating and correcting voter registries at the municipal level, and a mechanism for review by political parties which has resulted in the disenfranchisement of thousands of voters;
- ▶ The adoption of a system of representation which responds to the right of representation of the Albanian minority within Montenegro, such as an adjusted PR system with a lower threshold for legislative mandates, a schema for constituency delimitation or other alternative systems;
- ▶ The question of whether political parties registered solely at the federal level have the right to nominate candidates for republican, municipal, and local offices in Montenegro and the Federal Parliament of Yugoslavia or only the latter;
- ▶ Unrealistic timetables established within the law for campaign, election, and adjudication related deadlines;
- ▶ The inability of polling site boards to efficiently handle the volume of voters envisioned in the law, ie. as many as 2500 people, and assure the security of the ballot box and transparency of the commission's work within the prescribed voting hours;
- ▶ The absence of provisions within the law on the rights and responsibilities of international and domestic observers;
- ▶ Inadequate ballot security measures with respect to the printing, transport, distribution, storage, and validation of ballots and during voting outside of the polling premises;
- ▶ The dearth of a campaign finance regulatory system designed not to discourage political activity but to encourage compliance and public disclosure, as well as inadequate limitations on the use of public office and resources for overtly political purposes;
- ▶ Inequitable treatment of candidates and political parties with respect to state-subsidized media time/space, conditions for paid advertising, and news coverage.

### ***Legal Commentary***

During the course of the Voter Awareness Assessment, IFES learned that three pieces of legislation affecting elections were being drafted by a Parliamentary Working Group in the Republic of Montenegro, including a law on election to the Assembly and municipal councils, law on voter registries and a law on

financing of political parties.<sup>1</sup> While in Montenegro, IFES was repeatedly asked by the Deputy Prime Minister, the Republican Election Commission, Working Group members and political parties to provide commentary on the legislation in order to instill an American perspective on the drafting process and provide comparative experience and knowledge.

Toward this end, IFES employed a legal advisor for a period of ten days to review the draft legislation. The advisor drafted an analysis which focused on general issues common to the laws and addressed each piece of legislation on an individual basis, focusing on gaps and inconsistencies within each. The comments are suggested by analysis of the proposed laws themselves, certain other materials, general legal principles, comparative practice and international standards.

The proposed laws within the scope of the legal review will provide an adequate basis for the upcoming parliamentary elections in Montenegro as well as longer-range reform of the Montenegrin election system. At the same time, there are numerous issues which should be addressed in order to improve administration of the upcoming parliamentary elections and the probability that they will be viewed as a legitimate expression of the democratic will of the people of Montenegro. In addition, other, more far-reaching, reforms should be considered in order to create a stable basis for future elections and further development of democratic political institutions in the Republic.

#### *Overview*

Given the disposition of the current government toward international assistance and cooperation and tangible efforts to introduce an open and progressive political environment, there is a unique opportunity to foster real and sustainable change in the Republic of Montenegro and, indirectly, the Federal Republic of Yugoslavia. Immediate opportunities for technical electoral assistance within IFES capabilities include: legal advising, updating and maintaining of voter registries, voter information and education, non-partisan candidate information and support services, and training for core and expanded members of election commissions and polling site boards. Longer term needs include civic education aimed at the creation of an environment conducive to the development of NGOs and advising within the Assembly and the permanent REC with respect to legal, institution, regulatory and procedural reforms. Beyond IFES' mandate, additional assistance within the sphere of political process is also greatly needed. Priorities should include the creation of a truly independent mass media through the provision of infrastructure and training of journalists, the creation of legal and bar associations and training of their members, and traditional party-building initiatives.

Finally, IFES would like to thank its hosts and contacts within the Republic of Montenegro for their time, insights, and limitless hospitality. It is hoped that this report and legal analysis will serve as a platform for discussion and a tool for reform. The observations, criticisms, and recommendations contained herein are offered with the most constructive intentions. IFES is also grateful to the United States Agency for International Development (USAID) for its flexibility in providing for this mission.

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<sup>1</sup> These laws were subsequently re-drafted by the Working Group and passed by the Republican Assembly by mid-February. Drafts referred to throughout the assessment and legal review are those obtained by the IFES Team during the assessment mission.

**REPUBLIC OF MONTENEGRO**  
**VOTER AWARENESS ASSESSMENT**  
**15 NOVEMBER - 5 DECEMBER 1997**

# **I. INTRODUCTION**

## **A. MISSION BACKGROUND**

As part of its on-site technical assistance project in Yugoslavia, the International Foundation for Election Systems (IFES) conducted a brief Voter Awareness Assessment to collect information crucial to the development and conduct of non-partisan voter information initiatives leading into parliamentary and presidential elections in the Republic of Serbia. Given the decision by 12 opposition political parties to boycott the elections, the assessment focussed primarily on the impact of the boycott on the changing informational needs of the electorate, the capabilities of political parties and mass media outlets to meet these needs, and the feasibility of US-funded voter education efforts under such circumstances. At the time, the team concluded that: *Combined political and operational circumstances in Serbia rendered the "do-ability" of such efforts virtually impossible . . . [despite] the on-going need for civic, voter, and political education in Serbia. . .*

This assessment, however, was based on information collected and observations made within the confines of the Republic of Serbia and with respect to the September 1997 elections (presidential elections requiring run-offs in October and December). As such, it did not reflect a string of events simultaneously underway in the neighboring Republic of Montenegro. The split of the ruling Democratic Party of Socialists, the presidential election victory of opposition candidate Milo Djukanovic, and Montenegro's relatively liberal political environment vis-à-vis Serbia, combined to create both opportunities and momentum for substantial reform and a fertile programming environment for USAID funded projects. Informal inquiries suggested that the government, in general, and the election commission, in particular, were open to technical assistance. In response, IFES deployed a three-person team to the Republic of Montenegro in November 1997 to expand the scope of its original Voter Awareness Assessment.<sup>2</sup>

## **B. MISSION OBJECTIVES**

These are the objectives of IFES' Voter Awareness Assessment in Montenegro:

1. Analyzing the post-presidential election environment, particularly the impact of subsequent political maneuvering by republican and federal authorities regarding the legitimacy of the election results on the prospects for a peaceful transition of power and the conduct of minimally free and fair parliamentary elections in the Spring of 1998;
2. Assessing on-going weaknesses in Montenegro's electoral system which threaten to undermine its actual and perceived efficiency, transparency, and integrity;
3. Determining the changing informational and educational needs of the country's citizenry, including traditionally disadvantaged groups such as ethnic minorities, women, youth, and rural dwellers in an increasingly competitive political environment and in the midst of substantive electoral reforms;
4. Identifying opportunities for constructive cooperation leading into the parliamentary election cycle and in the longer term.

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<sup>2</sup> This activity was made possible by a no-cost time extension of Contract No. AEP-5486-I-6003-01, Delivery Order No. 803.

### **C. SCOPE OF MISSION**

The assessment plan sought to capture information from original sources through interviews and English language translations of pertinent documents and legislation. During the three-week mission, IFES team members held a series of consultations with more than 50 government officials, election administrators, political party leaders, student organizers, NGO activists, and media representatives in the capital city of Podgorica and coastal towns of Budva, and Ulcinj.<sup>3</sup> The team was provided with considerable access to opinion leaders and decision-makers, typically conducting meetings at the ministerial level; with chairmen and executive boards of political parties, among them members of Parliament; editors-in-chief; faculty deans, and justices of the Constitutional Court. The team was also provided with copies of original and revised draft legislation on elections, voter registries, political party financing, and public information.<sup>4</sup>

### **D. COMPARATIVE EXPERIENCE: SERBIA AND MONTENEGRO**

The reception of the IFES mission in Montenegro proved to be the antithesis of its experience in Serbia. Contrary to the environment of suspicion and antagonism under which IFES advisors worked in Serbia, their counterparts in Montenegro were able to engage in a constructive dialogue both at official and informal levels and in an atmosphere of relative transparency. Beyond the levels of access previously noted, information ranging from election results, demographic statistics, and polling data to political party platforms, government reports, draft legislation, and court rulings were provided upon request. In some cases, information was specially compiled on the basis of specific inquiries by IFES representatives. Although unsolicited, media outlets provided steady coverage of the team's activities which were presented in a positive light. This contributed to high awareness levels of IFES' mandate, facilitated the establishment of cooperative relationships and the exchange of information.

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<sup>3</sup> A complete list of contacts can be found in Annex I of this report.

<sup>4</sup> Copies of these documents can also be found in the Annexes of this report.

## **II. BACKGROUND**

### **A. COUNTRY BACKGROUND**

The tradition and history of statehood in the area of modern day Montenegro dates back a thousand years. The name Montenegro first appeared in the 15<sup>th</sup> century. It is believed that on-going resistance to nearly five centuries of Turkish invasions cultivated and strengthened the notion of statehood and in 1878, Montenegro was internationally recognized as a state. It formally became a kingdom in 1910 under the rule of Nikola I.

As a result of the post-World War I peace concluded at Versailles, the kingdoms of Serbia and Montenegro, as well as several other provinces of the dissolved Hapsburg and Ottoman Empire, were combined into a common Slavic state, the Kingdom of Yugoslavia. Upon the outbreak of the Second World War, Yugoslavia fought alongside of the Allied Forces. After the war, Montenegro became one of six constituent republics of the Socialist Federal Republic of Yugoslavia. Under this framework, Montenegro retained authority over its administrative and budgetary matters and its citizens were able to preserve their historical and cultural identity.

Beginning in 1991, the Socialist Federal Republic of Yugoslavia began to disintegrate as the republics of Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia seceded and formed independent states. In 1992, the citizens of Montenegro, through the referendum process, opted to remain within Yugoslavia along with the Republic of Serbia. As a result, the Federal Republic of Yugoslavia was established with each of the constituent republics enjoying *sovereign and equal status* according to the Constitution adopted by the Federal Parliament on 27 April 1992. In fact, however, Serbian authorities have dominated federal power structures responsible for foreign, fiscal, and customs policies and national defense as well as the adjudication of constitutional disputes.

Differences in policy orientation and political allegiance emerged in the Federal Parliament by the end of the year. The Montenegrin federal parliamentary delegation twice supported Federal Prime Minister Milan Panic in votes of no confidence orchestrated by Serbian President Slobodan Milosevic. As early as 1993, the nominal nature of Montenegro's equality and diverging political agendas led some to call for growing sovereignty for Montenegro either within or outside the Yugoslav Federation. By late 1997, frustration over Montenegro's inability to influence federal policies, economic isolation and decline, and increasing federal involvement in issues deemed to be internal republic affairs, particularly the unwillingness of the Milosevic regime to recognize the victory of opposition candidate Milo Djukanovic in presidential elections, led to widespread support for such calls, which were increasingly expressed at the highest levels of the Montenegrin Government.

### **B. ORGANIZATION OF THE STATE**

The Constitution of the Republic of Montenegro was approved by the Assembly of Montenegro on 12 October 1992. It established Montenegro as a democratic and sovereign state with power vested in its citizens. Any changes to the Constitution or to Montenegro's borders are subject to a nationwide referendum. State structure is organized according to the principle of separation of powers, with judicial and legislative powers operating independently.



In accordance with the Constitution, the Assembly consists of representatives elected through direct and secret ballot and on the basis of a general and equitable voting right. One representative is elected per every 6000 voters for a term of four years. The Assembly is responsible for: adoption of the Constitution; appointment and recall (through a vote of no confidence) of the Government and approval of its program; enactment of legislation; organization of state administration; enactment of the national budget; ratification of international treaties within the authority of the Republic; appointment of judges and state prosecutors; and announcement of public referenda. Regular sessions of the Assembly are convened twice a year with the possibility of additional extraordinary sessions. An extraordinary session is convened at the request of not less than one-third of the representatives or at the request of the President of the Republic and the Prime Minister. A quorum of 51% of the representatives is required for the Assembly to function and legislation is considered passed if approved by a simple majority. Decisions affecting citizens' freedoms and rights, the electoral system, taxes, state symbols, dismissal of the President, a vote of no-confidence in the Government, public referenda, and adjustments to its own terms and rules require an absolute majority. The right to introduce bills is reserved for representatives, the Government, and at the initiative of at least 6000 voters. The Assembly can be dissolved if it fails to appoint a Government within 60 days of receiving the President's nominations or if it ceases to perform its duties as prescribed by the Constitution for a prolonged period.

Currently, five political parties are represented in the Assembly of Montenegro. The breakdown of seats is as follows:

Political Party	Mandates	Comments
Democratic Party of Socialists	45 Seats	The Party has since broken into two competing factions represented by former President Momir Bulatovic and current President Milo Djukanovic.
The Coalition Narodna Sloga	19 Seats	This is a coalition of the People's Party and the Liberal Alliance. The Coalition has since collapsed and the People's Party has further broken down into two factions.
Democratic Union of Albanians	2 Seats	Albanian party
Democratic League of Albanians	2 Seats	Albanian party
Party of Democratic Action	3 Seats	Muslim-based Party

As noted in the commentary section, the political situation within the Assembly has become increasingly convoluted as a result of factionalization within the major parties and coalitions.<sup>5</sup>

The President is also elected on the basis of four-tail suffrage - general, equal, direct, and secret ballot - for a term of office of five years. Duties of the presidency include: representation of the republic domestically and internationally, promulgation of legislation, nomination of the Government, calling of legislative elections, and proposing public referenda. The President is bound to promulgate legislation adopted

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<sup>5</sup> More information on the broader political party situation can be found in Chapter 4 of this report.

by the Assembly within seven days of its passage or request that it conduct a second vote on the same piece of legislation. Legislation which is subsequently passed on the basis of such a request must be promulgated. The President can be recalled by the Assembly based on findings of the Constitutional Court that he/she has breached provisions of the Constitution.

The Government is composed of a Prime Minister, one or more deputy prime ministers, and ministers. The nominee for Prime Minister must present his/her recommendations for ministerial positions and the Government program for approval of the Assembly. Failing approval, the President must propose a new nominee for Prime Minister within ten days. The Government is responsible for: the setting and conduct of domestic and foreign policies; introduction of executive acts and regulations necessary to enforce legislation; development of the state budget; conclusion of international treaties within the authority of the Republic; organization of the state administration, supervision of ministries and state administrative structures, and enactment of decrees during a state of emergency. The Assembly may take a vote of no confidence in the Government based on a motion by not less than ten representatives and within three days from the date of the motion. If the Government receives a vote of confidence, a proposal for a vote of no confidence for the same reasons cannot be made before a period of 90 days from the previous vote. A Government which has lost a vote of no confidence, or one whose mandate has been revoked due to the dissolution of the Assembly, remains in office until the election of a new Government. The affairs of state are conducted by the ministries, secretariats, and other administrative authorities. Montenegro is divided into 21 municipalities, each of which exercises power on the basis of local self-government.

The judicial branch operates independently from legislative and executive branches of Government. Courts of law adjudicate in council and trials are public. Judges enjoy life tenure. The Supreme Court is the court of highest instance in the Republic. Public prosecutors are appointed for a term of five years and perform the tasks of criminal prosecution, apply legal remedies for protection of constitutional and legal rights, and represent the Republic in property and legal matters. It also handles complaints regarding omissions from and inaccuracies in the voter registry.

The Constitutional Court: decides on the conformity of legislation, executive acts, and regulations with the Constitution; determines whether the President has exceeded the bounds or acted contrary to the Constitution; hears complaints regarding the violation of constitutional rights; rules on conflicts between branches and levels of state authority; decides upon the conformity of political party and citizen group statutes with the Constitution and can ban a political party or citizen's group; and rules on electoral disputes. The Constitutional Court is comprised of five justices who serve terms of nine years and are not eligible for re-appointment. The President of the Constitutional Court is elected from among the justices for a term of three years. Decisions of the Constitutional Court are reached by a majority vote of the justices and are binding and final. Decisions of the Constitutional Court, including opinions of justices not siding with the majority are published.

### **C. RECENT POLITICAL DEVELOPMENTS**

The formal split of Montenegro's ruling Democratic Party of Socialists (DPS) in Summer of 1997 was a watershed event bringing the country to the brink of constitutional crisis while simultaneously initiating a thorough restructuring of the political scene and creating a window of opportunity for tangible democratic reforms. Increasingly, public disputes within the DPS emerged during the Spring when President Bulatovic began urging the ouster of his rival within the party, Prime Minister Milo Djukanovic, both from the

Government and from the party leadership. This rift culminated in July 1997, when Bulatovic was removed as president of the party by the pro-Djukanovic faction. In August, Bulatovic and Djukanovic were both certified as presidential candidates by the Republican Election Commission (REC). Defending its decision, the REC argued that the candidates represented two distinct political parties -- rather than mutually opposed wings of the same party -- since Bulatovic's DPS was registered in Belgrade as a federal party and Djukanovic's DPS was registered in Podgorica as a republican party.

Prime Minister Djukanovic subsequently lodged a complaint with the Constitutional Court of Montenegro, refuting this logic and quoting Article 5 of Montenegro's election law which stipulates that a political party can nominate only one candidate for the presidency of the Republic. On the basis of this complaint, the Constitutional Court cancelled and overruled the decision of the REC, withdrawing the certification of Momir Bulatovic as a candidate. In its ruling, the Constitutional Court noted that only political parties registered in Montenegro were entitled to nominate candidates.

In response, President Bulatovic, an ally of Yugoslav President Slobodan Milosevic, filed a complaint with the Federal Constitutional Court claiming that his constitutional right to stand as a candidate had been violated. On 10 September, the Court declined to hear the case but opted to abolish Article 5 of Montenegro's election law, thus clearing the way for Bulatovic's certification as a candidate. The REC complied, recognizing Bulatovic's candidacy. This decision sparked a constitutional crisis which is still ongoing. During a marathon session of the Assembly of Montenegro, two-thirds of the representatives supported a proposal to reject the Federal Constitutional Court's arbitration of the matter. The ruling was called "*interference of the Federal Constitutional Court in Montenegro's internal legal system.*" A spokesperson for the Bulatovic faction responded that: "Momir Bulatovic is the official and rightful presidential candidate of the DPS and in failing to recognize this the Government of Montenegro has violated its own constitution."

The campaign and election process was to prove a prelude to increased polarization within Montenegrin society. While Bulatovic won the first round of voting, he failed to obtain the required absolute majority. In the second round of balloting, characterized by heavy voter turnout, Djukanovic emerged the winner by 5,218 votes. The Bulatovic campaign cried foul play and lodged a series of complaints with the Constitutional Court of Montenegro. Bulatovic cited modifications to the voter registry between the first and second rounds of elections and the extension of voting hours at many polling stations as violations of the election law. According to the REC, since a new procedure requiring voters to sign the voter registry upon receipt of their ballot resulted in prolonged processing of voters, many of whom could not be accommodated during regular voting hours, some leniency was required.<sup>6</sup> With respect to the voter registry, the Supreme Court opted to allow changes to the lists prior to the second round as a result of inaccurate and outdated voter registries during the first round in order to avoid disenfranchising many voters.<sup>7</sup> While the Law on the Register of Electors prohibits changes to the voter registry within 48 hours of election day, it is silent about modifications between rounds of elections. According to the OSCE Observer Report:

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<sup>6</sup> Previously, election officials circled the ordinal number of the voter when providing them with a ballot. This modification was a positive change safeguarding against possible falsification of results at the polling site level. In addition, the combination of this practice and the size of some of the polling sites which were responsible for as many as 2,500 voters certainly contributed to the time pressures.

<sup>7</sup> The Supreme Court reportedly received 13,000 complaints from voters who were prevented from participating in the first round of elections.

*It is acknowledged that if the additional registration exercise had not taken place many thousand of citizens would have been denied their right to vote. However it is difficult to maintain a high level of transparency when such measures are undertaken in so short a period. No matter how well intended and non-discriminatory, such a practice should be avoided at future elections.*

Despite these complaints, the REC stood by its results and the Constitutional Court of Montenegro declined to hear any of the cases. US and European observer delegations endorsed the results as "...reflecting the will of the Montenegrin people."

Bulatovic refused to accept the integrity of the election and has sought to contest the results both through public demonstrations and federal structures. According to various news reports, he called upon his supporters to arm themselves against the incoming "criminal regime" which rode to power on the support of "Muslims and Albanians," causing the situation in Montenegro to become increasingly unstable throughout the Fall. Bulatovic, for his part, had insisted that he would not transfer power to Djukanovic on 15 January 1998 but would return it to the people. On 12 December, the Yugoslav federal prosecutor said that the Supreme Court of Montenegro violated federal law when it ordered the updating of the voter registry prior to the run-off elections. This sentiment was repeated by a spokesperson for the prosecutor's office on 30 December. Before the new year, the Assembly of Montenegro passed a resolution condemning the involvement of federal authorities in republican matters and blocking the implementation of such decisions in the Republic. On 6 January 1998, a Belgrade Court called into question the validity of the results. In response to the continued incursions of federal authorities into what are perceived to be internal matters, the Deputy Prime Minister of the Government of Montenegro threatened to propose a referendum for Montenegrin independence if Montenegro's equal status within the Federation is not respected by federal authorities.

As Bulatovic called for mass demonstrations prior to Djukanovic's scheduled inauguration on 15 January, the Chairman of the Assembly of Montenegro appealed for calm while the President of the Constitutional Court of Montenegro voiced concerns that the out-going president was attempting to use mass protests as an excuse to declare a state of emergency in order to prolong his own rule. Beginning on 12 January, Bulatovic supporters congregated in the streets, issuing an ultimatum for new presidential and parliamentary elections on 15 April. While police retained a low profile, weapons searches and seizures were conducted. The Army refused to become embroiled in the political crisis but a series of arrests followed. At this time, it appears that the immediate threat of further violence has abated.

Despite the crisis, elites within the country roundly welcome the split of the DPS as a catalyst to political dialogue, meaningful reform, opening of the mass media, and independent decision-making. It was the impression of one party leader that before the split, nothing was possible. In this sense, the political scene has been irrevocably changed. At the same time, the support of nearly 50% of the electorate for maintaining the status quo reveals the difficulties ahead as Montenegro struggles to join the democratic international community.

### III. ELECTION FRAMEWORK

#### A. CONSTITUTION

The legal foundation for democratic systems is often based on a hierarchy of rights. The Montenegrin system is founded on basic rights guaranteed by the Constitution. The opening provisions of the current Constitution establish Montenegro as a democratic state based on the rule of law. Article 3 expressly prohibits the imposition or recognition of any authority which does not result from the freely expressed will of the citizens. Voting rights are provided for under Article 32, which stipulates that citizens who have reached the age of 18 have the right to elect and be elected to public office. It should be noted that the Law on Election of Councilors and Representatives places further conditions upon this right (see below). Suffrage is exercised according to a general, equal, direct, and secret ballot. Citizens are also afforded the rights of initiative, representation, and petition. Additional rights and prohibitions affecting campaigns and elections include:

Article 28: Freedom of movement and residence;

Article 34: Freedom of conscience and expression;

Article 35: Freedom of information;

Article 37: Prohibition of censorship;

Article 39: Freedom of assembly;

Article 40: Freedom of association;

Article 41: Prohibition on political organization in state institutions.

The calling of elections is the responsibility of the President of the Assembly in the case of elections to the Presidency of the Republic. Elections for the Assembly are called by the President of the Republic.

#### B. LAW ON ELECTION OF COUNCILORS AND REPRESENTATIVES

Legislative elections at the republic and municipal levels are governed by the "Law on the Election of Councilors and Representatives." This law also provides the legal foundation for the protection of voter's rights. It was passed in 1992 and subsequently revised in 1995 and 1996. During the period of the assessment, the law was in the process of review by the Multi-Party Working Group on Electoral Reform (more below).<sup>8</sup> Major differences between the current law and draft revisions as of 10 December 1997 appear in italics. Main provisions of the 1996 law include:

Term of Office: Four years.

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<sup>8</sup> Since, the law was revised and passed by the Republican Assembly on 17 February 1998. IFES has based comments on the draft laws obtained during the assessment mission.

**Calling of Elections:** Elections are called by the President of the Republic.

**Franchise Requirements and Privileges:** Voters must have reached 18 years of age and have resided in the republic at least 6 months prior to election day and have civil (mental) capacity to vote and to be elected. Elections are conducted according to four-tail suffrage: general, equal, direct, and secret.

**Constituency Delimitation:** Councilmen and representatives are elected in constituencies on the basis of lists proposed by political parties, coalitions, and citizen's groups. Constituencies for municipal and republic elections are determined by special acts of councils and the Assembly. Fourteen constituencies were established for elections in 1996. *(Draft revisions to this law suggest that adjustments to the system of proportional representation will be made at the republic level to ensure representation of Montenegro's Albanian minority as the Assembly prepares to introduce a single national constituency for the election of its representatives. Current language envisions the creation of a special Albanian constituency and a waiver of threshold requirements).*

**Election Commission Hierarchy:** Elections are administered through a three-tiered hierarchy including the Republican Election Commission, municipal election commissions, and polling boards which are comprised of permanent and expanded membership *(Draft revisions to this law would seek to drop the requirement that core members of election commission be judges and would also introduce multi-party representation into the core membership).*

**Election Campaign:** Elections must be held within 15 days of the expiration of the terms of sitting councils and the Assembly. The campaign period is to be from 60 to 100 days after elections are called.

**Nomination Requirements:** Political parties, separately or in the form of coalitions, registered in the Republic of Montenegro, as well as groups of citizens are entitled to nominate their slate of candidates. Nomination through political parties is set by this Law and through the internal rules of procedures of those parties.

**Signature Requirements:** Nominating entities are required to collect signatures in support of the nominated slate of candidates. The number of signatures required is based upon the number of voters in a given constituency, ranging from 25 in a constituency of 6,000 voters to 300 in a constituency of 60,000 voters. *(Draft revisions to the law would require candidates to collect signatures equivalent to 1% of the total number of voters in a given constituency).*

**Rights of Nominating Entities:** Political parties, coalitions, and citizens' groups which meet the signature requirements are entitled to appoint representatives to serve on the expanded membership of election commissions and polling boards; to receive equal space/time for presentation of their platforms in state media; to organize public gatherings; prepare election literature; to purchase political advertising; and to receive public funding according to a formula based on the net average salary during the month preceding elections and the number of constituencies in which each entity is forwarding a slate of candidates *(Draft revisions to the law would defer decisions about public financing of campaigns to a decision of the Assembly. More below).*

**Campaign Financing:** Combined private and public financing. Nominating entities have the right to use their own funds (and those of their candidates) and to collect donations for campaign purposes. No restrictions, including the imposition of ceilings on contributions or expenditures, are applied to private donations in the law nor is there any requirement for periodic and final reporting of campaign contributions and expenditures.

*(Stand- alone legislation on the financing of political parties is also under revision, more below).*

**Complaint Adjudication:** Campaign and election-related grievances are heard and administrative/legal remedies awarded through the election commission structure and the Constitutional Court. Voters, candidates, and nominating entities are entitled to file complaints with the pertinent election commission. Administrative remedies must be exhausted through the commission structure before proceeding to the Constitutional Court. Complaints to commissions must be filed within 24 hours of the alleged violation and decisions rendered with 48 hours of filing. Should an election commission fail to reach a decision within that timeframe the complaint is deemed valid. Complaints must be filed with the Constitutional Court within 24 hours of the pronouncement of a decision by the Republican Election Commission and must be ruled on by the Court within 48 hours of filing.

**Polling Site Procedures:** Voting hours are from 7:00 am until 8:00 pm. Ballots are cast at polling sites assigned to voters on the basis of their residence. Prior to the official opening of the polls, ballot boxes are checked in the presence of the first voter and sealed. Control sheets verifying this process are placed in the ballot box. Voters must present their suffrage certificate (invitation to vote) and identification. The Chairman then circles the ordinal number of the voter in the extract of the voter registry, explains the polling procedure, and hands him/her the ballot. Secrecy of the ballot is to be preserved. The voter makes his/her choice by circling the ordinal number in front of his/her choice, the title of the electoral list, or the candidate's name which appears first on the list. Upon casting his or her ballot, the voter is required to leave the polling site premises. In the case of disturbances, the Chairman can invite the police to restore order. Technical violations at the polling site can result in closure of the site, nullification of results at that site, and the conduct of repeat voting. Provisions exist for voting outside the polling site and are further elaborated upon by regulations of the Republican Election Commission. *(Draft revisions to this law would require voters to sign the extract of the voter registry prior to receiving their ballots rather than having an election official circle their ordinal number).*

**Election Observers:** No language exists in the law regarding international or domestic observers. To date, the Republican Election Commission has provided for the accreditation of international observers through its own regulations.

**Election Results:** Ballots are counted at individual polling sites. Upon determination of the results, election data is entered into the record of the polling board, which is signed by all of its members. All members of the polling board are entitled to a copy of the record. Not later than 18 hours after closure of the polls, polling boards must deliver to the pertinent municipal election commissions their records and election materials. Municipal election commissions are responsible for the aggregation of votes within their constituency and the determination of results of municipal elections. This process must be completed within 12 hours of receiving results from the polling boards within its jurisdiction. Municipal election commissions forward reports from the polling boards and a record of their work to the Republican Election Commission. The Republican Election Commission is responsible for determination of election results to the Assembly.

**Distribution of Mandates:** Political parties, coalitions, and citizens' groups receiving at least 4% of the vote are awarded mandates in the Assembly. Mandates are distributed in proportion to the number of votes won. One half of the mandates won by each nominating entity are distributed according to the rank ordering of the list. The remainder are distributed based on a decision of the nominating entity.

**Publication of Results:** The overall results of the election of representatives to the Assembly must be publicized by the Republican Election Commission within 24 hours of receiving the reports of all municipal election commissions. Results according to polling station must be published at least seven days prior to constituting the new Republic Assembly. The overall results of the election of councilmen must be publicized by each constituency within 24 hours of receiving all reports from polling boards within their jurisdiction. Results of election of representatives and councilmen are published within the official gazettes of the Assembly and the Municipalities not later than 15 days after polling day.

While this law provides a reasonable framework for participation in elections and for their conduct, the absence of clarity, consistency, and detail throughout this and related legislation -- despite draft revisions prepared as of the date of this assessment mission by the Multi-Party Working Group on Electoral Reform -- undermines, if not precludes, the correct and uniform interpretation of the law and the efficient administration of elections. This, in turn, may jeopardize the integrity, actual or *perceived*, of the election process.

### **C. LAW ON THE REGISTER OF ELECTORS**

The "Law on the Register of Electors" was originally passed in 1992 and was being reviewed by the Multi-Party Working Group on Electoral Reform at the time of the assessment.<sup>9</sup> Revisions to the law were aimed at rectifying on-going problems with the accuracy of voter's lists (extracts of the Register of Electors) and accommodating possible computerization of the Registry. The 1992 law establishes the general procedures for updating and maintaining the Register of Electors and the preparation of extracts of the registry for the conduct of elections at polling stations. According to the law, the Register of Electors is a public document which serves as a record of citizens with electoral rights. It is obligatory for the Registry to be updated during an election year. All citizens who have reached the age of 18 are to be entered into the Registry according to their place of residence. Entries and deletions to the Registry can be undertaken at the request of a voter and upon the provision of other valid identification evidence.

Within three days of the calling of elections, the entity responsible for the Register of Electors shall inform citizens, through public notice, of their right to inspect the Registry and request changes, amendments, or corrections. Refusal to make the requested modifications by the responsible entity can be challenged in the Supreme Court. Modifications to the Registry are concluded not later than 15 days prior to elections. No subsequent changes are permitted except in the case of a court order and not later than 48 hours prior to election day. Upon the closure of the Registry, the number of electors per constituency is determined by the municipal election commissions. Based on this data, the Republican Election Commission determines the number of voters in the country at large. Verified extracts of the Register of Electors for each polling station are prepared by the entity responsible for maintaining the Registry and forwarded to municipal election commissions.

Although the law does not stipulate which entity is responsible for the Register of Electors, updating of the Registry is performed by secretariats of elections (not to be confused with the municipal election commissions) within each municipal authority and in cooperation with the Ministry of Justice and the Ministry of the Interior. Experience suggests that municipal authorities have not been diligent in maintaining the Registry and that the intervention of republic level ministries has been necessary to minimally prepare it for elections. Currently no central registry exists. Draft revisions to the law would require that the Register of

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<sup>9</sup> A Law on Voter Registries was subsequently passed on 11 February 1998.



Electors be updated every year, provide for a central and computerized Registry, entitle nominating organizations to receive a copy (in the form of computer diskette) of the Register of Electors, and establish individual responsibility and introduce penalties for failure to maintain a current and accurate Registry.

#### **D. LAW ON FINANCING OF POLITICAL PARTIES**

The Law on Financing of Political Parties was passed in 1993 with the intent of strengthening political parties, ensuring a more equitable playing field during election campaigns, and as a means of regulating campaign financing. The law is currently under review in the Multi-Party Working Group on Electoral Reform. According to the current law:

Political parties are permitted to raise funds for their activities through membership dues, contributions, income from their own assets and entrepreneurial activities, credits, and endowments and inheritances as well as budget allocations as provided for in the Law. Specifically, the Republic and municipality governments provide subsidies for the work of political parties whose candidates have been elected as representatives and/or councilmen. Subsidies are also provided to cover some of the expenses of election campaigns of political parties whose slates of candidates have been certified by the responsible municipal or republic election commissions. The amount of state subsidies is based upon the availability of funds, but cannot be lower than 0.3% of total budget revenues for the year.

With respect to funds allocated to parties with mandates in legislative bodies, 30% of the total are distributed equally among all parties with the remainder distributed proportionate to the total number of seats of each party. Public financing of election campaigns in the year in which elections have been called is distributed according to the following formula: (1) One-third of available funds is provided to political parties which have expressed their intent to forward a slate of candidates in the election campaign; (2) One third of available funds is provided to political parties whose slate of candidates has been certified by the responsible municipal or republican election commission; (3) One third of available funds is awarded to political parties having won mandates in proportion to the total number of seats won.

Political parties with certified slates of candidates are permitted to privately finance election campaigns through their own resources and the solicitation of contributions. Fundraising activities can be undertaken on the official premises of the nominating political party; in other public places, provided permission has been provided by the Ministry of Internal Affairs; at public events; or by means of direct deposit to a specified account. Campaign finances can be used to cover the costs of election propaganda including posters, advertising, media broadcasts, and publications. Language of the revised draft of the legislation did not specify a ceiling for campaign expenditures as of 10 December 1997, although it did clarify that a ceiling would be applied to expenditures if not contributions. No restrictions appear within the Law with respect to donors or the amount of their contributions. There is also no language concerning the handling of in-kind contributions.

Rather than outlining specific reporting and public disclosure requirements within the text of the Law, Article 10 merely stipulates that all parties within the Assembly will enter into a special agreement ensuring compliance with limits set for campaign expenditures within 15 days of the calling of elections and that this agreement shall specify the manner of controlling campaign financing. The law does require political parties to keep records of their revenues and expenditures and that such records be subject to control of the responsible authority. The entity charged with monitoring and enforcing of campaign finance regulations is not specified nor are parties required to provide periodic campaign finance reports during the election campaign nor a final

report upon its conclusion. There are also no provisions for the contents of such records and reports to be disclosed to the public.

The Law does apply equally to coalitions established for the purpose of nominating joint slates and to citizens' groups forwarding candidates for elections to municipal councils and Assembly of the Republic of Montenegro. While penalties are established for violations of the law, the lack of detail with respect to contributions and expenditures and the absence of routine reporting requirements suggests that if penalties are applied at all, they will be subject to arbitrary application.

#### **E. ELECTION ADMINISTRATIVE STRUCTURES**

Elections in Montenegro are administered according to a three-tiered system of election bodies which consists of the Republican Election Commission (REC), 21 municipal election commissions (MECs), and polling site boards (PSBs). There were 879 PSBs at the recent presidential elections. This system is established through the "Law on Election of Councilmen and Representatives". The republic and municipal commissions operate on a permanent basis appointed for four year terms to coincide with the mandates of the respective legislatures. Under the current system, election commissions and polling boards operate according to core and expanded membership. Core members of election commissions, ie. those working on a permanent basis, are appointed by the republican and municipal assemblies and must come from the judiciary or the legal profession. The chairmen and their deputies must be judges. The Secretary of the REC must be a full-time employee of the Republican Authority and an election expert. Core members of polling site boards are appointed by their respective MECs at the time of elections but not later than 10 days prior to the election. According to the REC, in the core and expanded form, election commissions and polling boards engaged approximately 10,000 people during the administration of recent presidential elections.

The expanded membership of election commissions and polling site boards is constituted upon the certification of nominating entities participating in a given election. Political parties, coalitions, and citizens' groups which have met the requirements for ballot access are entitled to nominate a representative to the electoral body which certified their slate and each subordinate electoral body, ie. political parties participating in national elections can appoint members to the REC, MECs, and PSBs, while those participating in municipal elections can appoint members to the certifying MECs and PSBs in its jurisdiction. Any nominating entity which has failed to appoint its authorized representative within five days of the election forfeits the right to representation on the electoral body. Expanded members are permitted to serve on commissions and polling site boards through the end of elections, although their role relative to the core membership is not sufficiently clarified in the Law. Nonetheless, the inclusion of political party representatives on electoral bodies is consistent with the basic features of competitive elections and provides an important mechanism for control of the election process. It should be noted that draft revisions to the Law would seek to extend multi-party representation to the core membership of election commissions and polling site boards and would eliminate requirements that core members and, in particular, the leadership of the commissions be judges on the basis that this practice violates the separation of powers principle.

The permanent membership of the Republican Election Commission is comprised of the Chairman, Secretary, and five Members. The REC's activities are public and its decisions rendered by a majority of members.

General responsibilities of the commission include:

1. The correct and uniform application of laws governing elections and the conduct of elections;
2. Monitoring compliance with and enforcing laws governing elections;
3. Coordinating and supervising the work of MECs;
4. Determining the standard form of election materials;
5. Issuing guidelines on election procedures provided for in the law;
6. Identifying election documents which must be submitted to the commission;
7. Determining the legal conformity of supporting documents and signature lists in support of a nominated slate of candidates by a political party, coalition, or citizen's group for election of representatives to the Assembly and certifying those lists which have been submitted in compliance with the requirements of the law;
8. Establishing the results of the election of representatives and number of votes received by each slate of candidates as well as the number of seats to be allocated to each nominating entity;
9. Publishing results of elections to the Assembly as well as results according to each polling site;
10. Submitting a report on the election of representatives to the Assembly of the Republic;
11. Issuing certificates to elected representatives.

The permanent membership of municipal election commissions consists of a Chairman, Secretary, and three members. Its responsibilities include:

1. The correct application of laws governing elections and conduct of elections;
2. Organizing technical preparations for the administration of elections;
3. Setting up polling sites;
4. Appointing the membership of polling boards;
5. Determining the number of ballots required by each polling site;
6. Judging whether supporting documents and signature lists in support of a nominated slate of candidates for municipal elections were submitted in conformity with the law and certifying slates which comply with the requirements of the law;
7. Determining the result of elections for municipal council, the number of voters won by each slate of candidates, and the distribution of seats to nominating entities;
8. Issuing certification to elected councilmen;
9. Determining results of election of representatives within its jurisdiction and reporting those results to the Republican Election Commission;
10. Publicizing results of elections to the municipal council;
11. Submitting a report on the election of councilmen to the municipal council.

The core membership of each polling site board consists of a Chairman and two members. It is responsible for the processing of voters and conduct of balloting on election day, ensuring the regularity and secrecy of the balloting process, maintaining order within the polling site, and establishing the results of voting. More detailed rules concerning the work of polling site boards are prepared by the Republican Election Commission. In accordance with the law, each polling site may be responsible for as many as 2,500 voters on election day.

On the surface, Montenegro's election administration structure follows traditional lines, with election commissions cooperating with municipal authorities in the technical and logistical preparations of elections, and with commissions, courts, and the criminal justice system handling the adjudication of complaints and administrative and legal remedies. Upon closer inspection, however, the IFES team found considerable

diffusion of administrative responsibilities both vertically and horizontally. Throughout the course of its consultations, various administrative components of the electoral process were found to be the responsibility not only of the REC, MECs, and likely municipal authorities, but also the Ministry of the Interior, the Ministry of Justice, the Secretariat of Law, the Secretariat of Development and their affiliates at local levels. There is clearly confusion, if not outright disagreement, about the responsibilities and mandate of various state structures. This situation probably stems from the uncertainties of all election legislation concerning specific responsibilities of authorities and leads to an inefficient administrative system.

Representatives of the REC, in particular, noted that they were bombarded with requests and complaints regarding issues over which they had no control. They cited problems brought to their attention concerning voter registries, which were a particular point of contention in the recent presidential elections, noting that they had no responsibility for updating voter registries and that this function fell within the jurisdiction of the Ministry of Justice in accordance with the "Special Law on the Responsibility of the Ministry of Justice." The Secretariat of Development, a technical support and MIS group, has developed a proposal for the creation of a centralized and computerized Register of Electors and intends to undertake the project of updating the registries as well as training and supervising personnel, and overseeing the Registry's maintenance, although it currently has no legal mandate to do so. The REC admitted that it would be willing to assume the responsibility of maintaining the central Registry if one were to be created. In the area of training, both the REC and the Secretariat of Law perceive a role in the training of election officials and undertook such activities leading into the recent presidential elections.

Beyond this rather convoluted institutional arrangement, the Republican Election Commission has not been included in the reform process, along with other practitioners, from the electoral reform process. At the time of the IFES team visit, the REC had not been invited to participate in or advise the Multi-Party Working Group on Electoral Reform. They had not received copies of draft revisions. They were not aware of any comprehensive analysis of the presidential election process with an eye toward legislative modifications and technical adjustments. While it is clear that the Working Group views the REC as an organization packed by Bulatovic supporters, this is not entirely correct. In fact, there are several members on the commission who have extensive professional experience and constructive and detailed recommendations on improving the electoral process as well as the workings of the election commission structure. This decision to eliminate the current commission is anticipated to limit the quality of amended legislation.

#### **F. AGREEMENT ON MINIMUM PRINCIPLES FOR DEVELOPMENT OF A DEMOCRATIC INFRASTRUCTURE**

In response to the formal rift within the DPS and the growing political crisis in Montenegro, an agreement was drafted by Montenegro's political parties on the "Minimum Principles for Development of a Democratic Infrastructure in Montenegro."<sup>10</sup> This agreement was signed on the 1<sup>st</sup> of September by all of Montenegro's political parties represented in the republic and federal parliaments as well as representatives of government with the sole exception of Momir Bulatovic and his wing of the Democratic Party of Socialists. Although the agreement was belatedly signed by the Bulatovic wing of the party, their commitment to its stated aim *to overcome the crisis by accelerating democratic processes on the basis of a consensus of all political and social groups on the basis of democratic values* must be called into question. His support of mass demonstrations prior to President-elect Djukanovic's inauguration and initial statements indicating he would

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<sup>10</sup> The complete English translation of this text can be found in Annex VII of this report.

not abdicate power, suggest decidedly different motives and means.

The signatories of the Agreement have committed themselves to working toward the establishment of stability and development of sustainable democratic institutions through such activities as:

- ▶ Guaranteeing civil peace and security by affirming the spirit of tolerance, compromise, and respect and by maintaining an open dialogue on the resolution of all social and political issues facing the country.
- ▶ Accelerating the process of democratization by committing to the conduct of parliamentary elections under free and fair conditions by May 1998. Toward this end, the signatories proposed to intensify the work of the Multi-Party Working Group on Electoral Reform.
- ▶ Respecting the rule of law through the establishment of limits on the exercise of power and greater transparency of state structures;
- ▶ Nationalizing all property belonging to the League of Communists and related institutions and preparing a full inventory of assets to be publicly disclosed. Issues of future title and utilization are to be the subject of parliamentary debate and decision.
- ▶ Decentralization of state authorities according to a plan developed cooperatively between Republic ministries and local communities;
- ▶ Acceleration of privatization in tandem with necessary social security measures;
- ▶ Protection of human rights and the introduction of a public dialogue on the equitable handling of minority issues.

The signatories further commit themselves to begin work toward the implementation of these goals immediately and consistently, in good faith and mutual trust, and envision the possible creation of a multi-party Government dedicated to their attainment.

#### **G. MULTI-PARTY WORKING GROUP ON ELECTORAL REFORM**

A special working group dedicated to the spirit of multi-partisanism and the need for electoral reforms has been established to forward, debate, and prepare revisions to the "Law on the Election of Councilmen and Representatives," the "Law on the Register of Electors," the "Law on Financing of Political Parties," and the "Law on Public Information." The Working Group is comprised of political parties represented in the Assembly as well as those with mandates in the Federal Parliament. Its members include representatives of the Democratic Party of Socialists (Djukanovic wing), the People's Party, the Liberal Alliance, the Democratic Action Party, the Democratic League, the Democratic Union of Albanians, and the Social Democratic Party as well as representatives of Government. The group was belatedly and reluctantly joined by representatives of the Bulatovic wing of the Democratic Party of Socialists. The chairmanship of the Working Group rotates from meeting to meeting and the work of its members is divided into two sub-groups: one responsible for legislation on elections and voter registration and the other on campaign financing and the mass media. There is no formal nor routine mechanism of liaison between the two-subgroups to ensure that legal terminology, administrative timetables, and campaign period requirements applied to various pieces of legislation are

consistent.

The activities of the Working Group were intensified upon the signing of the "Agreement on the Minimum Principals for the Development of a Democratic Infrastructure" as plans were made to introduce all four pieces of revised legislation to the full Assembly during its fall session and to secure passage by year's end.<sup>11</sup> In the aftermath of the Agreement, the Working Group directed its efforts toward modifications intended to: introduce proportional representation on the basis of a single electoral unit (with special provisions designed to safeguard the representation of Albanian minorities); improve mechanisms of control over the election process and determination of results; further open state-owned media and allow for equal access of all political parties; introduce greater regulation and disclosure of campaign financing; and improve the currency and accuracy of voter registries.

While the existence of such a multi-party forum brings a positive and necessary diversification of views to the election reform process, the absence of practitioners limits the quality of its proposals. During its consultations, the IFES team was surprised to learn that election officials, legal scholars, judges, and journalists had not been involved, not even as advisors to the Working Group, or as expert witnesses, nor had they been given access to copies of the revised drafts of legislation. Although the Working Group is a multi-party entity, the lack of independent counsel suggests that the process of electoral reform has become politicized, i.e. with political interests rather than technical and legal considerations driving the reform process.

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<sup>11</sup> In subsequent developments, most of the legislative package was approved by the Assembly by early 1998. Former President Bulatovic, refused to promulgate the laws and sent them back to the Assembly. The Parliamentary Working Group revised the draft laws and resubmitted them to the Assembly following Milo Djukanovic's inauguration as President. The laws have all passed in the Republican Assembly.

## **IV. POLITICAL PARTY SCENE**

The formal split of the Democratic Party of Socialists, the signing of the "Agreement for the Minimum Principles for the Establishment of a Democratic Infrastructure" by six political parties, and the presidential electoral defeat of Momir Bulatovic has created an entirely different political climate in Montenegro. It is an environment in which Milo Djukanovic will be forced to form a multi-party government in order to survive. It is also an environment which will necessitate significant adjustments in the practices of the opposition political parties if they are to prosper. Meaningful political competition and greater input to public policy will necessitate significant initiatives in the areas of party building, social outreach, message development, and program. While the prospect of truly competitive elections provides an opportunity for each party to obtain an accurate measure of its support in society, the limited political sophistication of the electorate may necessitate the formation of a coalition leading into the campaign if the democratically oriented parties have any hope of controlling the Assembly.

### **A. DEMOCRATIC PARTY OF SOCIALISTS**

The nature of the Democratic Party of Socialists remains extremely convoluted as the legal status of each faction has yet to be fully resolved and as the Djukanovic wing of the party is pushed by its coalition partners and the courts to separate its party structures from those of the government. As noted earlier, Momir Bulatovic lost the presidency of the national DPS structure and was ousted from the party in Summer 1997. His faction continues to use the DPS name and has been registered under that name with federal authorities in Belgrade. Milo Djukanovic's wing is registered under the name DPS with republican authorities in Podgorica. Rights to the name are particularly important as the resolution of this matter may well decide the final disposition of the party's extensive financial resources and property. At the same time, the Assembly has moved to inventory all assets of the League of Communists in Montenegro, of which the unified DPS was a successor, and consider options for future title and utilization. The courts have also begun to strip the party of its control over the Government. During the team's visit, the Constitutional Court ruled that government ministers no longer had to be approved by the party, in accordance with the party's rules, prior to their presentation to the Assembly.

While the split within the party was largely motivated by political ambitions, the evolution in the thinking of Djukanovic and his supporters is beginning to result in significant ideological differences between the two factions. Bulatovic is seen as thoroughly beholden to Milosevic's agenda, backed by conservative forces within the electorate: those favoring strong ties with Serbia and those hardest hit by economic collapse and opposed to change. Djukanovic favors increased autonomy for the Republic and considerably more progressive political and economic policies. Although western leaders have come out in favor of his regime and are optimistic about the prospects for democratization within Montenegro under his leadership, some opposition leaders are not so sure. One parliamentarian questioned the reform commitment of the revamped DPS, noting that it was "not within the nature of the party to enact democratic practices". Another noted that Djukanovic's DPS "has no strategy . . . no idea how to proceed. Once they learn how hard it will be, they may not be such eager reformers." In all fairness, the outcome of this evolutionary process with regard to public policy and democratic practice will become clear only after Djukanovic has consolidated his power. A measure of their popular support will have to wait until after new parliamentary elections are held in May 1998.

## **B. PEOPLE'S PARTY OF MONTENEGRO**

The People's Party of Montenegro was among the first opposition parties to be formed in Montenegro. The party, chaired by Professor Novak Kilibarda, is based in Podgorica and has branches in each of the 21 municipalities. It has approximately 20,000 members.

A party of liberal democratic orientation, it initially favored sovereignty for Montenegro within a democratic federation of Serbia and Montenegro and the integration of all Serbian peoples. Primacy of foreign relations was with other Balkan states and peoples. As a result of the authoritarian orientation of the Milosevic regime, deteriorating relations with Serbia, and the developing political crisis in Montenegro, the party has moved toward even greater autonomy, if not independence, for Montenegro. Its economic plank favors private property rights including the privatization of property formerly confiscated by the Communist regime, and taxation as the basis of state revenue. With respect to religion, the party recognizes Orthodoxy as the national religion. It endorses the establishment of a professional police force and army. In recent political developments, the People's Party played a crucial role in consolidating the support of the entire opposition behind Milo Djukanovic's presidential bid.

The party, in coalition with the Liberal Alliance, holds the second largest mandate, in the Assembly with 19 seats out of 71. This coalition has recently collapsed, however, as the Liberal Alliance positions itself to compete as a political party in upcoming parliamentary elections. The People's Party has also experienced a split within its own organization, with the more extremist, ie. pro-Serbia, elements, leaving the party. It is a signatory of the "Agreement on Democratic Principles." While the party continues to be highly respected, its intellectual orientation may limit its electoral prospects and influence in the longer term.

## **C. LIBERAL ALLIANCE OF MONTENEGRO**

The Liberal Alliance was established in 1990 in the city of Cetinje, as the first opposition political party. Although originally against the break-up of Yugoslavia (SFRY), once this happened, the party strongly opposed the war in former Yugoslavia and particularly the involvement of Montenegro in military operations against Dubrovnik, Croatia. It envisions an independent, internationally recognized and integrated Montenegro based on liberal democracy, private property, a market economy, and ethnic tolerance. It presents itself as a diverse organization committed to the Montenegrin traditions of peace, tolerance, and coexistence. The party is a full voting member of the Liberal International.

The Liberal Alliance is a signatory of the "Agreement on Democratic Principles." It recently left its parliamentary coalition with the People's Party to prepare for upcoming Parliamentary elections in which it anticipates winning as many as a quarter of the seats in the Assembly. In the aftermath of parliamentary elections, it favors the conduct of a new referendum to decide the future of the state of Montenegro. The party is chaired by Slavko Perovic and claims 22,000 members.

## **D. SOCIAL DEMOCRATIC PARTY**

The Social Democratic Party originated within the reform coalition of former Prime Minister Ante Markovic, although the party itself was not formally founded until 1993. It is chaired by Zarko Rakcevic and has chapters in most of Montenegro's municipalities.



Initially, the core favored the preservation of Yugoslavia (SFRY) based on democratic principles, a mixed economy, peaceful resolution of conflicts, and recognition of human rights. Since the break-up of Yugoslavia, they have come out in favor of an independent Montenegro. They do not recognize the results of the referendum in which Montenegro opted to remain within a federal state of Yugoslavia with the Republic of Serbia. The party emphasizes that in every respect this federation is comprised of two unequal partners which cannot function efficiently together and whose merger can only result in conflict. It envisions a democratic Montenegro integrated into the community of nations with a mixed-economy and environmentally sound policies. It has taken a lead in attempts to improve the living conditions and educational and employment opportunities of young people with the intent of their opting to remain in Montenegro.

The party has previously had representation in both the Assembly of Montenegro and the Federal Parliament, although it currently has mandates in neither. It is a signatory of the "Agreement on Democratic Principles" and supported Milo Djukanovic's bid for the presidency, although it admits that this support is based only on its opposition to the Milosevic regime. The party is extremely outspoken about the non-competitive basis of Montenegro's party system to date and the ruling party's monopoly over and manipulation of the media, the economy, and all state structures.

#### **E. DEMOCRATIC UNION OF ALBANIANS**

The Democratic Union of Albanians was formed in 1993 following a split with the Democratic League in Montenegro. The party is based in Ulcinj and has a branch organization in Tuzi. Its estimated membership is 5,000 people. The Union has two seats in the Assembly and eight seats in the Ulcinj City Council. The party is chaired by Bajram Redza.

The party perceives itself as a protector of Albanian rights and a representative of Albanian interests in Montenegro. It operates in accordance with the Constitution and laws of Montenegro and advocates the observance of international laws and conventions on human rights. It favors cooperation with all democratically-oriented political parties on the basis of mutual respect. It is a signatory to the "Memorandum for Special Status of Albanians in Montenegro" and the "Agreement on Democratic Principles." It views Djukanovic's reforms as crucial for greater Albanian rights and deems any cooperation with Bulatovic and his supporters as unacceptable. The party favors greater local autonomy for the authorities in Ulcinj and Tuzi, more rights within the sphere of education and regarding the use the Albanian language and Albanian national symbols, and advocates the creation of a separate electoral unit for Albanians.

#### **F. THE DEMOCRATIC LEAGUE OF ALBANIANS IN MONTENEGRO**

The Democratic League of Albanians in Montenegro was originally the sole political voice for Albanians and was established as a political party in 1990. The party has some 5,000 members and has two seats in the Assembly and control of the city council in Ulcinj. The party is headquartered in Ulcinj and has branches in Albanian communities throughout Montenegro. It is chaired by Professor Mehmet Bardhi.

The party favors the advancement of the Albanian cause and protection of their rights and culture through democratic and legal means. They are signatories of the "Memorandum for the Special Status of Albanians in Montenegro" and the "Agreement on Democratic Principles." The League opposes the status of Albanians under the Montenegrin Constitution, which refers to ethnic groups, favoring instead the term "national minority." It is dissatisfied with the absence of Albanian history and heritage within the educational

system, the lack of Albanian language mass media, and the under-representation of Albanians in state institutions. The League opposes the creation of a special electoral unit for Albanians as not all Albanians live within the proposed constituency and would lack representation in the Assembly. They favor the creation of a single electoral unit with a waiver of the threshold requirement for Albanian parties and the automatic allocation of four seats to representatives of the Albanian constituency.

## V. THE MEDIA ENVIRONMENT

While "democratization" of the mass media has been underway in Montenegro since 1992, the split of the ruling Democratic Party of Socialists has served as a catalyst for more meaningful and substantive changes and has greatly intensified the momentum of the reform process. Significant shifts are underway, both in terms of the openness, diversity, and competitiveness of media outlets and the tastes and loyalties of the media market. According to the Ministry of Information, there are currently 170 registered media in Montenegro, "most of them private" and three news agencies. At the time of the team's visit, political parties and members of the journalistic community expressed great relief and optimism at the altered political circumstances, ie. the split of the ruling party and the presidential election victory of Milo Djukanovic, and its ramifications for the mass media. This was a nearly universal impression despite the growing political crises within the country.

Political parties and special interest groups in Montenegro contend that prior to the split, despite the guarantees which existed on paper -- in the form of the comprehensive Law on Public Information<sup>12</sup> -- the mass media was, in fact, monopolized and manipulated by President Bulatovic and the then-united ruling party. Members of the journalistic community confirm that state-owned outlets have, for the past four years, failed to print or air stories on the views and activities of opposition political parties or even independent opinion leaders. According to one prominent journalist, "We have a very democratic public information law. Practice, well, that is another thing altogether." A colleague commented: "Under Bulatovic we had no access, no information." Although independent outlets existed, they were often dependent upon state-owned means of production ranging from printing houses to transmitters and thus vulnerable to the State.

Market research conducted between June and October suggests that the altered political landscape and subsequent developments within the mass media are beginning to impact media consumption, particularly among young people, ie. those under the age of thirty.<sup>13</sup> As of October, 37% of young people indicated that their peers served as their most trustworthy source of information, while 18% trusted radio, 14% trusted television, and 8% trusted newspapers. When asked which source they trusted least, 55% responded television, 24% newspapers, and 12% radio. It should be noted that most news and information programming is aired on state television Radio/Television Montenegro (RCG/RTV). Elmag Television airs only entertainment programming and Blue Moon only limited news and information. While the consumption of mass media programming is surprisingly low, the direction of these numbers is particularly revealing. Before the split of the ruling party, 66% of young people indicated they didn't even watch television. By October, this was down to 55%. In June only 6% of those who watched tuned in to RTV. Four months later, 18% were watching RTV. While only 6% listened to RCG prior to the split, 10% were tuning in by October. Similarly, readership of the state newspaper Pobjeda increased from 5% to 8% in the same period. Readership of newspapers produced in Serbia, among them Nasa Borba, Politika, Novosti, Blic, and Dnevni Telegraph, declined noticeably during the same period.

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<sup>12</sup> According to the Secretariat of Law, the laws of 37 developed democracies were reviewed during the drafting of Montenegro's Law on Public Information.

<sup>13</sup> All data has been generously provided by the Faculty for Economic Sciences in Podgorica.

## A. THE LAW ON PUBLIC INFORMATION

The Law on Public Information was first passed by the Assembly of Montenegro in 1993 and modified in 1996. It was under review by the Multi-Party Working Group on Electoral Reform during the assessment mission.<sup>14</sup> As noted above, the law is significantly more comprehensive than its counterparts governing campaigns and elections which, by and large, are in accordance with internationally recognized democratic standards. The basic provisions of the Law guarantee the right to factual, objective, and current public information, forbid censorship, provide for equal rights of all individuals and legal entities to information, and disallow the use of force as a means of influencing sources of public information or dictating the content of their publications, transmissions, or productions. Public information outlets are further expected to respect the privacy and dignity of a citizen. The decisions and actions of government, the legislature, and state administrative bodies are to be transparent, with information at their disposal equally accessible to all journalists.

Chapter Two of the Law deals with the management of public information sources and requires that the management of all state-owned media be constituted by a Management Board,<sup>15</sup> a Supervisory Board, and a Director. Article 26 stipulates that the Management Board is to consist of 15 members, appointed by the Assembly, in proportion to the number of representatives each political party has within the legislature. The director of a state-owned public information medium is elected by the management board. One of the few, albeit, significant proposals for the modification of the Law on Public Information forwarded by the Multi-Party Working Group on Electoral Reform is the addition of a program policy board to the management structure of state-owned public information sources. As with the Management Board, the Program Policy Board is appointed from the Assembly in proportion to the representation of each political party therein.

The responsibilities of the Management Board are not defined by the existing Law and are to be clarified by specific acts on the activities of public enterprises, the Deed of Foundation, and the medium's regulations in draft language for proposed modifications to the Law. The Supervisory Board, which also includes representatives directly appointed by the Government, is responsible for issues of financial management according to draft modifications. According to comments within the revised draft of the Law, the Government is able to *directly control the work of directors* of state media through the supervisory boards. The Program Policy Board is to be tasked with the formulation of the program policies of a public information medium and monitoring its compliance, while at the same time making sure that there is freedom of information and respect for the rights of citizens and journalists.

The law specifically disallows programming aimed at the violent destruction of the constitutional order, breaking the territorial integrity of the Republic, breaching guarantees of human rights and civil liberties of the populations, or inciting national, racial, or religious intolerance or hatred. According to the Secretariat of Information, the only two conditions that would cause the registration of a public information entity to be revoked are advocating the violent overthrow of the government or inciting hatred. At the same time, a public information entity will be removed from the register of public information media if it fails to initiate publication or broadcasting within 6 months of its registration, it is inactive for a period exceeding 6 months,

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<sup>14</sup> The Law on Public Information was subsequently passed on 12 February 1998 by the Republican Assembly.

<sup>15</sup> The Management Board is renamed the Board of Directors in proposed revisions to the Public Information Law.

or its activities are disrupted at least three times (reduced to two in draft modification to the law) as a result of a judicial ruling.

Chapter Three of the Law is devoted specifically to the rights and responsibilities of journalists. According to its provisions: journalists enjoy the right to express their opinions toward all events and developments within the Republic; a member of the journalistic community may neither be suspended, nor his/her status changed, nor his/her salary reduced as a result of his/her opinion; and a representative of the mass media may refuse to participate in any activity which is inconsistent with the regulations and practices of the journalist profession. In addition, it is unlawful to publish or air opinions under someone else's name. The printing or broadcasting of information subsequently found to contain inaccuracies must be handled through a correction.

In order to protect the freedoms of public information and the right of citizens to be given factual, objective, and current information, the Council for the Protection of Public Information Freedoms is created under Article 80. The Council consists of a president and 11 members. The president and seven members of the Council are to be appointed by the Assembly in proportion to the representation of political parties therein. The remaining four members are to be appointed, one each, by the President of the Republic, the President of the Government, the University of Montenegro, and the Academy of Arts and Sciences of Montenegro. Members are appointed for a period of 4 years. The Council is tasked to address:

1. Complaints raised by citizens and legal entities against the programming or actions of public information media;
2. Complaints of journalists and publishers whose rights to information from state organs have been violated;
3. Complaints of journalists regarding the disclosure of information to state organs;
4. Complaints of journalists and editors, as well as their professional associations, against the founders or publishers of public information entities who have curbed the freedoms of thought and expression.

The Council subsequently advises the Assembly, authorized organs of state power, and local government organs on its position regarding each complaint. Action taken in response to complaints and in accordance with the Council's recommendations is the responsibility of the Government and its authorized administrative bodies.

As noted in the introduction to this chapter, the problem with the Law on Public Information, with a few exceptions, is not so much its content, but dismally inadequate compliance and enforcement prior to the split within the ruling Democratic Party of Socialists. The quality and consistency of its application will become clear only in the future.

## **B. STATE MEDIA OUTLETS**

The situation within state-owned media is a difficult one. The past policies and practices of the public media have been widely and rightly condemned by opposition political parties, special interest groups, and the academic community, to name but a few. At the same time, editors in state-owned media have found themselves in an unenviable position. Most of them report being under extreme political pressure during the Bulatovic regime. Despite provisions in the Public Information Law to prevent such an eventuality, editors report that there is no security in their profession and they "are constantly being replaced." Interestingly, the intent of the various "control" boards, ie. management boards in particular and now program policy boards,

as envisioned by the "Law on Public Information" was to ensure the objectivity of state media outlets and the protection of the rights of citizens and journalists to be informed. In a one-party state, they have had the opposite effect: politicizing programming and editorial content and restricting the rights of citizens and journalists with respect to the factual, objective, and timely provision of information. In a society where elite circles continue to be highly distrustful of editors and journalists of public information organs, the root of many of the problems appears to have been the control boards.

In response to abuse of state-owned media outlets and the split within the ruling party, members of the Multi-Party Working Group on Electoral Reform have sought not only to increase the number of control boards but also their grasp over the public media. While well intentioned, the Working Group assumes that the break of the ruling party's monopoly on power will be the end to politicization and manipulation of public media outlets and at the same time fails to acknowledge that the domination of a single party or coalition -- which is not out of the question -- could have the same affect. On the other hand, a high degree of diversity or factionalism on the control boards has certain adverse consequences for their efficiency if not operability which have been equally unrecognized.

Journalists and editors in public media contend that political parties' appointees to control boards are more interested in narrow political interests than democratic principles. According to one editor, the boards are comprised of "low level party hacks." Their professional qualifications for the job have been brought into question. Out of 15 members of Pobjeda's Management Board, only one has a journalistic background. None of the member's of RTV's Management Board have come from the ranks of the journalistic profession. This lack of experience has been exacerbated by the fact that editors so far have, not had the right to make proposals to influence the debates of the decisions of the control boards, let alone oppose them.<sup>16</sup> According to the bulk of newspaper, radio, and television editors, they were not even permitted to attend the sessions of the management boards, which have also been closed to the public. When one editor-in-chief suggested that a session of his control board be televised since it was in the public interest, the members reportedly "blanched." The lack of transparency of the control boards is of particular concern and is wholly inconsistent with their democratically oriented mandate.

With respect to the efficiency and operability of the control boards within an increasingly political environment, representatives of the Ministry of Information confirm that the boards are becoming so big and diverse that they are having difficulty reaching a consensus and implementing it. It is widely believed that they have become unworkable. In the aftermath of the presidential elections, the management boards have not been functioning. Editors consistently reported that this has been their most productive time. Interestingly enough, this coincides with the period in which the public media's critics, most notably opposition politicians, have been most satisfied with its performance.

The editors contend that they eagerly await partial privatization in the near future, with a 51% stake of ownership retained by the Government.

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<sup>16</sup> As with practitioners from the independent media, none were invited to advise or participate in the Multi-Party Working Group on Electoral Reform which is charged with revising the Law on Public Information.

### **C. INDEPENDENT MEDIA OUTLETS**

The situation within so-called independent media is equally complicated. As in many post-communist societies, the independent media is not always so independent as it is a conduit for alternative viewpoints. In this respect Montenegro is not alone. The virtual absence of any dissenting opinions within the journalistic community concerning the anticipated policies of president-elect Djukanovic suggests that unwavering support of the new regime is considered crucial to the consolidation of a free press in the longer term even if immediate practices of the chief executive with respect to the mass media are not always so democratic. Of course, the latter part of this equation remains to be seen. Nevertheless, independent journalists and editors are clearly enthusiastic about the new era in the mass media despite their own financial hardships in what has been called a "dead" economy.

It is clear that there exists a graduated degree of autonomy within the so-called independent media. Discussions with a host of "independent" media outlets reveal that some have negotiated special arrangements with government representatives and according to some, as a result, have been given more favorable monthly rates for frequencies.<sup>17</sup> Monthly rates for a frequency can run as high as \$2000 a month for outlets without any formal arrangements with -- or expectations of -- the Government. Rumored connections of recently established media outlets with the administration of Djukanovic suggest that the practice of "special" rather than equitable conditions continues, perpetuating the perception of the non-independent nature of a portion of privately owned media.

Other challenges, reminders of Montenegro's communist past also affect the development and consolidation of a free press. Most notably, self-censorship remains a practice of many journalists. According to one editor, "there has not been any security in our profession." Another suggests that journalists have been trained in the socialist tradition and that "it will take years until Montenegro's media become truly independent." For representatives of some long-standing independent media the message sent by politically motivated firings; difficulties in and disruption of printing, distribution, and transmitting; and threats and actual incidences of violence over the years remains clear. Restricted behavior is not limited to the journalistic community. Editors also indicate that there is still some fear within the business community with respect to the purchase of advertising time or space within independent media outlets. The prospect of Government recriminations for financial support of the independent media has not yet dissipated.

As with their counterparts in the public media, independent journalists and editors report that they have not been invited to advise nor participate in the Multi-Party Working Group on Electoral Reform which is considering modifications to the "Law on Public Information," nor have they seen copies of the revised draft. When asked about this, one journalist responded: "We have not been consulted . . . No one I know has been consulted."

### **D. THE MASS MEDIA AND ELECTION CAMPAIGNS**

The performance of the mass media with regard to the treatment of political parties and reportage of

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<sup>17</sup> It is also interesting to note that special conditions have reportedly been applied to the Belgrade-based media group BK, which has been buying up frequencies in Montenegro but not using them. Some have alleged that they have surpassed the six-month inactivity clause of the Law on Public Information, although their registration has yet to be revoked.

election campaigns has been widely criticized and has been, in large part, the catalyst to current and intensive efforts to reform the "Law on Public Information." In particular, biased coverage of political campaigns during the election period and unequal access provided to political parties generally and the prejudicial ramifications of such practices were among the main concerns. The OSCE delegation also noted that broadcasts into Montenegro by Serbian-based media outlets are not subject to provisions of Montenegro's electoral and public information laws.

Campaign and media provisions of the electoral law cover:

1. The right of candidates to have access to public information media and equal time on Radio/Television Montenegro for presentation of candidates/nominating groups and their electoral programs;
2. Prohibitions on political messages during commercial or entertainment programs. Such messages are to be limited to informational and news programs;
3. The provision of equal space and conditions in the state-owned newspaper Pobjeda;
4. Equal treatment regarding the announcement of the scheduled rallies of political parties on Radio/Television Montenegro;
5. Requirement that paid political advertising be identified as such;
6. The forging of an agreement between media representatives, the Republican Election Commission, and candidates/nominating groups governing the presentation of political information and special election programming in an independent and objective manner by impartial presenters;
7. The development of rules governing all media funded by the state or local administrations;
8. The organization of conferences and public events in conformity with regulations on public order and peace as well as reportage of such events;
9. The preparation and display of campaign materials without special permission in places designated by municipal authorities;
10. Public disclosure of decisions on claims brought against the media during the election campaign;
11. Prohibitions on broadcasting/publication of the results of public opinion polls and projections of results within a week of elections through closing of the polls;

The "Law on Public Information" also requires that state media outlets publish, at the request of competent government institutions, information deemed urgent or of special importance of the citizenry (this would include information on the electoral process). It also requires them to inform the population on the activities and positions of all political parties represented in the Assembly.



## **VI. NGO DEVELOPMENT**

### **A. NGO ENVIRONMENT**

While non-governmental organizations (NGOs) do exist in a nominal sense, in actuality they have yet to take root in Montenegrin society. By and large this can be attributed to a lack of understanding about the nature and role of such organizations by the Government, prospective NGOs, and the population. The idea of civic initiative is a novel one, especially in rural areas where the population tends to be resistant to change. To date, prospective NGOs are not yet in a position to advocate a favorable environment for the evolution of the non-governmental sector; act as intermediaries between government and those they represent by consolidating and representing public interests and playing a public advocacy role; promote coordination and cooperation among similar groups; or build institutional sustainability through support services, such as advising, training, resource centers, newsletters, etc.

This situation is exacerbated by extremely limited options for financing. Cultural and special interest organizations, which tend to be extremely loosely organized and administered; student organizations; and a couple of human rights organizations, whose interests at times tend to be extremely broad and, on occasion academic, comprise the current NGO sphere. Many receive the sum or a bulk of their operating funds from the Government. Ethnic based groups enjoy some support from émigré communities. Private foundations have begun awarding grants to a handful of student and human rights organizations.

At the same time, the increasingly open and competitive political environment in Montenegro; improved prospects for transparency in government and decentralization of decision-making, or at least greater opportunities for input; and the reported ease with which NGOs can register; are promising signs for the development of a substantive NGO sector in Montenegro. Through on-going civic education activities and the consolidation of the NGO sector, the citizenry of Montenegro can be empowered to actively and effectively engage and monitor public institutions.

### **B. ELECTION RELATED NGOS**

There currently exist within Montenegro, two organizations with a mandate to conduct election-related and other activities. These include the Helsinki Committee of Montenegro and the Center for Democracy and Human Rights. The Helsinki Committee, founded in 1994, is described by its leadership as a group of individuals committed to the observance of human rights and promotion of democratic ideals. Among its interests and activities are: judicial reform, minority rights, free and fair elections, establishment of society based on the rule of law, openness of the mass media; reform of the military; creation of democratic political institutions, and protection of private property rights (as well as the public disclosure and equitable conditions for the privatization of property formerly belonging to the Communist Party).

The Helsinki Committee did field domestic monitors for the 1997 presidential elections and 1996 parliamentary elections, although the absence of language in the election law on the rights and responsibilities of observers did present problems in obtaining accreditation from the Republican Election Commission. During the recent presidential election campaign, it was forced to resort to quoting provisions of the Copenhagen Document. Pressure by international observer missions resulted in their receiving at least some credentials, but only for three of their 10 representatives, and only two days before the election. Among the

group's concerns with the election process were significant omissions and inadequacies in the voter registry, monopoly and manipulation of mass media outlets by the incumbent president, and political pressures and intimidation perpetuated by Federal authorities.

The Center for Democracy and Human Rights was established in July 1997 and currently has 10 members and two employees. Its activities also include monitoring of human rights and the creation and consolidation of democratic institutions in Montenegro. It focuses on electoral issues, ethnic relations, minority rights, refugee status, citizenship issues, the mass media, and political reform. The Center works closely with the Center for Human Rights in Belgrade and wants to establish working relations with international organizations. When asked to distinguish its activities from the Helsinki Commission, the Center's leaders noted that their orientation was more academic and analytical, while its counterpart was involved in practical questions.

The Center plans to hold a conference in early 1998 to analyze the recent presidential election process and discuss election law and practice, public information and the mass media, and the ramification of elections in Serbia and Montenegro. Its leaders were not aware of the timetable for the passage of amendments to a host of laws governing campaigns, elections, and public information which was slated for December 1997 or January 1998. Like other groups, it also was not invited to advise or participate in the Multi-Party Working Group on Electoral Reform, nor has it seen copies of draft modifications to the laws. When asked about the problems stemming from the absence of language within the election law concerning election observers, its leaders indicated that they didn't expect any obstacles to domestic monitoring but agrees that, perhaps, legal protections "could be useful." The Center also has plans to conduct eight public opinion polls between April and September 1998 (although legal prohibitions on the publication of polling results a week out from elections may affect their schedule) and issue a series of studies on a variety of human rights and election related issues.

### **C. ELECTION ACTIVITIES OF STUDENT GROUPS**

A number of student organizations, working in cooperation, also played an important role in recent presidential elections. Of the nearly 130,000 young people in Montenegro, an estimated 80,000 have voting rights. Many of these, as first time voters, have been directly affected by the inadequacies of Montenegro's voter registry. Thousands of young people were disenfranchised during the first round of presidential elections as their names did not appear on voters lists.

The Student Union and the Council of Youth tried to identify eligible young voters to ensure that their names were included on the lists. An appeal was sent to the Republican Election Commission and published in the mass media. As a result of their efforts, a reported 15,000 young people were added to the electoral rolls by the second round of the presidential elections. The two groups also requested that young people be allowed to vote at their places of study or military service (a significant number of young people attend university in Belgrade, Serbia). While this request was refused (there are not legal provisions for this), the groups arranged for students to be bused to their home constituencies.

Voter information and mobilization activities for young people were also conducted through the mass media and special events. The group estimates that as many as 80,000 people were reached by their message that: *You are important and your vote counts!* Student leaders note that while there was formerly little interest in politics, the split of the ruling Democratic Party of Socialists has created conditions and

opportunities which have sparked participation among young people.

At the same time, it appears that the group may not understand the *process-oriented nature* of elections nor its on-going role in informing its constituency and protecting their rights. When asked if they would perform similar activities for the parliamentary elections, student leaders noted that while they plan to conduct some voter education, the results of their registration drive are *permanent*, so the future need is not particularly great. This, of course, fails to acknowledge the continued need to monitor the compliance of local authorities to update voter registries and pressure them to do so as well as ensure that young people, who have recently obtained the right to vote or may be particularly mobile are included on the lists. It also indicates that the group is not fully aware of its significance as perhaps the most organized, pro-active, and focussed registration effort of the presidential election cycle. Moreover, recent surveys suggest that young people in Montenegro consider their peers to be the most important source of information on political, social, and economic groups. They also indicate that 38% of young people under the age of 30 do not consider themselves "*informed*" while 42% admit they could be "*better informed*." These results indicate a very strong need for civic education directed at young people.

In addition to the Student Union and the Council of Youth, another group engaged in election related activities, the Center for Reforms, which serves as a professional network and support group of young entrepreneurs,. According to the Center's President, " young people do not know enough about the electoral process and this limits somehow their influence in politics." In response to this situation, the Center used its ten member organizations throughout Montenegro, spanning six cities, to provide information during the presidential election campaign.. In particular, they tried to target apathetic voters and those planning to boycott the elections, counseling them about the importance of every vote. They also conducted door-to-door "get out the vote" campaigns (GOTV). The Center's leadership notes that while there were problems with the presidential elections, they were relatively free and fair but that *the political crisis which emerged in the aftermath of the elections has been exacerbated by people's lack of knowledge about the law.*

In anticipation of the upcoming parliamentary elections, the Center is holding meetings with regional election commissions and political party chapters in the hope of conducting multi-tiered training for political party representatives appointed to election commissions and polling sites as well as voter education activities through the mass media and special events. Funds to undertake youth-oriented activities by the Center for Reforms, the Council for Youth, and the Student Union were raised from a variety of sources including each organization's national and regional budgets (ultimately public funds), private contributions, the Open Society Institute, and the Jewish Distribution Corporation.

## VII. THE CITIZENRY

Montenegro has a population of over 630,000 people, of whom 62% are Montenegrin, 9% are Serb, 16% are Muslim, and 7% are Albanian. The number of refugees currently in Montenegro is estimated to constitute 10% of the population. It is anticipated that as many as 30,000 of these refugees will opt to remain in Montenegro. The Montenegrin Constitution expressly provides for equal rights of national and ethnic minorities and a tangible effort has been made to integrate citizens of Muslim and Albanian heritage into political, economic, and cultural spheres. While Serbo-Croatian is the country's official language, in communities with a high concentration of Albanians Albanian is clearly the language of choice and is utilized to the greatest extent possible. In the past forty years, the country has undergone a process of urbanization. Currently, 58% of the population live in towns or urban areas, while some 7% live and work in rural areas. According to statistics provided by the Ministry of Education, approximately 202,000 citizens over the age of 15 have attended secondary school or higher. Some 251,000 citizens over the age of 15 have no more than a primary school education, although 30,000 of those are deemed to be functionally illiterate. Primary education is mandatory. Of those, Recent studies by the Economic Faculty indicate that when it comes to current events and developments within Montenegro, only 15% of young people under the age of 30 consider themselves to be "*informed.*"

With respect to elections, 470,738 citizens qualified for suffrage according to the Register of Voters utilized for the second round of voting in the recent presidential elections of whom 343,221 participated. Of those, 50.8% cast their votes in favor of opposition candidate Milo Djukanovic, while 49.2% supported incumbent President Momir Bulatovic. Although 73% of voters participated in elections, levels of awareness, particularly with regard to their rights and the electoral process were relatively low. In particular, the apathy of voters with regard to checking their entries in the Register of Electors and providing the required notice of a change in address contributed to the disenfranchisement of thousands of voters in the first round of presidential elections. The lack of a clear mandate in support of Milo Djukanovic, given that nearly half of the electorate voted in favor of a continuation of the policies of the past, has served to undermine political stability within the Republic. The two leaders and their active supporters have become increasingly polarized, and the incumbent -- with the backing of federal authorities -- originally refused to peacefully turn over power to his successor. Bulatovic actually called upon his supporters to arm themselves against the incoming "criminal" regime and indicated that he would only turn power "back to the people." After a series of mass demonstrations were held by Bulatovic supporters surrounding Djukanovic's inauguration, Bulatovic did finally concede power.

## VIII. RECOMMENDATIONS

The current chapter provides some preliminary recommendations for legal, policy-oriented, and procedural changes which address the concerns raised and weaknesses observed during the team's mission to Montenegro and are based on the draft legislation received by the team.<sup>18</sup> More detailed analyses of the election law and the proposal for computerization and centralization of the voter registry can be found in Annexes XVI and XVII of this report.

### A. LEGAL REFORM

- ▶ Considerably more clarity and detail is required throughout legislation governing campaigns and elections to ensure the correct and consistent interpretation of law, efficient and uniform administration of elections, and equitable adjudication of grievances.
- ▶ Every effort should be made to include practitioners, among them legal scholars, election officials, and journalists, to be involved in the process of reforming legislation on elections, voter registries, campaign financing, and public information, either in an advisory capacity or formal participation in the Multi-Party Working Group on Electoral Reforms.
- ▶ Some form of routine liaison between the two sub-divisions of the Multi-Party Working Group should be instituted for the purposes of comparative review of all proposed legislation to ensure consistent and/or compatible legal terminology, realistic administrative timetables, and enforcement of campaign requirements.
- ▶ In light of political pressures to conduct elections in May 1998, the Multi-Party Working Group should focus its efforts on a manageable number of priority issues, especially those which proved most problematic during the presidential election cycle such as: Certification of candidate slates and ballot access, equal access to and equitable coverage by state media outlets; accuracy and currency of voter registries, adjudication of grievances, and the integrity of the election process, including particularly election results. Issues pertaining to the representation of the Albanian minority in the legislature and, subsequently questions of constituency delimitation or threshold requirements for mandates will also need to be addressed.
- ▶ In the aftermath of the election campaign, the Multi-Party Working Group should commit itself to an exhaustive review of the presidential, parliamentary, and municipal election experience to further refine legislation governing campaigns and elections, and continue promotion of institutional, regulatory, and procedural reforms, as well as actively encourage and support voter and civic education initiatives.

### B. ELECTION MANAGEMENT AND ADMINISTRATION

- ▶ Institutional reform is required to rectify the current diffusion of election administrative responsibilities which has led to confusion among voters and political participants, disagreements

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<sup>18</sup> Subsequent revisions to the draft laws are not addressed as they were not available at the time of writing.

between state structures, and an ineffective administrative system. All responsibilities for the preparation and conduct of elections at the national level should be consolidated under the Republican Election Commission. A distinction between electoral administration and executive/logistical operations is required.

- ▶ Much more realistic timetables must be established within the law for campaign, election, and adjudication-related deadlines.
- ▶ The law should clarify the relative duties of core and expanded members of election commissions and polling site boards, particularly on election day.
- ▶ Provisions of the law dealing with the independence and impartiality of election structures need to be elaborated. Toward this end, multi-party representation should be extended to the core membership of election commissions, leadership of commissions should be determined on the basis of secret ballot among the membership; and criteria for the removal of commission members should be built into the law.
- ▶ Serious consideration should be given to utilizing the *permanent* Republican Election Commission more effectively by involving it in the electoral reform process, the development and provision of on-going election official training and professional development program, and the design of official, non-partisan voter information initiatives. The role of the REC in maintaining a centralized voter registry, if introduced, should also be taken into account. Necessary financial and human resources must be allocated to the REC so that it may perform its duties adequately.

#### **C. VOTER REGISTRIES**

- ▶ The establishment of a central Register of Electors, a methodical and reliable means of updating and correcting voter registries at the municipal level and on a routine basis, and a mechanism for review by political parties is strongly recommended.

#### **D. SYSTEM OF REPRESENTATION**

- ▶ Consideration should be given to additional options for the adoption of a modified system of representation which would respond to the right of representation of the Albanian minority within Montenegro. While the creation of a special constituency for the Albanian minority and waiver of any threshold requirements would increase their chances of representation, it may also dilute the vote of the general electorate, thereby violating the "one man one vote" principle that is implied by Article 32 of the Constitution which stipulates that *voting right is equal*. One possible alternative may be to create a single national constituency with a lower threshold for legislative mandates.<sup>19</sup>

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<sup>19</sup> Additional options for representational models which accommodate minority groups can be found in the legal analysis of the proposed Montenegrin draft laws.

## **E. CANDIDATE NOMINATION AND CERTIFICATION**

- ▶ The question of whether political parties registered solely at the federal level have the right to nominate candidates for republican, municipal, and local offices in Montenegro as well as the Federal Parliament of Yugoslavia, or only in the latter, needs to be resolved.
- ▶ To facilitate the development of a viable multi-party system, consideration should be given to built-in advantages for nomination through political parties rather than more transient citizens' groups. Rather than having established political parties expend resources each election cycle, those with mandates in the Assembly might be exempted from the signature requirement. To guard against further empowerment of the successor parties of the Communist League to the detriment of smaller ones, an adjusted threshold requirement could be applied, eg. Parties surpassing a 3% threshold (when a 4% threshold is required for representation) in the previous election could receive a waiver of the signature requirement.
- ▶ If signature requirements are retained for all or at least for a portion of the nominating entities, the law should clearly define the procedures by which signature petitions will be evaluated and dictate the specific grounds on which a petition may be rejected. Without specific legal guidelines, administrative steps in the review of petitions will remain potentially subjective. Some thought should be given to establishing a double threshold requirement. For instance, it could be determined that the signature petition must contain valid signatures equivalent to, say, at least 1% of the total number of voters in the constituency and errors or invalid signatures in excess of a legally established threshold will cause the petition to be declared null and void.
- ▶ The law should include prohibitions on places where signatures in support of candidate slates can be collected, such as places of employment or offices where salaries or benefits are distributed, to protect against undue influence or outright coercion of voters.
- ▶ Clarification in the law is required with respect to the timetable for the start of nominations, close of nominations, publication of the provisional electoral list, the period for hearing claims against rejection of or in objection to acceptance of candidate slates, and publication of the final electoral list.

## **F. CAMPAIGNS, FINANCING, AND THE MASS MEDIA**

- ▶ The dearth of a campaign finance regulatory system should be enhanced by a system designed not to discourage political activity but to encourage compliance and public disclosure. Limitations should be established on the use of public office and resources for overtly political purposes.
- ▶ Inequitable treatment of candidates and political parties with respect to state-subsidized media time/space, conditions for paid advertising, and news coverage should be addressed.

## **G. VOTER INFORMATION**

- ▶ More extensive provision of non-partisan voter information and education is required to educate voters about: the civic responsibility to register as voters, means of checking the voter registry, and

information on measures to improve the accuracy and currency of voter registries, such as the application of modern technologies; voter rights and obligations under the law; opportunities for oversight of the election process; and modifications to election law and practice as well as polling day procedures which will directly affect voters. Confidence building measures may also be in order.

#### **H. POLLING SITE PROCEDURE**

- ▶ The size of polling sites needs to be reduced from the possible legal allowance of 2,500 voters per site, in order to allow polling site boards to efficiently process voters, assure the security of the ballot box, and transparency of the board's work within the prescribed voting hours.
- ▶ Serious consideration should be given to shifting the process of ballot verification (validation) from the municipal election commissions to polling site boards. The validation of ballots is intended to be a security measure by which to recognize officially issued ballots from others put into the ballot box fraudulently. This is effective only if those ballots issued are validated. The law should make it clear that all verifying stamps and/or signatures should be affixed on election day and only upon issuance to the voter. If done in advance or if unissued ballots are also validated, the intended security factor is nullified.
- ▶ All mechanisms for voting outside the polling site premises should be clearly defined and distinguished. The procedure for voting outside the polling station and criteria under which voters can utilize this option should be clarified in the law.
- ▶ Language throughout the law, such as appears in Article 68, which provides for the nullification of voting based on technical violations, should be removed. It is possible that minor technicalities may be breached as a result of mistakes rather than malfeasance. Moreover, the ease with which polling stations can be dissolved and voting nullified is open to purposeful manipulation by political participants. The invalidation of election results should be based only upon fraudulent acts which can be proven in a court of law to have affected the outcome of elections. Technical violations should be dealt with through a graduated penalty system.
- ▶ The practice introduced in recent presidential elections requiring voters to sign the voter registry upon receipt of their ballot should be built into the law.
- ▶ Currently, no language exists within the law for dealing with spoiled ballots. Language should be incorporated which would allow polling site boards to issue a new ballot if a voter incorrectly marks his/her ballot at the polling site, provided a proper audit trail is kept and the spoiled ballot is immediately invalidated.
- ▶ Among the criteria for determining a ballot invalid, the following should be included: ballots of non-standard form, ie. those which are not of the official format and stock approved by the REC and which have not been validated by the responsible election commission, and ballots which have been marked in pencil.



## **I. BALLOT SECURITY AND CONTROL OF THE ELECTION PROCESS**

- ▶ Language must be built into the law which provides for the rights and stipulates the responsibilities of both international and domestic observers.
- ▶ Improved ballot security measures need to be introduced with respect to the printing, transport, distribution, storage, and validation of ballots and during voting outside of the polling premises.
- ▶ The law should be amended to require two members of polling site boards, each representing different nominating entities, to administer balloting outside the polling premises. Interested observers should be permitted to accompany the team.
- ▶ An additional copy of the minutes of the results at the polling site should be completed and certified by members of the polling board and posted outside the polling site facilitating review and summarization of results by voters and election observers. The provision of sufficient copies for distribution to the entire expanded membership of polling site boards, not just their core members, would also enhance transparency. The law should expressly provide for similar practices with respect to aggregated results at the municipal level.

## **J. TABULATION AND REPORTING OF RESULTS**

- ▶ The aggregation and finalization of election results, as with the rest of the election process, must be carried out in the most transparent manner, including the reporting of results as soon as they are available. Any delay in the announcement of results will lead to the *perception* of fraud and undermine public confidence in the integrity of the election process and validity of election results. Political parties, the mass media, and voters must be kept fully informed at this most crucial stage of the electoral process.

## **IX. PROGRAMMING OPPORTUNITIES**

Among the opportunities for programming, identified by the IFES team for the immediate term are:

### **A. ADVISING ON THE IMPLEMENTATION OF LEGISLATION**

IFES is in a position to assist in the implementation of legislation governing elections, voter registration, and campaign financing through the provision of comparative analysis and on-site advising and coordination. An IFES legal specialist has already undertaken a review of draft legislation on legislative elections, voter registration and financing of political parties which could be used toward this end. IFES legal experts were invited by the Multi-Party Working Group on Electoral Reform, which places a high priority on the American perspective, to play a role in the legal reform process. In keeping with IFES' approach, its legal experts would provide options and models to help policy makers and election administrators better anticipate the practical ramifications of their choices by actively employing the institutional, regulatory, procedural, and educational mechanisms to deal with them.

### **B. ASSISTANCE IN UPDATING AND MAINTAINING VOTER REGISTRIES**

IFES has also received a request from the Government of Montenegro, through the Ministry of Foreign Affairs and the Secretariat for Development, to assist in the introduction of a centralized and computerized voter registry. IFES is prepared to assist republican and municipal authorities and system administrators through the provision of necessary infrastructure and technical experts to identify more cost-effective means of computerizing their voter registries, devise a realistic and incremental timetable for implementation of the project, provide training and oversight, and advise on the optimal management structure. IFES has provided USAID with a technical analysis of the proposed plan, as developed by the Secretariat of Development, to computerize and centralize voter registries, elaborating on the most efficient means of designing and executing the process.<sup>20</sup> An IFES technical advisor can work in cooperation with the legal advisor to help legislators modify the Law on the Registry of Electors to accommodate a centralized and computerized registry. This should also be done in tandem with voter education efforts designed to inform the electorate about efforts to improve the accuracy and currency of the voters' lists, particularly the positive application of modern technologies, and means of checking the new registry.

### **C. NON-PARTISAN VOTER EDUCATION AND INFORMATION**

The IFES team was also inundated with requests to assist in the development and delivery of a non-partisan voter education and information campaign leading into elections. Past election experience and the results of recent surveys suggest that the need is particularly acute and becoming greater as the Assembly prepares to modify legislation affecting everything from elections and constituency delimitation to voter registration and public information. IFES advisors can work with mass media outlets and election authorities to design a campaign which addresses: voter's rights and obligations under the law, means of checking the Registry of Electors, changes in election planning and administration which affect voters, and innovations aimed at improving the transparency and integrity of elections (public confidence building measures),

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<sup>20</sup> See Annex IX

including opportunities for oversight. Special messages can also be designed for target groups, including youth, women, and national minorities. Illiteracy, language differences, and varying reach and consumption of media outlets will necessitate diversified means of communication.

#### **D. NON-PARTISAN CANDIDATE INFORMATION AND SUPPORT SERVICES**

Based on its observations, IFES team would also suggest the development and provision of special informational materials for participating political parties and their candidates. Fundamental changes to a host of laws governing campaigns and elections, a relatively low awareness level among political parties of their rights and obligations under the law, and consequent problems with compliance suggest that the Republic Election Commission will need to pro-actively provide user-friendly guidance and reference materials by the time political parties declare their intent to nominate a slate of candidates to run in the election. On the basis of its model publication, "What Every Candidate Needs to Know," IFES can work with the REC to provide vital and timely information on: signature collection requirements, campaign finance regulations and reporting requirements, provisions for equal time/conditions for appearances on state media, a calendar of election-related deadlines, information on appointment of expanded members to election commissions, rights of access of candidate representatives, sample forms, an index of all laws and regulations governing the election campaign, a clarification of which ministries are responsible for which aspects of the election process, and contact information for those ministries, election commissions, and municipal authorities.

#### **E. TRAINING FOR CORE AND EXPANDED MEMBERSHIP OF MUNICIPAL ELECTION COMMISSIONS AND POLLING STATIONS**

The Republican Election Commission, Secretariat of Law, and a host of political parties also requested IFES cooperation in the development of a training program for core and expanded members of election commissions and polling site boards. To date, the REC and Ministry of Law have provided some training for core members of commissions, while each party trains B or does not train B its appointees to the expanded membership, which means that there is no uniformity to these efforts. Moreover, the decision of the multi-party Working Group to ban judges from serving on election commissions and polling boards, as is currently the practice, may result in a considerably lower level of expertise among election administrators in the next election. In order to address changes to election practice under new legislation and to ensure the uniformity, efficiency, and integrity of election administration at the polling site level, written training and reference materials and a standardized training program will need to be developed. IFES is in a position to assist with the conceptualization of such a program, materials development, and implementation and supervision of training.

Longer term initiatives are required in the areas of:

#### **F. CIVIC EDUCATION**

The development of a civic society, crucial to the sustainability of democracy, requires an informed and active citizenry. Discussions with political parties, government officials, and NGO representatives as well as the results of recent surveys conducted in Montenegro suggest that a significant effort will need to be undertaken to educate citizens about the nature of democracy and to prepare them for their rights and obligations in a democratic society. IFES was invited by the Government of Montenegro to design a longer term program of civic education aimed particularly at young people and rural dwellers but also war refugees

should be the aim of a long term civic education program but is an unrealistic deliverable in the immediate future.

#### **G. LEGAL AND TECHNICAL ADVISING ON ELECTORAL REFORM**

As noted earlier in this report, the very real political pressure to hold new legislative elections at the national and municipal levels in the spring significantly compress the timeframe in which modifications to existing laws can be thoroughly considered and aired for public debate. IFES has recommended that under such circumstances, the Inter-Party Working Group should focus its immediate efforts on priority issues which proved to be problematic during recent presidential elections and which may have contributed to the *perception*, if not the threat, of fraud. IFES is prepared to assist the Working Group and the Republican Election Commission in undertaking a comprehensive analysis of the presidential, parliamentary, and municipal elections after they are held with the intent of making further legal refinements based on technical considerations outside the polarized campaign environment. IFES can provide options for legal reform and help policy makers and election administrators better anticipate the practical ramifications of their choices by actively employing the institutional, regulatory, and procedural, and educational mechanisms to deal with them.

In addition to programming needs and opportunities which fall directly within IFES' mandate, numerous requests were made which could be met by other US service providers, including the party institutes, media organizations, legal associations. In particular, assistance in classical political party building, social outreach, and message development is required in the increasingly open and competitive political environment. Potential factionalization and instability within the new legislature may also necessitate training on parliamentary procedure, committee organization, and coalition building. Commodities and technical support, as well as training, are also essential to ensure an independent media throughout the country and at the grass-roots level. The professionalization of the journalistic corps was highlighted as a priority. With respect to elections, US assistance was requested in training journalists to cover the campaign and election process in a non-biased manner. Finally, the absence of a professional association of lawyers or jurists, which would provide a mechanism for input in legal would be extremely useful.

## **X. CONCLUSION**

Given the disposition of the current Government of Montenegro toward international assistance and cooperation and tangible efforts to introduce an open and progressive political environment, there is a unique opportunity to foster real and sustainable change in the Republic of Montenegro and, indirectly, the Federal Republic of Yugoslavia. In light of the current crisis, the crucial nature of international support as a means of tipping the balance toward democracy and away from autocracy or war should not be underestimated. Nor should the value of utilizing Montenegro as a model for Serbian development. A system of reciprocity in the provision of aid, ie. assistance based on *demonstrated* commitment to rather than promises of reform, should be the hallmark of future programming within Serbia and Montenegro.

**REPUBLIC OF MONTENEGRO  
TECHNICAL LEGAL ANALYSIS OF  
DRAFT ELECTION LEGISLATION  
FEBRUARY 1998**

## INTRODUCTION

In the aftermath of the republican presidential elections of October 1997, Montenegrin political parties with representation in the republican Assembly have entered into a multi-party agreement (Montenegro, 1997b) to enhance the development of democratic institutions in the Republic, including through a number of concrete measures. These measures included, *inter alia*, a commitment to conduct parliamentary elections by the end of May 1998; to intensify the work of an all-party task force to propose improvements to several election and election-related laws; and to incorporate certain fundamental reforms into the electoral process in order to achieve fairer and more representative results.

Under the multi-party agreement, reform of Montenegrin election laws has aimed, at the outset, to amend the existing laws on the Election of Councilors and Representatives (Montenegro, 1997a, pp. 27-60, hereinafter referred to as the "Legislative Election Law"); on the Register of Electors (*Id.*, pp. 61-67, hereinafter "Registration Law"); on the Financing of Political Parties ("Political Finance Law"); and on Public Information. The parliamentary group which was established for this purpose was divided into two sub-groups, one working on the first two laws cited and the other the second two. The working group submitted draft legislation on all four subjects in late 1997 and in January of this year the Republican Assembly approved the drafts. Outgoing President Momir Bulatovic refused to promulgate the laws, however, necessitating that they be passed anew by the Assembly for promulgation by the new President, Mr. Milo Djukanovic. On February 17, a revised Legislative Elections Law was passed by the Republican Assembly and the Registration Law was passed on February 11.

The International Foundation for Election Systems (IFES), with the support of the U.S. Agency for International Development, conducted a Voter Awareness Assessment in Montenegro commencing in November 1997. As part of that assessment, IFES experts also studied related matters including election administration in Montenegro and the legal framework for the upcoming parliamentary elections and longer-range reform of the electoral system. Based on the findings of the IFES team (see IFES, 1998 and Barnes, 1997), the present consultant was asked to conduct an additional, legal review of three of the proposed electoral laws - the Legislative Election Law, Registration Law and Political Finance Law. (See Montenegro, 1997 c, d & e.) This draft legislation was obtained by the IFES team during their assessment and does not reflect changes made to the drafts following former President Bulatovic's refusal to accept the laws in early January.

The consultant accordingly submits the following commentary on proposed election laws of the Republic of Montenegro. It should be understood that these comments are suggested by analysis of the proposed laws themselves, certain other materials (see references), general legal principles, comparative practice and international standards. (The consultant did not have the opportunity to visit Montenegro in connection with this assignment).

The proposed laws within the scope of this report could provide an adequate basis for the upcoming parliamentary elections in Montenegro as well as for longer-range reform of the Montenegrin election system. At the same time, there are numerous issues which should be addressed in order to improve administration of the upcoming elections and the probability that they will be viewed as a legitimate expression of the democratic will of the people of Montenegro. In addition, other, more far-reaching, reforms should be considered in order to create a stable basis for future elections and further development of democratic political institutions in the Republic.

The following comments are offered in the hope that they will be helpful to Montenegrin experts and other interested parties in refining the new election laws that are currently proposed and considering

more sweeping changes in the legal and administrative structure for elections thereafter. The commentary is organized as follows: I. Overall Observations; and II. Specific Comments on the three laws under consideration (including both general comments and running commentary on their detailed provisions).



# I. OVERALL OBSERVATIONS

## A. CONSTITUTIONAL BASIS

The power of the Montenegrin government to make laws concerning electoral matters is grounded in the republican Constitution (Montenegro, 1992). Article 81(3) of the Constitution grants overall lawmaking power to the republican Assembly. While this article does not directly address legislation concerning electoral matters, Article 83(2) does indicate that it is the Assembly that has competence in this area, subject to the requirement of that clause that enactment of legislation on certain matters, including “on the electoral system”, is subject to the requirement of an absolute majority vote in that body.

Indeed, the Constitution makes it clear that, in general, the Republic of Montenegro retains its sovereignty despite participating in the Federal Republic of Yugoslavia (FRY), and that the sovereignty of the Republic is based on that of its citizens exercised through the democratic system (including both direct and representative means). Article 2 (1)-(3) of the Constitution, on Sovereignty, states:

*“Montenegro shall be sovereign in all matters which it has not conferred onto the jurisdiction of the Federal Republic of Yugoslavia.”*

*“Sovereignty is vested in all the citizens of the Republic of Montenegro.”*

*“Citizens shall exercise their sovereignty directly and through their freely elected representatives.”*

In addition, the Montenegrin Constitution, through Part Two thereof, provides the basis of the human and political rights of the citizens of the Republic. Article 32 of the Constitution specifically provides the basis of the Voting Right of Montenegrin citizens.

Notwithstanding the continued sovereignty of the Republic of Montenegro, particularly with respect to the electoral and other rights of its people, the legal authorities of other entities — including the FRY — have sometimes intervened in Montenegrin electoral processes. During last year’s presidential election, for example, the Federal Constitutional Court invalidated a provision of the Montenegrin presidential election law, permitting two candidates to be nominated from a single registered political party. In addition, the Yugoslavian Federal Prosecutor indicated that the Montenegrin Supreme Court had violated federal law when it ordered updating of the voter registry during the period between the first and second rounds of voting in that election, as a result of massive deficiencies revealed during the first round. Subsequently, the Montenegrin Assembly passed a resolution condemning the intervention of federal authorities in republican elections and blocking implementation of such actions in the Republic.

Despite this history, the draft election laws within the scope of this report -- the Legislative Election Law, Voter Registry Law and Political Financing Law — do not clearly and unambiguously proclaim Montenegrin sovereignty in these matters within the terms of the proposed laws themselves. Instead, there are relatively weak references on this point in the Commentaries which accompany the actual text of the bills. For example, the Commentary on the draft Legislative Election Law states:<sup>1</sup>

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<sup>1</sup>Similar language is contained in the commentaries accompanying the Registration Law and Political Finance Law.

### *Constitutional Grounds for this Draft Law*

*" The constitutional grounds for this Draft Law are contained in Article 12, Paragraph 4 of the Constitution of the Republic of Montenegro prescribing that the Republic regulates, by its legal provisions that are in conformity with the Constitution, among other issues, the issues of significance to the Republic. "*

Unfortunately, this very paragraph reveals the relative weakness of the proposed legislative claim in this regard and also does not go as far as possible to support it. In particular, it appears undesirable to ground such an important claim in what is merely a "residual" paragraph in the constitutional article which is cited. (See footnote for the relevant text.)<sup>2</sup>

Actually, it would probably be better to appeal to other constitutional provisions, including those cited earlier, as well as this reference. Those provisions, it will be recalled, include: the basic article on the sovereignty of the Republic, Article 2; the articles on the relevant powers of the Assembly, including Articles 81(3) and 83(2); the provisions on the basic rights of the Montenegrin people, such as their human rights and right to vote, which are secured through the republican Constitution (see Part Two, on Freedoms and Rights, especially Article 32 on the Voting Right); the election of the political branches (presidential and legislative) of the Montenegrin government as described in the portions of the Constitution on these branches (see Part Three, on Organization of the State); and the empowerment of the Montenegrin Constitutional Court to decide on electoral disputes (see Article 113, paragraph 8).

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<sup>2</sup>Article 12:

#### Legislature

*"The law shall prescribe and regulate the following, in accordance with the Constitution:*

- 3) *Manner in which rights and freedoms shall be exercised if this is necessary for their exercise;*
- 4) *Manner of establishing, organizing and competence of the state authorities and the procedure before the authorities if this is necessary for their proper functioning;*
- 5) *The system of the local self-government;*
- 6) *Other matter[s] of interest for the Republic."*

Of course the assertion of constitutional authority by the Assembly would not in and of itself prevent legal attacks on the republican electoral system by external authorities, including those from the FRY. But at the very least, including such statements of authority in the proposed electoral laws, would complicate any attempt by the federal or other external authorities to intervene in republican electoral processes through legal action or other means. Inclusion of such references would also have important political as well as legal value.

It is therefore recommended that appropriate provisions be drafted demonstrating the basis in the republican Constitution for the enactment of these electoral laws. These provisions should strongly be considered for inclusion in the legislative language of the bills, and not relegated to an accompanying commentary.

In addition, as will be seen below, many provisions of the proposed laws — particularly the Legislative Election Law — parallel or restate actual provisions of the Constitution, but do not cite them as such. In order to clarify the constitutional basis for the law and these provisions in particular, as well as to ensure their uniform understanding and application, appropriate references to the Constitution should be added within these provisions as well. (This point will be repeated in the specific comments which address these provisions.)

## **B. ORGANIZATIONAL ISSUES**

The multi-party agreement on democratic principles (Montenegro, 1997b) contained major commitments regarding the reform of electoral institutions and specific objectives to that end. The primary goal on elections was shortening the term of the current republican Assembly and preparing for “free, fair and democratic parliamentary elections ... [to be] held at the latest by the end of May 1998”. To this end, the parties also agreed on specific electoral objectives to be accomplished through legislative amendments.<sup>3</sup>

It was noted earlier that the Assembly actually adopted new electoral laws during its Fall 1997 session, but that the bills were rejected by the outgoing President. At the time of writing (January 1998), the Assembly is planning to consider these bills again imminently, probably during the February legislative period. The priorities for the parliamentary working group at this time focus on the proposed

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<sup>3</sup>These objectives included:

*“- Intensify the work of an all-party task force aimed at upgrading the law on election of deputies and councillors, the law on information, the law on the financing of political parties and the law on voting registers. The upgrading of the above legislation should be aimed at: making sure that all the voters have the opportunity to cast their ballot freely; establishment of a proportional voting system (Montenegro — one electoral unit, modified so as to ensure adequate representation of the Albanians in the Assembly of Montenegro); improvement of mechanisms of control of the election process and election results; further democratization of the state-owned news media and ensuring equal access to the media for all the participants in the elections; ensuring fair financing of the parties and public control of their revenue; ensuring up-to-dateness, accuracy and accessibility of voting registers, as well as other conditions which the signatories shall consider as a contribution to the democratic quality of the election process.”*

*“- The legislation should be ready by the end of September and should be passed at the first sitting of the regular fall session of the Assembly. The adopted solutions should be enforced without delay, in particular those related to the election of the new managing bodies and editorial teams of the state-owned news media, up-to-dateness of the voting registers and financing of the political parties.”*

Registration Law, Public Information Law (not within the scope of this report) and Legislative Election Law.

Several commentators (IFES, 1998; OSCE, 1997; Barnes, 1997) have concluded that current Montenegrin election laws are deficient in certain respects, including an overall lack of clarity concerning the responsibilities of government bodies; insufficient detail concerning procedures; conflicts among the laws; and a whole range of more specific issues, many of which are addressed separately in what follows. It appears unlikely that all these issues can be addressed during current legislative consideration of the proposed bills, or even prior to the expected May parliamentary elections.

This report therefore focuses primarily on the texts of the three proposed laws within its scope (Legislative Elections, Voter Registration and Political Finance). Every effort will be made to analyze problems that might arise as a result of enacting these bills into law, both in terms of the specific provisions of each and in terms of their interrelationships. (It has been commented that during the development of the current legislative amendments by the working group, there has been relatively limited consultation with persons knowledgeable about election law and administration, specifically within Montenegro, and between the sub-groups responsible for preparation of drafts of the different bills. See IFES, 1998; Barnes, 1997.)

It would also seem advisable, however — and some effort has been made in this direction in the current report — also to look beyond the anticipated adoption of the bills currently under consideration toward the eventual creation of a comprehensive election code uniting the core legislation on various types of elections (presidential and republican and municipal assemblies, and also perhaps referenda), key administrative and legal provisions (such as the formation of election commissions and delineation of complaint procedures), and closely related legislation such as voter registration and political party financing. (See *Id.*)

Another advantage of adopting comprehensive election legislation in the future would be to permit the conduct of combined elections. In view of conflicts between the Presidential and Legislative Election Laws (see OSCE, 1997), it would be difficult to conduct these types of elections simultaneously without creating duplicate election machinery. Yet one might imagine a situation in which, for legal, political or financial reasons, it would be desirable to do so.

On the other hand, if the adoption of comprehensive legislation cannot be anticipated in the foreseeable future, then consideration should be given to the opposite approach. That would involve the further separation of the legislative provisions regarding different types of elections, so as to minimize conflicts between the provisions that have been combined into a single law. This situation applies particularly with respect to the current (and proposed) Legislative Election Law — or “Law on the Election of Councilors and Representatives”. Many provisions of this law are confusing and probably conflicting when applied to the two different kinds of elections that are within its scope.

Finally, further rationalization of the election laws would enable other improvements of the electoral system to be undertaken (see IFES, 1998). First, the roles of existing authorities (such as the Republican Election Commission [REC] and municipal election commissions [MECs]) would be clarified and could be further strengthened. Second, such authorities would be in a better position to develop further rules and regulations to improve electoral administration (see OSCE, 1997). Third, election authorities would be in a better position to undertake other programs related to elections, such as civic education (see IFES, 1998).

These factors are reflected as the primary recommendation of the OSCE observation mission to the 1997 presidential elections:

*The Legal Framework and Administrative Procedures*

*"There is an overriding need for consolidation of the existing legal framework, with clear and precise laws as well as rules and regulations, which further expand on the laws, and define and clarify the various technical and administrative aspects of the electoral process." (OSCE, 1997, p. 24.)*

### C. DRAFTING ISSUES

Related to the issue of the organization of the legislative effort on election law reform is the question of improving the drafting of the bills and integrating their provisions more carefully with each other and related legislation. One problem in this regard is the lack of uniform and consistent usage of certain terms.

The term "political party", for example, is widely used in the election laws, including the proposed Legislative Election Law and Political Finance Law. One can assume that it is intended that such organizations, in order to exercise the prerogatives of political parties under this law, must qualify as such under other legislation. While in Montenegro parties must register with state authorities prior to being recognized as such no reference is made, either in a formal definition or elsewhere, to this requirement.

Also, despite the recent history of disagreement within certain political parties in Montenegro, there is little attempt to clarify how the parties are supposed to undertake various specific activities under the law. With respect to the submission of electoral lists (lists of candidates) for legislative mandates, for example, the parties under Article 38 of the proposed Legislative Election Law are supposed to proceed "through the procedures defined by the regulations of those political parties." There is no requirement that copies of those procedures be submitted to the election commission receiving the proposed list, or that any relevant records be supplied demonstrating that the procedures have been followed (such as minutes of any nominating convention that may have been held).

Another example is the provisions in Articles 24 and 29 of the same proposed law (which shall be considered at greater length later) which permit "the political parties that are represented in the parliament" to propose the names of individuals for appointment by the competent Assembly to seats on the Republican or municipal election commissions. No guidance is given as to how these parties are supposed to make this decision, or present it to the Assembly. For example, would it be the party organization (outside parliament) who would make this decision and forward it somehow to the Assembly, or the parliamentarians acting within their own party "caucus", or legislative organization?

In addition, there is an apparent ambiguity regarding whether the reference in both cases is to parties which are represented in the republican Assembly, or the relevant assembly — *i.e.*, Republican in the case of appointments to the REC, or municipal for appointments to the relevant MEC. With respect to this entire procedure, furthermore, there is no provision for the participation of parliamentarians from lists that may have been submitted by citizens groups, not political parties, even though they may also have achieved substantial representation in the relevant assembly.

On the subject of so-called groups of citizens, the proposed Legislative Election Law continues the practice from previous legislation of permitting such groups to nominate a candidate list in the event

they can meet the applicable requirements. Yet, unlike the case of political parties, it is not clear how these groups would be formed or exercise their prerogatives. Presumably Montenegro, like other formerly socialist countries, has established laws regulating the activities of public associations, by whatever name they are referred to — “social associations,” “nongovernmental organizations” (NGO’s) or something similar. But the proposed Legislative Election Law does not make clear whether the groups of citizens it refers to would be organizations which are subject to registration or other requirements of legislation on that subject.

The proposed Legislative Election Law (LEL) also regularly uses the rather cumbersome locution “submitters of electoral lists” to refer collectively to those organizations — i.e., political parties and groups of citizens — which have the prerogative of nominating a list of candidates for election. At various places in the bill, furthermore, the term is used without indication whether it refers to organizations which have submitted lists (prior to approval) or those whose lists have been accepted by the competent election commission.

It is important, in order to eliminate confusion over these types of provisions, to adopt uniform election terminology and standardize references. While this is perhaps best done in connection with development of a comprehensive election code, it should be carried out to the extent possible in connection with amendment of existing laws. The following terms are suggested for this purpose: “electoral association” to refer to organizations which have the prerogative of nominating candidates, and “election contestants” to describe organizations which have had their lists of candidates approved. Such terms, if introduced, must of course be defined as clearly as possible within the text of the proposed law or, if necessary, by reference to definitions contained elsewhere in law.

Another useful term that might be considered for adoption in the proposed LEL is that of the “campaign period”, as distinguished from the entire election period. The campaign phase of an election is generally defined as commencing with the approval of candidate lists and ending at a time shortly before election day.

#### **D. STRUCTURE AND OPERATIONS OF ELECTION COMMISSIONS**

##### **1. Structure**

##### **(a) Timing of Appointment and Term of Office**

As in other parts of former Yugoslavia (including Serbia; see IFES, 1997b), full Republican and municipal election commissions in Montenegro are ordinarily constituted shortly before the date parliamentary elections are announced. Under the proposed and existing Legislative Election Laws, the members of the commissions are appointed to terms of four years, which corresponds to the normal term of an elected parliament. Under the proposed LEL, new election commissions would be appointed within seven days of its effective date, in order to administer the early republican Assembly elections for which this law is being prepared.<sup>4</sup>

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<sup>4</sup>Actually, the related provisions in Part XIV, “Transitional and Final Provisions”, of the proposed LEL are not entirely unambiguous. Article 122 appears to call for the creation of new election commissions at the Republican and probably municipal levels within the prescribed seven-day period. But there is no provision explicitly dissolving the current commissions -- which presumably still exist under current law, holding over from the time of the last parliamentary elections -- except that the current law would be repealed from the effective date of the new one (see Article 124). Also the language of Article 122(1) is not entirely clear in its application, especially as the next clause of the article applies to the REC only; however, clause (1) states:

Under Montenegrin election laws (similar to the case in other republics of the former Yugoslavia), the core membership of an election commission is described as the "permanent" composition of the commission. Once the election period begins, parties that qualify through nominating a list of candidates have the right to propose a representative to the "expanded" composition of the commission. The permanent composition of commissions are sometimes also referred to as the "appointed members" and the expanded composition the "authorized members". (See proposed LEL, Art. 18.) The two classes of members will occasionally also be referred to here as the "core" and "representative" membership.

While Montenegrin election laws (like those of other republics of the former Yugoslavia) give the appearance of a permanent electoral administration structure, it is questionable whether a significant permanent structure in fact operates between elections:

It does not seem that there are any particular functions assigned to the commissions during the time between elections. Compilation of the Voter Registry, for example, is not an ongoing process but appears to occur only for specific elections, and is in any event actually performed by other bodies (including the republican security and police structure, as well as municipal authorities). There do not appear to be any substantial and continuing civic education or election worker training programs. So while the election commissions are constituted between elections, they do not seem to exercise any significant functions after an election has ended.

It should be stated, however, that this is not due to a lack of effort and competence by election commissions but rather a lack of staffing, funding and authority granted to commissioners. In discussions the IFES Team had with several commissioners from the REC, they expressed a willingness and enthusiasm to undertake activities traditionally within the domain of election commissions such as pollworker training and civic and voter education.

Various issues are also raised by the manner of appointment of election commissions (particularly the Republican and municipal commissions) under the existing and proposed LEL:

#### **(b) Separation of Powers and Appointment of Election Commissions**

Similar to the approach taken in the former Soviet Union and other Socialist systems, as well those of certain former Yugoslav republics, the election laws of Montenegro give the power to establish and make appointments to election commissions directly to the relevant legislative assembly. During the socialist period it was commonly understood that the State had a strong influence over the conduct of elections and that election commissions and other bodies set up for this purpose were only quasi-autonomous. Assigning the power to supervise such bodies directly to the parliament helped give them a greater image of independence from State power, since the parliament was nominally a popularly-elected body representing the views and interests of the public. (One might mention that giving the power to

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*" The chairman, the secretary, election commission members and their deputies in the permanent composition shall be, in conformity with this Law, appointed not later than 7 (seven) days following the day of this Law coming into force. "*

supervise election administration to parliament also helped its members to protect their own electoral interests.)

As mentioned previously, the current Legislative Election Law (Articles 29 and 30) provides for appointment of the President of the REC and his Deputy by the republican Assembly, from among distinguished judges, and for the appointment of similarly qualified individuals to the other core membership and deputy positions. Similar provisions apply, *mutatis mutandis*, to the appointment of the core members of the MECs by the competent municipal assembly. The proposed LEL (see Part V) retains the appointment of election commission members by the relevant assembly, but eliminates the requirement for the selection of judges.<sup>5</sup> It also provides for the parties which are represented in parliament to propose candidates for appointment to the commissions. (A similar system is followed in Serbia, except that the role of political parties is not explicitly recognized in the law; see IFES, 1997a.)

The doctrine of Separation of Powers is enshrined in the Constitution of the Republic of Montenegro.<sup>6</sup> In many other constitutional systems founded upon this doctrine, it is interpreted to prevent the legislative branch from taking certain actions of an executive character. This would include most actions that cannot be addressed through the enactment of legislation, *i.e.*, laws of general applicability. Appointments of officials to state bodies are usually considered to fall within the class of particular actions that are reserved for the executive branch of government, although the legislative branch may legitimately have a role in such appointments (*e.g.*, through proposing candidates, or confirming their selection).

In the United States, the doctrine of Separation of Powers with respect to appointments is observed in both ways just mentioned. In certain cases, the Constitution explicitly gives the upper house of Congress, the Senate, the power to confirm presidential appointments. In other cases, established through particular laws, Congress has reserved the right to propose a number of the members of state bodies. In these cases, however, the President is generally instructed to select the membership from among a list submitted by Congress and is usually also given the right to make his own appointments. (This approach is commonly followed in the establishment of "mixed" commissions including both government and non-governmental personnel.)

Similar methods consistent with the principle of Separation of Powers are often followed in comparative international practice with respect to appointments to electoral bodies. In the Russian Federation, for example, prior to 1994 the chairman of the Central Election Commission was appointed by the President, subject to approval by the State Duma. However, because this practice was regarded by many as undermining the independence of the CEC, a political compromise was reached which sought to improve the independence of the CEC by appointing 5 members each from the lower house of Parliament, the upper house of Parliament, and the executive to a total of 15 members. Leaders of the Commission are now selected from among the members by secret ballot.

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<sup>5</sup>This may simply reflect a shortage of judicial personnel, but recent events both in Serbia and Montenegro have created a suspicion of the role of judges in the process of election administration. (See Finn, 1997; IFES, 1997a.)

<sup>6</sup>Article 5 of the Constitution states:

*DIVISION OF POWER*

*"The government of Montenegro shall be arranged according to the rule of the division of power into the legislative, executive and judicial."*



There are also other ways to address this issue. For example in Romania, under existing national election laws, the judges of the Supreme Court choose among themselves by lottery the necessary number for core membership positions in the Central Election Bureau. The Chairman of the Bureau is then chosen, again by lottery, from among the judges who have been selected in this manner.

The failure to follow Separation of Powers principles in the appointment of the REC and MECs may lend the appearance to this body that it will be unduly subject to influence by political interests in parliament. This appearance will only be increased by the explicit role granted to the political parties in parliament over the appointment of election commission members. It may be preferable to find some alternative to this approach that is politically acceptable but is more consistent with the principle of Separation of Powers.

Another related problem relates to Article 18(2), which states that:

*"The election bodies must have members of different political parties in their permanent composition, in proportion to the number of seats of each party in individual assemblies."*

This provision appears to apply to polling boards (PBs) as well as election commissions (the REC and MECs). It is likely further to raise suspicions about the independence and objectivity of electoral bodies and their members.

In many formerly socialist countries, including in the former Yugoslavia, members of political parties are excluded from serving on electoral bodies. (This is legally true in Serbia, but it has been regularly alleged there that such persons have been appointed regardless.) The exclusion of political party members presumably reflects suspicion of the old ruling parties, as well as a feeling that it is not yet normal practice for people to associate themselves with other parties; therefore it is felt that those persons who join parties must be activists. In more consolidated democratic systems, membership or association with a political party is not a disqualifying factor for service in election administration, but it is expected that such membership will not influence the work of the individual in question.

It is hoped that Montenegro will reach the point in its democratic development where participation in politics is widespread, and that persons associated with political parties will be expected to be capable of operating independently of them. At the present time, however, one wonders if that is the case. It may, therefore, be desirable to eliminate the requirement that the membership of electoral bodies reflect the representation of political parties in government. It would perhaps be better to draft additional provisions, specifically concerning violations and related penalties, requiring election officials to operate independently of political influences from whatever source.

Under current political circumstances, however, the inclusion of political parties in the core membership of election commissions may at least serve to decrease suspicions among parties and the government through a mutual monitoring effort on electoral boards. As there is no guarantee that non-party appointees (i.e. academics, technical personnel, etc.) will truly act independent of any political interests, an additional measure of transparency may result from their participation.

## **2. Operations**

### **(a) Administrative Transparency**

Another fundamental institutional issue associated with the current as well as proposed system of electoral administration in Montenegro is the absence of transparency regarding key parts of the administrative process. It is often unclear from the existing or proposed laws how the REC and other election commissions are to obtain the necessary administrative and technical support to fulfill their responsibilities. To the extent that such matters are addressed, little transparency or accountability is created with respect to these aspects of election administration.

Under both the old Legislative Election Law (LEL) and the proposed new one, election commissions have a secretary who serves as a member of the commission. Under Article 30 of the old law, the Secretary is a government official with expertise and competence in election-related matters.<sup>7</sup> This requirement does not appear in the proposed LEL, but the new law would nevertheless retain the position of secretary of the REC (in Article 30) as well as of the MECs (Article 25). There does not appear to be any provision in either the old law or the new one for a secretariat, or staff, to election commissions. In actuality, there appears to be little or no professional staff available to election commissions at the republic or municipal level, requiring the involvement of other secretariats and ministries to assist in the administration of elections and other aspects of the electoral process. This practice dissipates administrative responsibility and delegates tasks to organs that, by virtue of omission, are free to operate outside the scope of the election law.

As noted above, the core members of election commissions are mostly supposed to be lawyers (jurists). In other former Yugoslav republics (such as Serbia), there are also requirements that members of the expanded REC should be lawyers, but here that is not the case. (This is a separate, but related, issue concerning the qualifications and expected deportment of the representative members.) It is true that lawyers are generally thought to be skillful persons, knowledgeable in understanding and applying the law, as well as often individuals of considerable professional as well as personal integrity. But there is little reason to believe that persons with a legal background are particularly well qualified to exercise the administrative (as opposed to juridical) aspects of the election process. One must assume, therefore, that while these individuals are responsible for supervising election administration there may well be aspects that are in fact conducted by other personnel, including those of state organizations.

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<sup>7</sup>Clause (4) thereof reads as follows:

*"The secretary of the Republic Election Commission is appointed from among the experts in electoral system(s) and is a full-time employee of a republic authority in charge of the election system and organization of government."*

There is no comparable provision in the current LEL regarding the MEC's, but they are also supposed to have secretaries among their memberships pursuant to Article 25. In addition, Article 38(2) of the proposed LEL states that, *"The conditions for the work of the Municipal Election Commission are provided by the Municipal Assembly."*

It is useful to note that Serbia has a similar provision regarding the position of Secretary of its Republic Election Commission, in Article 38 of its Parliamentary Election Law: *"The Republic Electoral Commission shall have a secretary appointed by the National Assembly from the order of professional workers of its services, who shall participate in the work of the electoral commission without the right to participate in decisionmaking."* The consultant views this provision as worse in one sense, since involving a staff member of the legislative branch in the business of an election committee would appear to represent another violation of the doctrine of the Separation of Powers, in addition to raising questions about administrative transparency.

This situation is exacerbated by the extremely tight timelines under which election commissions must operate, which other commentators have pointed out may have to be lengthened for various reasons (IFES, 1998; OSCE, 1997). Confronted by these challenges, it would be very difficult for members of election commissions, themselves newly-appointed and running a newly-formed organization, to take the necessary actions without considerable advice as well as other support from other government bodies.

One example is the appointment of polling boards (PBs), which would be the responsibility of the relevant MEC under Article 27(4) of the proposed LEL (similar to Article 27 of the current law). Not only must the MEC, prior to 15 days before the election, arrange the location of the polling stations and supervise the setting up of their facilities, it must also appoint three members (plus an equal number of deputies) to each PB. It should be asked where the MEC could obtain the names of appropriate personnel without relying heavily on advice from municipal government and other possibly interested sources outside electoral administration.

Of course, it is inevitable that other state bodies will be required to assist electoral authorities, particularly when a jurisdiction does not have a well-developed electoral administration operating continuously and exercising regular and substantive functions. This fact is recognized in Article 17(3) of the proposed LEL, which states:

*"All state agencies and organizations are bound to offer help to the bodies administering the election and provide them with the data necessary for their work."*

It is also well to keep in mind that election administrators are supposed to be as independent and autonomous as possible, as required by the first clause of that article:

*"The bodies in charge of administering the election are self-governing and independent in their work and perform their duties in conformity with this and other laws as well as with regulations enacted on the basis of these laws."*

The concern in this respect is merely that election administrators will not have the means to achieve the latter standard, and will instead be forced to rely on other state bodies to an extent that could compromise their independence. (See IFES, 1998; OSCE, 1997, p. 25.) As the OSCE concluded after the recent presidential elections:

*"There is ... a need to include a more detailed provision in the electoral law as regards the independence and impartiality of the permanent members of electoral bodies in the performance of their duties under the law."*

*"There is [also] a need to review the provisions of the law in respect of the powers and competencies of the electoral bodies, and to define more clearly the roles of the various Ministries and other public administration bodies. A distinction must be established between electoral administration on the one part and logistical operations on the other part." Id.*

#### **(b) Role of Expanded Membership**

Like the old LEL, the proposed LEL is rather unclear on the role of the party representatives who constitute the expanded membership of election commissions and polling boards. Numerous provisions on this point appear to be in conflict, either directly or indirectly, so that it would probably not be useful to go through them in detail here.

With regard to the authorized party representatives on election bodies, the questions are essentially quite simple: When do they assume membership; what are their rights and duties (including specific functions to be performed); what standards govern their conduct; and when does their status on the election commission normally cease?

Under the proposed LEL, the relevant commission approves the appointment of party representatives a short time (48 hours) after approval of a party's list of candidates (see Article 31). The representatives are not actually admitted until later, however (apparently after determinations have been made with respect to all candidate lists which have been submitted), and it is only at that time that election commissions begin to operate in their expanded mode (see Article 19). Even at this point, however, it is not clear whether the representative members have full rights to information and participation in the business of the commission, including voting on decisions. At a minimum, the representative members have the right to inspect certain materials within five days of the election (see Article 77). The election commission is able to conduct its business without their participation; Article 18(1) states:

*"The election bodies may operate in their permanent (appointed members) or extended composition (authorized representatives)."*

Finally the extended composition terminates at "the end of the election," but that phrase is not specifically defined.

Advantages and disadvantages have been experienced in different countries with respect to the manner of inclusion of party representatives in election commissions. Election administration in some countries (such as Romania) has apparently benefited from fairly full participation by party representatives, including involvement in decisionmaking by election commissions, as well as the work of polling stations. Other countries limit the participation of representative members to an advisory role on commissions, and a status akin to observers at polling stations.

Whatever model is adopted, it is probably best to be clear and consistent with respect to the role of the representative membership of electoral bodies. In Montenegro, past practice appears somewhat ambiguous with respect to election commissions, and mixed on polling boards (where some chairmen have reportedly permitted party representatives to participate in the work, or parts of it, while others have tried to keep them at a distance). While it is desirable to preserve some discretion for the core members of commissions and boards in this matter, it would nevertheless undoubtedly be better to be clearer in the proposed law on the intended role of party representatives to all electoral bodies.

#### **E. NOMINATION OF CANDIDATES**

Part VI of the proposed LEL describes the system for nomination of candidates to legislative office by political parties and citizens' groups. In a change to the established procedure (under the current LEL), political parties which are represented in parliament, as well as citizens' groups and others, would be required to submit a substantial number of signatures in support of their lists of candidates. This number — one percent (1%) of the number of registered voters in the jurisdiction at the time of the last election (see proposed LEL, Art. 43) — is in line with prevailing international practice.

In the past, established political parties were not required to submit signature petitions at all. Citizens' groups and others were, but the numerical requirements were relatively low.

The IFES assessment team which visited Montenegro last year concluded that it might be undesirable to require established parties to engage in extensive signature collection (IFES, 1998). The reason for this conclusion was to encourage the formation of regular parties as a buttress to more stable democratic politics. This consultant understands these reasons but, nevertheless, believes that it is best to require established parties to meet the test of public support for their candidates in the same way as others.

Established parties do remain favored in the proposed system, furthermore. Under proposed Article 43, parties or groups submitting nominating petitions must support them by the quoted number of signatures regardless of the size of the candidate list which is put forward. This means that well-established parties, which have found candidates for a large number of assembly seats, are not required to submit any more names than other parties nominating a smaller list.

In fact, many electoral systems prepare a different number of signatures required for nomination of a candidate list according to the number of candidates put forward. The consultant tends to favor this approach, since it puts all submitters on the same level with regard to demonstrating public support, regardless of the size of their party organizations and scale of their electoral efforts.

The provisions of Part V of the LEL regarding the review of nominating petitions by the competent election commission are rather sketchy. The consultant strongly agrees with the recommendations of the IFES team (see IFES, 1998) that more specific and effective procedures and standards should be established in the proposed law for review of signature petitions.<sup>8</sup> As it is, there is virtually no guidance for the competent commission concerning how and to what extent to review the contents of a nominating petition, including signature lists.

Another problem in this regard noted by the IFES team is the very short time available to the competent election commission for receipt and review of nominating petitions. Under Article 46 of the proposed LEL, petitions can be submitted as late as 15 days prior to the election. Under Article 47, the commission has only 24 hours to make its initial determination concerning the validity of a submitted petition. Even if more specific procedures and standards were introduced for the review of nominating petitions, they would be very difficult to reconcile with these time requirements.

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<sup>8</sup>The specific recommendation of the IFES team was: "Some thought should be given to establishing a double threshold requirement, *e.g.*, the signature petition must contain valid signatures equivalent to at least 1% of the total number of voters in the constituency and errors or invalid signatures in excess of a legally established threshold will cause the petition to be declared null and void." (IFES, 1998.) Two advantages of the IFES proposal are that it focuses from an administrative point of view entirely on the issue whether a sufficient number of signatures have been submitted, and that sufficient care was taken by the submitter to demonstrate its good faith effort to collect them. (The question of fraud, or intentional failure to submit a sufficient number of valid names, could be pursued if it arises as a result of information obtained by the commission, either as a result of its own review or through a complaint filed by a third party.)

Another issue concerns the lack of established standards for the actual collection of signatures. Article 45 in particular provides little guidance in this regard. It is recommended, at minimum, that each person collecting signatures be required to identify himself and to sign each sheet, preferably under an attestation that the signatures were collected by him and that he personally confirmed the information put down by the electors.

There should also be other limitations on the signature-collection process, such as the suggestion by the IFES team that this activity should not be permitted in certain environments such as government offices and any place of work. In addition, it should be made a violation of the law to pay voters to sign a petition or induce them to do so through offering a material benefit or threatening the loss of some privilege or benefit.

One Montenegrin election practice that is particularly perplexing is the ability of political parties and others who have submitted lists of candidates, some of whom have been elected, to assign half the mandates awarded to candidates on their list regardless of their order on the list. (See Article 100 of the proposed LEL and Article 99 of the old LEL.) The exercise of this power by parties and others who have made an appeal to popular support could result in a loss of their credibility and a rise in apathy and disenchantment among voters. One can also wonder whether this provision is fully in accordance with the voting rights of the Montenegrin people enshrined in Article 32 of the Constitution, especially clause (4) which states that, "Elections shall be free and *direct* ..." (emphasis added).

## **F. COMPLAINT RESOLUTION**

The main provisions regarding the resolution of complaints related to election administration are in Part XI, on "Protection of Suffrage", of the proposed LEL. Under these provisions, appeals from the actions of election commissions (including polling board) go to the next level commission; appeals from the REC go to the Constitutional Court, in accordance with Article 113(8) of the Montenegrin Constitution (which is not cited as such in the article). The actual rules governing appeals and their consideration, in a procedural sense, are not specified except through the provision in Article 116 that "All the procedures ... shall be regulated in accordance with the rules regulating ... administrative procedure."

The absence of detailed complaint procedures in the election laws of the Republic of Serbia, combined with references such as the above to other legislation (including that regarding judicial appeals from various administrative decisions), combined to create a chaotic situation in the aftermath of the hotly-contested municipal elections in Fall 1996. The former Yugoslavian state and its constituent republics had highly developed civil law systems, including detailed procedures for judicial appeals, which continue in the laws of the separate republics today. It would appear advisable, therefore, for the working group to enquire further into this matter, and to draft an election-specific set of complaint procedures if necessary.

Another aspect of election practice in the region that produced considerable confusion as well as confrontation in the situation mentioned above was the presence of provisions in the election laws calling for automatic invalidation of the election in polling stations where certain violations are found to have occurred. These provisions tended to lead to provocations by parties which were losing in certain areas and whose leadership or activists wished to create reasons to challenge the results and if possible nullify them.

There are several provisions in the proposed LEL which require the invalidation of election results at a polling station in certain situations. Some of these involve discrepancies in the ballot count, and others technical violations within or in the vicinity of the polling station (such as certain kinds of activity within the station or displaying posters in its vicinity on election day). On a previous mission to Serbia, the consultant was informed that during the 1996 municipal elections a large number of violations that were reported were probably provocations or overreactions. Challenges were entered against polling stations near which posters were observed, even though it could not be shown that the posters were hanging during polling hours or had influenced voters. A challenge was brought against the results at two polling stations which were connected with a third, on the grounds that a candidate proceeding to vote at his own polling station walked past the others! The strict rules on ballot accounting also probably encouraged dishonest and unscrupulous officials to enter additional ballots into the ballot stream in order to create a violation. (See Finn, 1997; IFES, 1997a.)

It is, therefore, unwise to retain provisions that strictly call for the invalidation of results in the event certain specific events occur at a polling station. Instead, general standards should be established through statute and the relevant commissions, as well as the Constitutional Court, should have it within their discretion to apply them to the case at hand, choosing from one of the available remedies according to the actual seriousness and effect of the violation.

## **G. PROTECTION OF MINORITY INTERESTS**

### **1. Ethnic Minorities**

According to published sources, the population of Montenegro includes several minority ethnic groups, or nationalities, such as Muslims (nearly 15%) and Albanians, Serbs and others (under 10% each). The participants in the multi-party agreement on democratization (Montenegro, 1997b) accordingly agreed that the single republican electoral constituency envisioned in the agreement would be "modified so as to ensure adequate representation of the Albanians in the Assembly of Montenegro".

The proposed LEL attempts to achieve this objective through Article 13, which would create a second constituency. The consultant assumes that the second constituency has been designed with the expectation that Albanians could achieve a representation in the republican Assembly similar to what they hold at the present time.<sup>9</sup> The minority could be relatively assured of the continued protection of their interests in this way by the fact that this provision would be included in the main body of the LEL and not in some other law (such as a special implementing law on districting); so any amendment would require the support of an absolute majority in the Republican Assembly.<sup>10</sup>

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<sup>9</sup>At the time this report is being written, the consultant did not have available to him a map of the proposed second constituency or information concerning its demographic composition. He has been informed by IFES staff that, in all likelihood, the second constituency includes a number of areas in which the Albanian minority is concentrated, including municipalities and parts thereof located near the border with Albania. He has also been informed that the second constituency is probably not contiguous, *i.e.*, that not all its components are geographically connected to each other.

<sup>10</sup>See Article 83(2) of the Montenegrin Constitution (Montenegro, 1992). Under Article 13(3) of the LEL, however, the number of parliamentarians to be elected from specific constituencies is to be determined by the republican Assembly through a "special decision". It is not clear whether this action would also be subject to the constitutional requirement of support by an absolute majority in the Assembly. Even if not, however, the Assembly's action could presumably be challenged before the Constitutional Court in the event its action did not accurately reflect the norm of representation — one representative to be elected for each 6,000 voters — established in Article 77(2) of the Constitution.

The IFES assessment team has recommended an alternative approach, under which the electoral interests of the Albanian minority could be accommodated within a single republican constituency (see IFES, 1998). This would involve lowering the proposed (and current) threshold for representation in the republican Assembly of four percent to only three percent (3%). While this is an attractive solution, it has presumably been considered by the participants in the parliamentary working group. Adoption of this alternative would also weaken the protection against the entry of fringe parties into the legislative system which is afforded through the existing threshold for representation.

The present consultant was previously asked to provide information on the general question of protection of minority interests in national parliaments during an assignment in Moldova. The question was raised on behalf of an ethnic minority in that country, the Gagauz, who are Christian Turks and whose population is relatively localized geographically. The consultant developed the following information on approaches to this problem in that context (see IFES, 1997b):

Overall, there appear to be four or five methods of providing special protection for minority interests in parliament:

1. Districting: In proportional representation (PR) systems, minority interests are usually protected through the establishment of the correct number and distribution of electoral districts to allow minorities to achieve parliamentary representation. Minority interests are usually not well protected through large districts, including single national districts. They are better represented through smaller districts, especially if the districts are drawn so as to reflect the distribution of minority population. On the other hand, there are limits on how small districts should be. If districts are drawn so small as to have fewer than 5-6 representatives elected from each, then the principle of PR begins to break down arithmetically, and the number of representatives elected from each party no longer bears a close relationship to the percentage of the vote they receive.
2. Single Mandate and Mixed Systems: These systems inherently better reflect minority strength in local districts than PR, provided the district lines generally coincide with areas of minority strength.
3. Side Elections: The most commonly-used special technique to achieve minority representation in national parliaments is to conduct side elections. While there are many variations on this approach, it generally involves permitting all voters to participate in general elections according to whatever system is generally followed. Designated minority voters have, in addition, the ability to participate in a special, or side, election that would result in the election of a special bloc of minority candidates to parliament.
4. Minority Quotas: Another method, which is followed in the world's biggest democracy (India), is to require parties to nominate a certain percentage of their candidates nationwide from various ethnic or other groups. In India, this includes various castes, and also women. This approach helps to ensure that a sufficient number of such candidates are elected to office. (It would be difficult to implement in Montenegro, however, so long as the practice is continued whereby parties which have successfully nominated a candidate list to assign one-half [1/2] of the mandates won by them to listed candidates of their choice, regardless of their position on the list.)



5. Regional Parliaments: Another approach, not directly related to the question of minority representation in the national parliament, is establishment of special regional councils in areas with large minority populations. This approach is, however, more closely linked to the question of political status (including possible autonomy) of minority areas than the protection of minority interests in the method of election to the national parliament.

Another possibility -- which could be followed under the laws of Moldova -- would have minority (there, Gagauz) candidates participate in a special "list" composed of independent candidates. This way, they could obtain enough votes to win election, but without having to pass the threshold for party representation in Parliament, which is also 4% in Moldova. This approach also might not be workable in Montenegro, however, in view of the requirement that submitters of electoral lists put forward enough candidates to contest one-third [1/3] of the seats subject to election. (It should also be commented with respect to Moldova that in the past the desired number of Gagauz candidates did take seats, mainly as a result of their being placed relatively high on the respective candidate lists of the main national parties.)

The consultant is unable to put forward an entirely satisfactory approach to the current issue in Montenegro with respect to satisfaction of the minority rights of Albanians consistent with maximum possible movement toward a system based on proportional representation in a single republican constituency. He understands the reasons behind the current approach, involving the creation of a limited second district, but believes that this district may be perceived as not really genuine (*e.g.*, in terms of historic, geographic or administrative factors) but rather constituted merely in order to achieve the desired goal of minority representation.

If this is to be the case, then perhaps it would be better to be realistic and follow either approaches #2 or #3 described above. Either special elections could be held for minority voters from the protected group (as in approach #3), or a small number of special districts could be created for application of another method of election (as in approach #2). For example, a certain number of single-mandate districts could be created in areas where there is a concentration of minority voters; candidates elected from these districts would take their seat in the republican Assembly along with candidates elected through PR republic-wide.

It might be objected that some aspects of the approaches just suggested, or even the approach contained in the proposed LEL, could run afoul of the equal rights and equal voting provisions of the Montenegrin constitution. For example, Article 15(1) of the Constitution provides that "All citizens are free and equal regardless of any particularities and/or other personal attributes." And Article 32(3) provides: "The voting right is general and equal."

On the other hand, Article 77(1) on election of the republican Assembly, which provides that "The Assembly shall consist of deputies elected by citizens ..., on the basis of a general *and equitable* voting right" (emphasis added), could be interpreted to open the door for some adjustment to absolute equality to achieve equitable purposes. And Part Two, Section 5 of the Constitution contains a series of articles recognizing the special rights of national and ethnic groups. In this section, Article 67(2) states that protection of these groups "shall be exercised in accordance with the international protection of human and civic right." And Article 73 provides: "Members of the national and ethnic groups shall be guaranteed the right to a proportional representation in the public services, state authorities and in local self-government." Not being an expert on Montenegrin constitutional law, the consultant will leave it to local experts whether the latter articles could be used to justify various ways of protecting minority voting interests, either *de jure* (as through special-purpose districts or side elections) or *de facto* (such as in the manner contained in the proposed law).

## 2. Refugees

As a result of the conflict in various parts of former Yugoslavia and other neighboring states, a large number of refugees are currently residing in Montenegro. Published information indicates that the number of refugees is approximately 10% of the total population.

Article 32(1) of the Montenegrin constitution extends voting privileges to “[e]very citizen of Montenegro” over the age of 18 years. Article 10 indicates that the Republic “shall confer Montenegrin citizenship on its citizens.”

The Constitution of the FRY also addresses citizenship issues, however. Article 17 of the FRY constitution states:

*“The Federal Republic of Yugoslavia shall confer Yugoslav citizenship on its inhabitants.”*

*“A Yugoslav citizen shall be simultaneously a citizen of one of its member republics.”*

*“Yugoslav citizenship shall be regulated by federal law.”*

The proposed LEL, in its basic provisions, does not address the issue of federal *versus* republican citizenship in a general way. Article 2, for example, states simply, “Citizens shall elect the councillors and representatives ...”.

Article 11 of the proposed LEL, on the other hand, does make it clear that citizens of either Montenegro or Yugoslavia can vote in Montenegrin elections, provided they meet other requirements, including residency within Montenegro for at least six months prior to the day of the election. It refers to “[a] citizen of Montenegro or a citizen of Yugoslavia” in this connection.

Citizenship of the FRY<sup>11</sup> is established under the Yugoslav Citizenship Law which came into effect on January 1, 1977. Under the Law, persons who were citizens of the former Socialist Federative Republic of Yugoslavia (“former Yugoslavia”), and had citizenship in Serbia or the Republic of Montenegro on the date of the proclamation of the Constitution of the FRY (April 27, 1992) are considered Yugoslav citizens. Citizenship is of course necessary to vote in republican and FRY elections.

The FRY Citizenship Law also contains transitional provisions dealing with persons who had former Yugoslav citizenship in another republic. These people had one year (after the effective date of the Law) to apply for Yugoslav citizenship, or three years in special cases. Refugees may be admitted as citizens by decision of the appropriate republican and federal authorities, but only “taking into account the justification of reasons stated in the submitted application and bearing in mind the interests of security, defense and international position of Yugoslavia.” Others may apply anytime, as “foreigners”; their cases would be subject to individualized determination.

There are over 650,000 registered refugees in Yugoslavia who have not yet formally been granted citizenship, despite the fact that most of them desire to remain in Serbia and Montenegro. In addition,

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<sup>11</sup>The following paragraphs could also apply to obtaining citizenship of Montenegro in the event Montenegro, like Serbia, has not enacted a separate citizenship law but instead relies on the Federal one. The consultant has no information on this point.

there are many other displaced persons from other republics of former Yugoslavia living in the FRY who have not registered as refugees or formally obtained citizenship. It is reported that, especially in earlier stages of the conflict in Bosnia and Herzegovina, some returning Serbs (who were largely supportive of the Serbian regime) were permitted formally to obtain Serbian citizenship. (This conclusion is usually drawn from observing their ability to conduct affairs, like purchasing property, that are limited to citizens.)

The unclarified citizenship status of the refugees has raised the concern that governments in power could move to grant citizenship to at least some of them in hope of obtaining their votes in elections. This concern appears unlikely to be realized on a large scale since refugee attitudes have turned overwhelmingly against the ruling parties, especially in Serbia. It is still possible, however, that some number of the refugees could formally be admitted to citizenship on a selective basis.

IFES was informed that the 200-300,000 refugees present in Serbia during the republican elections of 1993 probably were eligible to vote, assuming their names were included in the Voter List (see IFES, 1997a). (It is not known how many of these people actually voted.) Under the new FRY Citizenship Law, however, the Serbian government could remove the right to vote from this group, on the grounds that their citizenship had not been formally granted in the first place. It is entirely likely, therefore, that a large number of persons who voted in 1992 and 1993 were not permitted to vote during more recent elections. These reported manipulations in Serbia show how the citizenship issue can be used to affect the composition of the electorate in republican elections, and may indicate that further attention should be given to this problem in amending the election laws.

Another consideration applies with respect to the issue of voting rights *vis-a-vis* citizenship. As noted elsewhere in this report, the Montenegrin Voter Registry is compiled based on the residents' list maintained by the police, and also information from other sources (including municipal authorities). It is not clear whether information concerning citizenship is systematically reviewed in compiling the Registry. Assuming the name of a person who had not formally been granted FRY or Montenegrin citizenship was placed in the Registry, it would be possible for him/her to vote after presenting proper personal identification at the polling station. The main document accepted for this purpose in the past (a Yugoslav ID card) does not contain information on an individual's citizenship. These facts may show that further work should be performed to ensure that non-citizens are not included in the Voter Registry, or that proof of citizenship should be required in upcoming elections.

## **H. OBSERVERS**

The proposed LEL does not contain a basis for attendance at election operations by neutral observers, either from international organizations or domestic groups. Indeed, the presence of observers at polling stations could be prevented by Article 72(4), which provides: "Persons having no rights or duties with regard to the administration of the election, as prescribed by this Law, are forbidden to remain at the polling station." (As with many other aspects of polling station procedures, violation of this rule can lead to nullification of the results there, although that result is not automatic. See Art. 72[5].)

Despite this provision, international observers have been allowed to operate during past elections, including the 1997 presidential election. (See OSCE, 1997.) Domestic observers, coordinated by the Montenegrin Helsinki Committee for Human Rights, were also allowed to undertake monitoring of the presidential election, although there appear to have been some delays in receiving credentials.

There is a provision in the current LEL, Article 22(2), that may create a basis for the presence of observers by providing: *"The members of election bodies and other persons monitoring the operations of*

*election bodies shall act according to the rules of conduct laid down by the Republic Election Commission.*" A similar provision has not been found in the proposed LEL, however.

It may be that in the past certain "citizen" observers were permitted into polling stations by PB chairmen, as has been reported in Serbian elections. It has been said that these "citizens" were invariably supporters of the ruling party, and that on occasion they were suspected of participating in fraudulent activities within the polling stations. (It may be that such individuals actually obtained membership on the polling boards as representatives of so-called "citizens' groups" that qualified as a result of nominating the requisite number of candidates in the district.)

Despite these reported practices in Serbia, it would still be worthwhile to consider whether the presence of domestic observers at polling stations or other election operations is actually permissible under current Montenegrin law, including the general power of the REC to make rules for the administration of elections. If so, it might be possible to persuade election authorities to permit the participation of *bona fide* observers nominated by NGO's with a legitimate interest in human rights and civil society.

If the power to admit properly qualified observers is not within the mandate of the REC, then the consultant would recommend that such power be granted. Ideally, in order to prevent abuses, the REC should be empowered to consider requests to sponsor observers which are submitted by legitimate and qualified NGO's with an interest in human rights and democracy. If this authority is included in the law, then the REC should proceed, especially in the period prior to the actual calling of elections, to enter into consultations with such groups in order to discuss their participation in a future monitoring program.

In the absence of a direct domestic observer program, it still might be possible for citizens to organize themselves to conduct indirect monitoring of the elections. This could be a useful step in itself, and also lay the groundwork for direct participation of domestic observers in future elections.

## **II. SPECIFIC COMMENTS ON PROPOSED LEGISLATION**

### **A. LEGISLATIVE ELECTION LAW**

The comments in this section pertain to the proposed “Law on the Election of Councilors and Representatives” (Legislative Election Law, or LEL) drafted by the parliamentary working group. Many aspects of the proposed LEL have already been discussed in the preceding section on Overall Observations, and the comments in this section supplement those observations.

#### **1. General Comments**

##### **(a) Scope and Applicability**

Providing for both types of Montenegrin parliamentary elections (to the republican and municipal assemblies) in a single vehicle creates many ambiguities as well as gaps, overlaps and conflicts in the texts of various provisions. Some of these have been noted in previous comments, but there are so many instances that it would not be productive to catalogue them here.

Consolidation of the provisions related to all parliamentary elections in a single LEL carries over from the old LEL, which is also drafted this way. In one sense, the combination is desirable if it could sometime become the basis of a comprehensive election code. But as currently drafted, the combination might result in considerable mischief as to what provisions apply to what kind of elections and which bodies are being referred to at any particular point. One particular source of confusion is whether republican and municipal parliamentary elections must be scheduled simultaneously, or can be conducted at separate times.

At this time, the consultant recommends that further effort go into working through the detailed provisions of the proposed LEL to eliminate the problems caused by combining into a single law the provisions applicable to republican and municipal elections. In addition, he would recommend that consideration be given to creating two entirely separate sections, or even entire bills, which could still share a common legal and administrative basis.

For the longer term, the current combined approach could provide a basis for the development of a more comprehensive election code.

##### **(b) Relationship of the REC to MECs**

One particular question, which has been raised by another IFES consultant (Barnes, 1997), concerns the relationship between the REC and the MECs, particularly with respect to municipal elections. Specifically, is the relationship “consultative” (*i.e.*, with the REC exercising administrative authority) or merely advisory?

Also, it is to be noted in a general sense that the MECs may be obliged to follow certain instructions of the REC -- and may even have their authority substituted by that of the REC in case of their failure to discharge their responsibilities -- but the REC does not appoint the members of MECs and the latter are actually accountable to the bodies that appointed them (see Article 17[3]), *viz.* municipal assemblies. The MECs must also rely for support on other government bodies (see Article 17[e]), which would ordinarily be provided at the municipal level.

These provisions must be thought through further, particularly in light of the comments on Separation of Powers and Administrative Transparency contained in the Overall Observations part of this report.

**(c) Ballot Security**

Other commentators (IFES, 1998; OSCE, 1997) have noted the absence of a ballot stamping, or validation, procedure at polling stations. Such measures do represent an important means of deterring ballot box stuffing. It is probably unrealistic, in view of the high demands on members of the PB during polling hours -- which results from the relatively small size of the PBs, the large numbers of voters assigned to individual polling stations, and newly introduced procedures such as having voters sign the extracts of the register before receiving ballots -- to expect the officials administering the voting to stamp each ballot personally immediately before delivering it to a voter. On the other hand, arrangements could be made for a member of the PB, ideally the chairman, to pre-stamp a limited number of ballots several times during election day.

**(d) Voting Outside Polling Station**

The bill provides for several methods of voting outside the polling station (see Articles 86-92): Persons who are temporarily absent from their residence may request absentee ballots from the PB at their normal polling station (PS). Military personnel vote at their bases, and students like others may vote by mail, upon request to their PB. Other persons who for some reason (such as illness or disability) cannot physically come to the PS on election day may also contact the PB for assistance; in this case, an official is sent from the PB to administer voting. Though the means of delivering the ballots to voters and back to the PS differs in each case, the form of balloting is essentially what would be described as an "absentee" procedure; the voters mark their ballots, place them in an envelope, and enclose that envelope along with their voter identification in a second, outer envelope for delivery to the PS.

The consultant believes that this is essentially a sound procedure, and preferable to alternatives involving special polling stations or mobile ballot boxes. (In this regard the present consultant differs with the perspective of another IFES consultant, who prefers use of mobile ballot boxes; see Barnes, 1997.) Such alternatives create the possibility for fraudulent deposition of a large number of ballots, if there is not careful reconciliation before the contents of ballot boxes from these sources are entered into the counting stream.

At the same time, there are definitely practical difficulties. PBs under the current and proposed law are formed only 15 days before election day. This does not allow much time for persons wishing to vote outside the polling station to contact the PB and make the necessary arrangements, particularly if they involve receiving (and returning) ballots through the mail. Also, the provisions for physically delivering ballots from the PS to persons who cannot come to it on election day should be strengthened to include a greater number of representatives from the PB, as well as permit them to be accompanied by authorized party representatives and/or observers.

**(e) Counting Process at the Polling Station**

Some aspects of the counting process to be followed at PSs which are described in the proposed law (carried over from the current law) are unrealistic and could prove troublesome in the event of a complaint, especially as the remedies for violations, even of a technical nature, are often quite severe. These procedures should be reviewed in consultation with experienced election administrators to ensure that they do not conflict with normal and sound practice. In addition, consideration should be given to

inserting a clause at the appropriate point that would enable the PB chairman to follow another method provided it fulfills all the requirements of the law. (Party representatives or others present at the PS could of course complain at the time in the event they believe a decision along these lines were questionable.)

One example is the provisions of Article 93 (4)-(5):

*“When the ballot box is opened, and after the control sheet has been checked, valid ballot papers are separated from the invalid ones.”*

*“The Polling Board states the number of invalid ballot papers and enters it into the record. It then states the number of valid ballot papers and the number of votes for each electoral list and also enters into the record.”*

Now, going through all the ballots first to determine whether they are valid, and only then to determine for whom the ballot was cast, would require examining every ballot twice. While it is of course necessary to determine the number of invalid ballots, that could presumably be done in the course of counting the ballots for all purposes, in a carefully controlled manner.

Thus, it would appear that the detailed provisions of the law with respect to technical operations at the polling station should be reviewed. In addition, it would appear desirable for the REC, or perhaps the MECs for municipal elections, to establish more detailed procedures through regulations consistent with the provisions of the law.

## **2. Running Commentary**

This section contains additional specific comments that arise from running through the provisions of the bill, in order of the various articles:

Article 14: This article reflects Article 88(1) of the Montenegrin Constitution, which provides that the President calls parliamentary elections, in the sense of determining the precise date. The provision also states, however, that the President “also sets the time-limits for the election procedures prescribed by this law”. The consultant believes that properly it is the President who determines the date of a legislative election, but the relevant law should establish the time limits (except setting specific dates as a consequence of the President's announcement). This may be merely a translation issue, however.

Article 21: This article states simply that, “The election bodies take decisions by a majority of votes of their members.” The question, as discussed earlier, is which members are meant; specifically, do representative members admitted at the request of political parties have the right to vote, and if so, on all business or only some?

Article 26: As noted earlier, party representatives proposed for inclusion on an election commission must be approved within 48 hours of the submission of their names. It is not clear from this provision precisely when such members would actually join the commission and exercise their functions.

Article 27(5): This article requires MECs to validate ballots by stamping them, prior to delivery to polling stations. This would appear to be a new practice, since it has been reported that there is currently no ballot validation procedure in operation. In event such a procedure is adopted, however, for the reasons noted earlier it would be preferable to have it applied at the polling station — as short a time as possible prior to the delivery of ballots to voters.

Article 31: See comment on Article 26.

Article 36: See comment on previous article. The fact that there have to be three separate articles on appointments of party representatives to the various electoral bodies (REC, MECs and PBs) reflects the need for improved consolidation of the legal provisions related to elections and ultimately for a comprehensive election code.

Article 37(3): This clause charges PBs to assign one of their members to administer voting outside the station. As argued earlier, it would be better to assign more than one member (possibly bringing in the deputies for this purpose). In addition, it would be desirable to make arrangements to permit party representatives and outside observers, if present, to accompany the official administering voting outside the station.

Article 39(3): This clause requires that, in order to submit an electoral list, a political party or citizens' group must propose candidates for at least one-third (1/3) of the available legislative positions being contested. Presumably this requirement has been adopted to deter the participation of small parties or citizens' groups in putting forward lists of candidates. However, the other methods also contained in the proposed law for this purpose (such as the requirement that the same number of supporting signatures be submitted, no matter what the size of the candidate list [see Article 43]; and the overall threshold for parliamentary representation [4%]) operate more effectively. It is difficult to see why a party or group should be forced to put forward so many candidates, knowing full well that they will probably not succeed in getting them all elected anyway. Quality in this instance should definitely be preferred over quantity!

This clause also prevents a party or other organization from putting forward additional (or "alternate") candidates, in the event other candidacies have to be withdrawn. It is unclear why a limited number of alternates is not allowed, especially as their presence could also be beneficial if a parliamentary vacancy became available to a party after the election.

Article 41: The consultant does not appreciate why a party one of whose candidates has been rendered ineligible for some reason, cannot substitute another candidate, at least in the event that the time period for the submission of electoral lists is still open. (Even after that time, it would be acceptable to permit substitutions in such cases, since any such substitutions could be publicized in the media as well as posted on a notice at the polls on election day.)

Article 43(4): This clause mandates the REC to "prescribe the content and layout of the form for the signatures of electors..." This useful provision should be supplemented by further standards contained within the statute itself. This entire issue has been discussed previously.

Article 45: The consultant applauds the decision not to attempt to regulate the signature-collecting process in a governmental manner. Such efforts inevitably impede free political discourse and civic activism. At the same time, it would be useful — in order to deter fraud and provocations — to devise a standard for the review of signature petitions that encourages parties and citizens' groups submitting nominating petitions to regulate their own submissions carefully. This issue has been discussed previously.

Article 46: The ability of parties and citizens' groups to submit electoral lists until 15 days prior to the election means that the amount of time for the review and any challenges to nominating petitions is extremely limited. Under such pressure, election administrators and the Constitutional Court might be



forced to take actions which threaten the fairness of the election itself. Serious consideration should be given to moving back the date by which nominating petitions must be submitted.

Article 47: This article, dealing with the review of nominating petitions by the relevant election commissions, allows such review to begin as soon as a completed petition is received, but allows the commission only 24 hours for this purpose (absent any appeal or request for modification). The subject of how to review signature petitions is a very complex one, depending largely on the special circumstances of the jurisdiction in question (particularly how voters are registered, and the amount of manpower, computer equipment and funding available); experts differ on the correct method even when circumstances are largely the same. What is striking about this article is the extremely short period available to the commission, namely one day, to make its determination. This seems to preclude any serious, empirical review, even if other circumstances permitted it.

Article 48: The standards referred to in this article, with respect to the adequacy of nominating petitions — “no faults” and “faults have been eliminated” -- appear unrealistically high. See the previous comment, as well as the earlier discussion of procedures and standards for review of nominating petitions, including signature lists.

Article 49(2): This may reflect a translation error, but the English version of this clause says that the order of “candidates” — not submitters of electoral lists — on the general electoral list should be determined by the chairman of the competent election commission by lots.

Article 49(3): Since the general electoral list must be published 10 days prior to the election, and parties and others must submit lists only by 15 days prior (see above), there are only five (5) days during which period all complaints and appeals regarding such lists must be resolved. This period is certainly too short.

PART VII (Articles 50-64) and Article 121: The provisions of this part and the later article must be compared with the proposed new Public Information Law, which is not within the scope of these comments.

Article 54: With respect to disclosure of the sponsorship of paid political advertising, the question is what is a political advertisement and what is not? (This is currently a big issue in the United States, where interest groups supporting one or another party or candidate run so-called “issue ads” that are really political advertisements by another name. There is also evidence in the U.S. that these groups coordinate their media strategy with political parties and candidates, thereby doubly bypassing the regulations on political advertising.)

Article 57(2): This clause calls for the media and political parties to consult after the electoral lists have been submitted in order to develop more detailed rules on fair coverage. A similar approach, however, proved unworkable during last year’s presidential election (see OSCE, 1997, pp. 20-21).

Article 60: The OSCE indicated in its report on the presidential election (OSCE, 1997) that political posters were widespread, not confined to special locations maintained by municipal authorities, which indicated a need for making such locations available. This provision, like that in Article 59 of the current LEL, seems to address this issue adequately. The relevant election commission should undoubtedly promulgate some rules on how such spaces are to be used by political parties and candidates.

Article 63: This provision, which prohibits the publication of polls and similar information within seven days of the election, and the publication of preliminary results or estimates on election day itself, appears to be in line with international standards in this area. The publication of polling information (as well as

exit interviews and similar techniques on election day) is ordinarily regulated more closely than other election coverage, since it contains supposedly "scientifically"-based information that is less easy for voters to evaluate than ordinary news reports, and could influence their voting.

It is admittedly extremely difficult to regulate this kind of conduct by the press; and in fact some responsible journalists reject such regulation entirely. During the 1996 municipal elections in Serbia, a major Belgrade newspaper (*Dnevni Telegraph*) printed a story on election day predicting that the opposition would win the elections. The story did not present polling data or other apparently objective evidence that could not be readily evaluated by readers, but was technically in violation of the ban in force there on certain political coverage 48 hours prior to election day and on election day itself; however, no action was taken against the newspaper.

Article 65 (2) & (4): Under these clauses, polling stations are established only 15 days before an election, and their locations are announced only 10 days before the election. These times are very close to election time; the latter time period, in particular, would hardly allow sufficient time for voters requesting special ballots to both receive them and return them by election day.

Article 65(4): This clause requires polling stations to be set up in such a way that the "members" of polling boards be able at all times to view the ballot box and voting material. The first question is whether representative members of the PB are also to have this prerogative, as previous observers have commented that this has not always been the case. Second, see the discussion later of the separate article that provides for voting secrecy, which appears in conflict with the requirement contained in this article.

Article 66:The specified number of voters that can be assigned to a PS has been characterized as overly large, in view of the number of members on the PB and the number of voter list extracts available. These problems have been compounded by the adoption of an additional requirement that voters sign the extract as well as have their numbers circled thereon, at the time they receive their ballots. The second clause, which calls upon the REC to adopt more detailed rules for PSs, is welcome.

Article 68:The timing of the delivering of election notices to voters does not appear to provide adequate time for voters who require special ballots to receive them.

Article 69: This is one of those articles that contains a draconian remedy -- closure of the station, or nullification of the results -- for certain violations which may occur at polling stations. The meaning of "verified" with respect to ballot papers is unclear, as there is no validation procedure, at least in practice. The requirement has been added for voters to sign alongside their names on the voter list extract, a good procedure but one that will increase the burden on the PB (see previous discussions). The exclusion of displays of political symbols or material within fifty (50) meters of a station is very hard to enforce, and has elsewhere (Serbia) apparently become the basis for provocations intended to nullify election results. The provision preventing the carrying of arms or dangerous instruments in a PS should probably be modified to permit policemen on active duty to do so while they come in to vote.

Article 71: A decision to close a polling station, and extend voting later as a result, should be promptly notified by the PB chairman to the relevant MEC.

Article 72 (2)-(3): These provisions would appear to conflict with the provision, discussed earlier, which requires that the ballot box and voting materials be within view of members of the PB. Even if not technically in conflict, the specified arrangement would still appear to prevent voters from being observed at all times after they receive ballots and deposit them in the ballot box, with the exception of whatever

time they actually spend in a voting booth. This could enable persons who have received ballots to escape detection while they substitute other papers, or *vice versa*, thereby facilitating ballot fraud.

Article 73: Query why the ballot should contain an indication of the polling station, at least on the printed form. On the other hand, as noted previously, it would certainly be desirable for ballots which are issued to voters to be validated at the polling station.

Article 75: Clause (2) requires delivery of election material (presumably to polling stations) not later than 48 hours prior to election day. This period is rather long, and could result in additional problems with ballot security, particularly in the view of the absence of a validation procedure at the station.

Clause (3) requires other materials to be delivered to the stations by the “competent municipal body”. It would probably be desirable to distinguish between sensitive and non-sensitive election materials in some way, through definition. Sensitive material should include any stamps that are used at the PS for official purposes, and these should probably be retained between elections by an electoral body and not municipal authorities.

The final clause states:

*“On polling day, before the beginning of polling, the Polling Board shall determine whether the election material for that Polling Board is complete and in proper state, whether the polling station has been organized in such a way to ensure the secrecy of voting, and whether polling may start ... ”*

It is certainly necessary for the chairman and the other members of the PB to perform this task prior to the time of opening of the PS, and also to undertake the necessary opening procedure when the polls are declared open. On the other hand, this provision implies that the PB would not have confirmed these matters earlier. It also appears to indicate that the voting materials would not be the responsibility of the PB from the time they are delivered to the PS.

In most election systems, these important matters of accountability and security, as well as proper operation, of the PS and election materials are not left to non-electoral authorities in the manner envisioned in this article. The consultant strongly recommends, therefore, that this article be re-drafted, or supplemented by another article which outlines the responsibilities of the PB in this regard:

Articles 77 - 78: The consultant notes with approval the provision in Article 77 under which party representatives on PBs have the ability within the five-day period following the election to inspect the election material, including “ballot papers.” He is concerned, however, by the fact that under Article 48 “ballot papers” have to be retained only “for 60 (sixty) days or until the termination of procedure on the infringement of rights during the election”. If the latter provision is meant to mean that cast ballots may ordinarily be discarded after only 60 days, then he would oppose it. (On the other hand, article 78[1] provides that “election material” must be kept for a period of at least four years; if cast ballots are intended to be within the scope of the latter phrase, then the period of time specified would appear to be adequate.)

The question also arises under Article 78 as to who is responsible for the retention of old election records, which is subject to rulemaking by the REC. The consultant believes that sensitive election materials (such as cast ballots, including invalid ones) should be retained by electoral authorities or another quasi-independent branch of government, such as the courts. (In Romania, for example, cast ballots are retained by the courts and other materials by other government authorities.)

Article 81: It should be recalled that while the presentation of identification may confirm the identity of a voter, it does not guarantee his eligibility to vote. That is established through proper constitution of the voter registry. This is particularly important since many acceptable forms of identification do not contain proof of citizenship.

Clause (3) of this article continues the old requirement that a PB member delivering a ballot to a voter must circle the ordinal number of the voter on the extract of the voter registry. It is not clear whether this is still necessary in view of the fact that another article now requires the voter to place his signature alongside his name on the extract.

Article 82: This article obliges the PB to explain the voting procedure to a voter, upon request. It does not provide for giving the voter another ballot in the event he hands back a spoiled one. This defect, also noted by another IFES consultant (Barnes, 1997), should be remedied by the addition of such a procedure.

Article 84: This article prevents any "alterations" to the extracts from the voter registry on election day, and provides for nullification of the voting at a polling station in the event that such an alteration is made. It is unclear whether allowing individuals to vote, even if their names are not on the extract, based on the submission of proper identification at the polling station and tracking of these voters on a "special list", is consistent with this provision and desirable.

Article 93: Another IFES consultant (see Barnes, 1997) has observed that filling out the ballot in pencil should be added to the grounds for invalidity of ballots.

The provision in the final paragraph of this article, that the results of the election at a polling station must be nullified if there is a discrepancy in even a single ballot, is too draconian and could easily be exploited by *provocateurs*, especially if a member of the PB is in collusion with another interested individual or group.

Article 94: The summary of the PB's work is contained in a so-called "record," which includes the protocol of the results of the election at that PS as well as the log of any other significant events that may have occurred there. Due to the ambivalent sense of the word "record" in this connection, it might be preferable to adopt the other terms suggested as well.

The consultant applauds inclusion in the record of comments by PB members and observations concerning other events; it might be well also to require a record of any comments of significance from other sources, including any accredited observers who might be present. The consultant also applauds the practice of making copies of the record to all members of the PB, but believes that requiring the entire record to be provided (and not just the protocol containing the results) could discourage the keeping of a proper log book. If accredited observers are present at the time the work of the PB is completed on election night, it would be desirable if they could also be able to request an official copy of the record. In addition, in order to help facilitate election night tabulations and post-election day review by electoral bodies, political parties, voters and observer groups, it would be useful to post the protocol of results not only at individual polling sites but also at the MECs.

Article 103: This article contains time deadlines for the publication of official results by the REC and the MEC's. It would also be advisable, as a confidence-building measure, to call for publication of partial results as they become available, unless the commission determines that the results are likely to be misleading, or their publication could lead to public disturbances.

Article 110: This article provides for early elections in the case of dissolution of the Republican Assembly; there does not appear to be a corresponding provision regarding municipal assemblies.

Article 112: The right to appeal election decisions (extended to “[e]very elector, candidate and submitter of an electoral list”) is extremely broad. Taken in combination with the provisions that require invalidation of election proceedings or results in certain situations, it could lend itself to conspiracies to attack the outcome of an election on this basis. This is what appears to have occurred in Serbia following the municipal elections of 1996.

Article 114: The procedures concerning administrative appeals within the system of electoral bodies do not explicitly provide for these bodies to hear appeals in the first instance from their own decisions, prior to referring them to superior commissions. It might be useful to include some provision for rehearings or appeal proceedings by electoral bodies, as such proceedings may obviate the need to appeal to a higher body or the court.

PART XII (Articles 117-118): The provisions of this part must be compared with the provisions of the proposed Political Finance Law, and will be discussed below in that connection.

Article 117: This article, which envisions payments for individual candidates (as opposed to their parties), does not make clear either on its own terms or with reference to other laws (such as the proposed Political Finance Law), what these funds can be used for. Presumably, candidates should use such funds only for campaign purposes, so there should be a reference to a provision in this law or elsewhere which defines what those are; see, *e.g.*, Article 9 of the proposed Political Finance Law.

Article 118: The reference to an agreement between election contestants and state bodies with respect to the use of facilities, *etc.*, should probably be redrafted so as to call instead for “consultations” by those bodies with the parties. This would address the case in which an agreement cannot be reached.

Article 119: The consultant notes that the amount of the fine provided for in the first sentence of this provision is not specified in the version before him.

Article 122(1): In the version of the bill being reviewed by the consultant, it is not specified which election commission this provision applies to — only the REC or also the MECs.

## **B. REGISTRATION LAW**

The following comments concern the Proposed Law on Registers of Electors (“Registration Law”), and are additional to any related points contained in the Overall Observations part of this report. The comments in this section are organized into General Comments and Running Commentary:

### **1. General Comments**

The consultant wishes to begin by congratulating the working group on its success in incorporating virtually all of the provisions of electoral law related to the Voter Registry into this discrete bill. As a result of this effort, adoption of this proposed law will not only greatly clarify republican procedures on maintenance of the Voter Registry but provide a basis for further legal as well as administrative reform in this area.

Specifically, in the event a comprehensive election code is ever drafted, then surely this proposed law could become a chapter in that code. Meantime, this bill could provide the integrated legal basis for

improvement of the Voter Registry, and be referred to as necessary in drafting and applying other laws related to elections.

**(a) Non-Specification of Responsible Authorities**

The most obvious deficiency of the proposed law is of course well recognized by the drafters. This is the non-specification of the governmental bodies responsible for conducting actions in compliance with the law at the republican and municipal level.

Primary responsibility for gathering data for inclusion in the Voter Registry at the municipal (and presumably republican) level lies with the police and other security services, which are in charge of maintaining residence information and certain other records. It is not known to the consultant which authorities are currently responsible for compiling this data into the basis for the Voter Registry; perhaps this task is performed on an interagency basis at the relevant level of government (primarily municipal).

The proposed law represents a laudable contribution to improving administration of the Voter Registry through specifying specific responsibilities and procedures, as well as assigning control authority (see below). It will continue to be difficult to obtain sufficient accountability, however, as long as the lines of administrative authority remain undefined. If this matter cannot now be specified in law, due to unresolved issues of government administration, then perhaps more concrete assignments of responsibility related to preparation of the Voter Registry can be implemented subsequently, through executive order or regulation of the relevant Ministry.

**(b) Mechanism for Updating Voter Information**

As part of the effort to ensure timely entry and correction of information about eligible voters, the proposed law in Article 6(2) requires that changes known to responsible agencies of government must be reported to the authorities in charge of maintaining Voter Registries “within 15 days after the date as of which any such change has occurred.” Several aspects of this formulation would make it difficult to administer, and therefore minor changes are suggested to this paragraph.

First of all, the clock should probably begin running from when an agency actually discovers certain information as a result of collection through standard means, submission by another agency, or being provided by an individual — not from the time that a change in voter information “has occurred”. It is not reasonable to assume that a responsible government agency would always receive such information within that period of time from its occurrence, even if it is operating diligently. If it is failing to operate diligently, then its officers could be liable to penalties under another provision.

Second, it is probably more efficient to direct government agencies to report all related information within their possession according to some regular schedule — say, every 15 days. (This is probably how such agencies would attempt to follow the directive contained in this paragraph anyway.) This would permit the agencies to “bundle up” the information they have in an orderly and regular way. Otherwise, if an agency received some piece of information on day number 15 of its usual reporting cycle and it did not get included in the batch being transmitted that day, then probably the information would not actually be relayed until the 16<sup>th</sup> day (when the next batch is sent), which would technically be a violation of the 15-day requirement.

For these reasons, it would be more realistic to require that the authorities in charge of keeping certain records transmit new information relevant to the Voter Registry, if any is received, every so often (say, 15 days, as in the bill). In order to ensure that not too much time goes by before they obtain updated

information about voters, the agencies should also be directed to devise systems by which relevant information about voters is received by them within a similarly reasonable period of time (once again, perhaps 15 days).

**(c) Rulemaking and Supervision**

Article 6(5) is a very important provision which mandates that a republican ministry be responsible for making rules and exercising supervision over the voter registration-related activities of government agencies.<sup>12</sup> As in other parts of this bill, it is unfortunate that the precise identity of the relevant ministry cannot be set down. But, of course, this could change from time to time as a result of government decisions concerning the structure and organization of the ministries.

The rules and procedures established by the Ministry under this paragraph will be critical in ensuring that voter information is maintained in an accurate manner. Although the Ministry is required to promulgate rules within a relatively brief 30 days from the date of enactment of the proposed law,<sup>13</sup> it should plainly continue to refine these rules and develop new procedures on the basis of its ongoing supervision in this area.

Under the Ministry's mandate to supervise compliance with the law and its regulations, it should order that regular checks be run on the accuracy of voter registers. It should also require periodic reports from the various agencies which are assigned to compile the actual registries, as well as other agencies which are responsible for transmitting information to them. It might be desirable explicitly to include these two elements into the statutory framework as part of Article 6(5).

**(d) Inspection and Appeal of Voter Registry Information**

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<sup>12</sup>The paragraph states:

*"The ministry in charge of administration affairs shall govern in more detail the manner of keeping, correcting, supplying, concluding, copying and publicizing the Register of Electors and other matters needed for the maintaining of complete, accurate and up-to-date registers and shall supervise compliance with the regulations governing the maintaining of Registers of Electors."*

<sup>13</sup>Article 11 of the proposed law states:

*"The Ministry in charge of administration affairs is obliged to pass the regulations referred to in Article 6 above within the period of 30 days from the day of coming into force of this law."*

Under the proposed law, voters are informed by notice — and possibly other means — of their ability to check the Voter Registry just days after elections are called (see Article 7). Political parties are also able to obtain the information in a Voter Registry in the form of computer data (see Article 9[3]). It is not clear, however, whether election authorities — especially the MECs — must provide reasonably convenient facilities for interested persons and parties to review the Voter Registry in printed form, and exactly what the scope of the right to appeal alleged inaccuracies in the Registry is.

One apparently serious omission in the proposed law is the absence of any reference to inspection of the voter registry, or extracts therefrom, at the precinct (polling station) level. Presumably, it would be quite onerous and time-consuming for voters and others to travel to municipal offices in order to check the registry. In Serbia, this problem is addressed by making the extracts from the registry available at the polling station or nearby facility at the precinct level. (Even this measure was not completely successful there, however, as shown by the discussion that follows.) It is unclear why such a measure was not included in the proposed Registration Law, especially since Article 65(2) of the proposed Legislative Election Law provides a ready basis for it; that paragraph states:

*"Polling stations are set up by the Municipal Election Commission upon the proposal of the body in charge of keeping the register of electors not later than 15 (fifteen) days prior to the polling day."*

It is therefore recommended that a provision be added to the proposed Registry Law explicitly providing for making extracts of the voter registry available for inspection at the polling station or a nearby facility as soon as possible after the polling station is formed.

Issues about the procedures for inspection and appeal of the voter list became quite significant in Serbia after the experience of the 1996 municipal elections. (See Finn, 1997; IFES, 1997a.) According to NGO representatives and the opposition spokesman there, Serbian election law and regulations was interpreted to permit review of the voter list (VL) only by individuals, with respect to determining if they themselves (and perhaps their families) were properly listed. It is widely believed that the inclusion of additional names on the VL is a main source of fraud, since it would permit members of the polling station commission or others to insert extra ballots into the counting stream without leading to invalidation of the results at that station. (As in Montenegro, the election laws in Serbia require invalidation of the results at a polling station whenever any ballot reconciliation problem occurs, no matter how minor. Therefore, it would be difficult for ballot boxes to be stuffed unless additional names are entered into the VL and checked off in an equivalent number to the false ballots that are added.)

There were numerous stories circulating in Serbia concerning inexplicable inaccuracies in VLs maintained at the precinct level in connection with the municipal elections. Reportedly, one homeowner in the Belgrade area, the head of a family of four who lives in a house, went to check his name and -- when he looked at the names listed under his address -- found that there were six, the four members of his family and two others who were unknown to him! Yet he was reportedly not permitted to challenge inclusion of these names.

Under the Serbian Parliamentary Election Law, similarly to Montenegro, the VL is made available for review within three days after elections are called; it is finalized 15 days before the elections. Citizens are permitted to inspect the list, although it is not clear in the law how far that right extends.<sup>14</sup>

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<sup>14</sup>Art. 21 of the 1992 Serbian Law provides in relevant part as follows:



After the election, parties have the right to inspect election materials, including VL's, but it would presumably be difficult for them to conduct a comprehensive review and mount an appeal within the necessary time period.<sup>15</sup>

(Against the characterization of this process by the Serbian opposition, an IFES team was informed by other knowledgeable persons that voters there may in fact check other names in addition to their own, and take action to challenge them if necessary; and that such checks may also be made by individuals on behalf of a party or other nominating organization. It would appear, however, that practice differed on this point at different places, and that in some areas election administrators made it difficult to conduct a systematic review of the list by imposing certain conditions on inspection and review -- e.g., by prohibiting photocopies to be made of the list, necessitating it to be copied by hand.)

It was also alleged in Serbia that numerous extra ballot papers were printed by the State in order to facilitate the fraudulent practice of entering additional ballots into the count in numbers corresponding to additional names being checked off on the voter list. (Ballot papers there are printed on instructions of the district election commission, but the actual printing is conducted by state bodies.)

Serbian NGOs and the opposition informed the IFES team that their suspicions about the integrity of the elections process initially focused on "post-protocol" aspects of the election process -- i.e., transport of the protocols and other voting materials from the polling stations, delivery to the district commissions,

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*"Within three days of the day of calling for elections, the competent agency shall notify citizens, by way of a public announcement or through the mass media, that they may inspect the electoral roll and request in or removal from the electoral role, as well as its modification, amendment or correction."*

The article also addresses the procedures for complaints and appeals.

<sup>15</sup>Similarly to Montenegrin law, Art. 74 of the Serbian law provides as follows:

*"Representatives of the submitters of electoral lists and candidates for representatives have the right to inspect the electoral materials, and specially the extracts from the electoral rolls, the minutes of the electoral commissions and the ballots. This can be done in the official premises of the electoral commissions, as well as with the authorities keeping the electoral materials."*

*"Inspection of the electoral materials can be carried out within five days of the day of holding of elections."*

tabulation by the commissions and publication of results. They later became convinced, however, that large-scale fraud also occurs at the polling station level. An opposition spokesman said that failure to address this single issue would lead the main coalition to stage a boycott of the 1997 parliamentary elections; the opposition did boycott the election but largely for other reasons.

In light of the Serbian experience described in the previous paragraphs, which arose under nearly identical legislation as that which is proposed for re-enactment in Montenegro, greater specificity may be required concerning the ability of individuals and parties to review voter registries in a meaningful way, and to appeal whatever discrepancies they discover. The entire register should be available for review by interested persons, and representatives of parties should be permitted to make arrangements to copy it if they so desire. An individual should be permitted to appeal any information he has factual grounds to know is incorrect; this is apparently provided for by Article 7(3). And a party or other organization contesting the elections should be permitted to appeal any aspect of the registry.

#### (e) **Citizenship Issues**

It would appear, based on the discussion of citizenship issues in the Overall Observations part of this report, that the means of ascertaining citizenship of the FRY and Montenegro are imperfect and that the Voter Registry may contain significant deficiencies in this regard. Further provisions should be developed on this point, for separate inclusion in the proposed law or for addition to the scope of rulemaking and supervision undertaken pursuant to the law.

### 2. **Running Commentary**

Article 7(2): This paragraph requires that, in addition to public notice, media announcements and other means should be used to inform voters of their ability to inspect the voter registry “if the need arises”. The quoted phrase should be deleted, since he feels that such means of communicating the information to the public would always be warranted.

Article 7(3): This paragraph does not limit the scope of a request for change of information in a voter registry, provided it is supported by proper evidence. Does this mean that any person can challenge any information in the registry? (The consultant supports the latter approach; see discussion above.)

Article 7 (4)-(6): These paragraphs establish a very sensible procedure by which complaints about the voter registry are compiled by the administering agency, and forwarded to the Supreme Court in batches. The consultant assumes that the only function of the agency would be ministerial in nature — *i.e.*, to compile the appeals — and that it could not eliminate them without further right of appeal.

Article 9(1): This paragraph calls for a single copy of the extract from the Voter Register to be provided to each polling station. Observers have indicated their belief that additional copies may be required to accommodate the new procedure of having voters place signatures beside their names on the extract when receiving ballots.

Article 9(3): This paragraph obliges administrators to provide a “party submitting the election list” with a copy of the voter registry by a computer diskette containing the information, if requested. First, at is the meaning of the word “party”; is it a political party? Second, must the party already have submitted a list of candidates, or is it sufficient for it to be preparing to do so? And how would the latter be determined? Third, why only parties and not other submitters of electoral lists in the event there are any? Fourth, it is necessary to specify that a copy of the register would be made available on paper in the event that the register has not been computerized satisfactorily. (This addition is required by Article 12, which permits

paper records to be used to maintain voter registries in case computerization is not feasible.) Fifth, since computer technology is always changing (much faster than laws!) it might be well to add the phrase "or other commonly-used electronic data storage medium" after the words "computer diskette".

Article 10: The consultant is not familiar with Montenegrin practice in the area of violations and penalties. However, it would appear that the nature of the violations defined in this article (administrative, civil or criminal) are not defined; so that the relevant standards and procedures for their adjudication may not be clear.

## **B. POLITICAL FINANCE LAW**

The consultant believes that adoption of a separate law, or code section, on financing of political parties will provide a basis for better regulation of campaign and other political fundraising and expenditures by parties. At the same time, the proposed Political Finance Law is somewhat undeveloped and requires further clarification and strengthening.

### **1. Scope and Applicability**

The proposed law is limited to the financing of political parties, and includes activities both during an election period and at other times. It would also be desirable to include certain activities of other organizations, such as the citizens' groups which may also submit electoral lists during a legislative election — especially as these matters are not currently addressed within any other proposed law, such as the proposed Legislative Elections Law. Note that Article 1, on the purpose of the Political Finance Law, is limited to political parties, but that term is not defined either in this proposed Law or by reference to any other law.

### **2. State Subsidies**

#### **(a) Non-Campaign Subsidies**

Articles 3(1), 4 and 5 call for direct subsidies by the State to established political parties, *viz.*, those whose candidates have been elected to the republican or municipal assemblies. The funds, which would come out of the republican and municipal budgets respectively, would total 0.3% of total budgetary revenues anticipated during that budgetary year.

Subsidies to established political parties could have the benefit of strengthening them and helping to stabilize the political environment in Montenegro. The consultant is nevertheless wary of funding parties outside the election campaign period. The assurance of such funding could lead established parties to fail to concentrate on maintaining and increasing their "grass roots" support, and also contribute to public apathy or at worst resentment toward them. It would also place at an immediate disadvantage new parties and citizens' groups which are also entitled to put forward candidates in elections and make a contribution to the political life of the country.

At the same time, until the property issues pertaining to the successor parties of the Communist League, *ie.* both wings of the DPS, are resolved by the courts, these two parties have an enormous financial advantage over the other political parties, thereby obliterating a level playing field. Other parties may require additional state support in order to remain competitive during election periods and maintain their organizational structure. In addition, given that Montenegro's economy has all but collapsed as a result of the sanctions and Yugoslavia's continued international isolation, it would be difficult to raise funds from legitimate sources (individual, legal, and corporate) at this time. If political

parties were stripped of their state subsidies and if they were unable to solicit legal contributions, one can assume that would be impossible for parties to survive using legal means.

### **(b) Campaign Subsidies**

Article 6 establishes the basis for campaign subsidies to political parties, but once again not to other organizations participating in an election. Under Article 6(2)(a), parties which are already represented in the legislature would receive 1/3 of these funds, provided they have “expressed their intention to take part in the elections.” (Some mechanism should be specified to formalize the method of making this expression for purpose of being eligible to receive these funds.)

Under Article 6(2)(b), an additional 1/3 of the funds available for this purpose would go to assist the campaigns of political parties which have successfully put forward a candidate list. No method of distribution is mentioned; perhaps these funds should be distributed in proportion to the number of candidates on the respective lists.

Under Article 6(2)(c), the remaining 1/3 of the funds would go to parties which “have won” mandates — presumably in the election in question. It is also not specified how these funds would be distributed. While rewarding the winners is a somewhat appealing approach, the consultant feels it is unwise to make the issue of funding turn on electoral results. Just because a party might not have done well at the polls does not mean that it did not make a serious and important contribution to political discourse.

### **3. Solicitation and Use of Private Contributions**

Under Article 8, private funding by the party itself could be used both for campaign and other “pre-election activities,” presumably including mounting a nominating drive. This means that the State subsidies provided as discussed above could be used to provide advantages to incumbent candidates and parties and the expense of newly-organized political forces. In addition, there is no mechanism to prevent a party from using any funds, including private contributions, left over from a previous election campaign to be used for pre-campaign activities.

Under Article 8(2), however, only after they successfully register their electoral lists can parties collect private contributions, including in the manner specified in paragraph (3) of that article. Paragraph (4) states that, “Contributions to individual candidates or election lists can be made by individual citizens,” but it does not explicitly rule out such contributions by other legal persons such as business entities. It also does not address a practice that is currently problematic in the United States — the so-called “bundling” of separate, apparently legal, contributions from individuals at the initiative of another individual or business entity.

It would appear that there should be a limit on political contributions from any one source. While a later article (see below) would establish a ceiling on total expenditures by a party, it would presumably also be undesirable to permit parties to rely too much on only a single or small group of private contributors. Also, while later disclosure (if any) of that fact might affect the image of a party, that prospect alone is probably not sufficient to deter it from accepting large contributions from individuals or groups during the heat of a campaign.

### **4. Expenditure Limit and Types**

Article 9(2) refers in draft to a proposed overall limit (or “ceiling”) on the total expenses of an election campaign for a party, which would be based on some multiple of the net republican average salary just prior to the election period. These expenses would have to be of the types specified in paragraph (1) of that article, which include various kinds of political advertising but do not include operating expenses.

## **5. Reporting and Supervision**

### **(a) Supervision**

Articles 12 gives some measure of control over the raising and expenditure of funds by political parties to the “authority in charge of controlling the financial and material operations of legal entities” — perhaps the Justice or Interior Ministry. Under Article 13, that ministry should report irregularities to the “ministry in charge of finances” (“Finance Ministry”). The only clear enforcement power given directly to the Finance Ministry would be withholding further State funding from violators. Parties in violation could also, however, under Article 13, be fined a certain maximum sum and forced to disgorge the funds it received illegally. (Specific individuals could also be punished by fine and confiscation of funds under Article 14.)

Unfortunately, the articles referred to do not give clear supervisory authority, including the right to establish regular reporting procedures and provide for public disclosure, to state bodies. Instead, the primary delegation for the establishment of procedures, under Article 10, is to the “parties which have representatives in the Assembly”, who are instructed to enter into a “special agreement” on this matter within 15 days after elections have been called. Query whether bestowing such important authority on a group of non-governmental entities, namely the political parties, is not an unconstitutional delegation of legislative and regulatory (quasi-executive) power under the Separation of Powers and other constitutional doctrines.

While it would be desirable to bring the parties together to discuss the modalities of regulating campaign expenditures, that would better be done on a universal basis — *i.e.*, including all parties which have successfully put forward candidates for election. It would also be desirable for such an inter-party agreement to be made on the basis of regulations and procedures developed by the competent government bodies, in consultation with the parties if possible.

### **(b) Reporting**

The reporting and disclosure requirements of the framework described above are weakly defined. Article 11 provides for parties to “keep records of their revenues and expenditures,” but does not require that they be detailed and contain certain aspects such as specific sources, dates, the reasons for expenditures, documentation and the like. Also while paragraph (2) of that article does make this matter “subject to the control” of competent authorities, it does not clearly grant them rulemaking authority, including to require regular reporting.

The only reference to public disclosure of the results of control of political finance is in Article 10(3), which provides that “Results of control shall be published in the news media.” That reference, however, comes in the article describing the proposed inter-party agreement as the basis for control. It is not clear that the results to be published under such an agreement would include any detail concerning the amounts of funds raised, and from what sources, by the parties, nor the precise amounts they have expended, and for what purposes.

The consultant believes it is essential to provide the kind of information described above for regular summary reports of party fundraising and expenditures, as well as for fuller and more detailed reporting on a periodic basis. The records submitted by the parties under such rules should also be open to inspection by the public and the press, including during the campaign period.

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## **ANNEXES**

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- VIII. IFES ADMINISTRATIVE ANALYSIS**
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## ANNEX I: CONTACT LIST

**List of Meetings**  
**IFES Voter Awareness Assessment**  
**16 November - 5 December 1997**

<b>OFFICE/ ORGANIZATION</b>	<b>CONTACT/ POSITION</b>	<b>COMMENTS</b>
Office of the Deputy Prime Minister	Miodrag Vukovic, Deputy Prime Minister	IFES held a series of consultations with the Deputy Prime Minister to introduce its mandate and capabilities, discern the official Government position regarding electoral reforms and the conduct of new parliamentary elections, and identify opportunities for cooperation leading into the election campaign and in the longer term.
Secretariat of Information	Bozidar Jaredic, Secretary of Information Abaz Dzafic, Law Dept. of the Secretary	IFES conducted a series of discussions with the Secretary of Information to review proposed changes to the Law on Public Information, to identify short-comings in the media's coverage of elections and free and paid media during the campaign, as well as to learn about the changing dynamics of Montenegro's evolving media environment and media market. The Ministry was instrumental in providing English translations of pertinent documents as well as contact information. Sample IFES legal commentaries, election official training manuals, and public information materials were provided with the instruction that these materials be made available to interested parties upon request.
Ministry of Education	Pavle Gazivoda, Deputy Minister	IFES met with the Deputy Minister of Education to measure interest in and evaluate

		<p>the potential for joint voter/civic education activities within the school system and to obtain an overview of the educational and literacy levels of the population. Sample IFES voter and civic education materials were provided. Demographic data on the population was requested.</p>
<p>Ministry of Foreign Affairs</p>	<p>Branko Perovic, Foreign Minister Slavica Milacic, Deputy Foreign Minister</p>	<p>IFES held a series of meetings with the Minister of Foreign Affairs to discuss a proposal forwarded to the US Government for assistance in the creation of a centralized and computerized voter registry and issues pertaining to the conduct of technical assistance activities by foreign organizations in Montenegro such as entry visas. The Ministry provided IFES with translations of the latest revisions to a host of laws governing elections and public information as well as the proposal on voter registries.</p>
<p>Republic Election Commission</p>	<p>Miras Radovic, Vice-Chairman Marko Lasarevic, Member Radojka Stamatovic, Secretary</p>	<p>IFES met with members of the Republican Election Commission to hear their assessment of the recent presidential elections, concerns leading into the parliamentary election campaign, review proposed changes to a host of laws governing elections, and identify opportunities for cooperation and technical assistance in the immediate and longer terms. Sample IFES legal commentaries, election official training manuals, and public information materials were provided.</p>
<p>Secretariat of Law</p>	<p>Rajko Milovic, Secretary</p>	<p>A meeting was held with the Secretary of Law to learn more about the Secretariat's responsibility for conducting training for election officials and judges and to identify</p>

		future educational and professional development needs in light of a significant overhaul of legislation governing political and electoral processes. Sample IFES legal commentaries, election official training manuals, and public information materials were provided.
Secretariat for Development	Brana Gvozdenovic, Secretary Borivoje Maric, Project Manager	IFES met with representatives of the Secretariat of Development to discuss the particulars of a proposal forwarded to the US Government for assistance in centralizing and computerizing the voter registry. A timetable for the successful completion of the project was requested.
Constitutional Court	Blagota Mitric, President Radojko Djuricanin, Member Bozidar Martinovic, Advisor Dragan Vuksanovic, Assistant Slavica Maras, Secretary	A series of consultations were held with the Constitutional Court to discuss complaints lodged during the presidential election campaign process ranging from disenfranchisement of voters to ballot access and the integrity of election results; weaknesses in the system of adjudicating grievances; and various proposals for modifying existing laws governing campaigns and elections.
Democratic Party of Socialists (Djukanovic Faction)	Milica Pejanovic-Djurisic, President	IFES representatives met with the President of the Democratic Party of Socialists supporting Milo Djukanovic to ascertain the public policy agenda of the president-elect; discuss organizational and political adjustments within the party following its split; and review the feasibility of various proposals for modifying legislation governing campaigns and elections and public information. Government openness to technical assistance

		and opportunities for cooperation leading into the parliamentary election campaign and in the longer term were also on the agenda. Sample IFES legal commentaries, election official training manuals, and public information materials were provided.
People's Party (Kilibarda Faction)	Novak Kilibarda, President Predrag Drecun, Chair of Exec. Board Predrag Popovic, Head of Parliamentary Faction	A series of consultations was conducted with the leadership of the People's Party to learn more about its program and strategy leading into the parliamentary elections and about organizational and political adjustments required following a split within its structure; about its recommendations for reform of legislation governing campaigns and elections and public information; and about its impressions of the electoral reform process. Sample IFES legal commentaries, election official training manuals, and public information materials were provided.
Liberal Alliance	Ranko Djonovic, Member of Parliament	IFES representatives met with leaders of the Liberal Alliance to discuss the party's program and strategy leading into parliamentary elections; its proposals for modification of legislation governing campaigns and elections and public information; and its impressions of the electoral reform process. Sample IFES legal commentaries, election official training manuals, and public information materials were provided.
Social Democratic Party	Zarko Rakcevic, President Dragisa Burzan, Vice President	IFES representatives met with leaders of the Social Democratic Party to discuss its program and strategy leading into parliamentary elections; its proposals for

		modification of legislation governing campaigns and elections and public information; and its impressions of the electoral reform process. Sample IFES legal commentaries, election official training manuals, and public information materials were provided.
Democratic League of Albanians in Montenegro	Mehmet Bardhi, President Tahir Pereziqi, Executive Board	A meeting was held with representatives of the Democratic League to discuss its program and strategy leading into parliamentary elections; its proposals for modification of legislation governing campaigns and elections and public information, in particular the creation of a special electoral unit for the Albanian minority; its impressions of the electoral reform process; and the special needs and issues of the Albanian constituency.
Democratic Union of Albanians	Bajram Rexha, President Nazif Cungu, Executive Board Mehmet Gjoni, Member of Parliament	IFES representatives met with the leadership of the Democratic Union to discuss its program and strategy leading into parliamentary elections; its proposals for modification of legislation governing campaigns and elections and public information, in particular the creation of a special electoral unit for the Albanian minority; its impressions of the electoral reform process; and the special needs and issues of the Albanian constituency.
Radio/Television Montenegro	Milorad Djurkovic, Editor-In-Chief	IFES representatives met with the Editor-In-Chief of State Radio/Television to discuss relative freedom of media; the efficiency and democratic nature of the station's multi-party control board; the objectivity and

		informational value of media coverage of campaigns; issues pertaining to free and paid media during the campaign; and the feasibility of various proposals for modification of the Law on Public Information.
Elmag Radio/Television	Gojko Mitrovic, Director	A meeting with held with the Director of Elmag Television to discuss the station's policy of airing only entertainment oriented programming, ie. excluding any sort of programs which could be deemed political, including information and news shows, at the current time.
Antena M Radio	Veselin Tomovic, Editor-In-Chief	Several meetings were conducted with the Editor-In-Chief of Antenna M Radio to discuss the station's programming and audience, the relative openness and competitiveness of the media environment; difficulties facing new and independent media; the voter, civic, and public information needs of the population; and the feasibility of certain proposals to modify the Law on Public Information. Price lists for airtime (advertising and shows) were requested.
Pobjeda Newspaper	Slobodan Vukovic, Editor-In-Chief Branka Novakovic, Deputy-Editor-In-Chief Vladan Micunovic, Asst. to Editor-In-Chief	IFES representatives met with the leadership of the State Newspaper to discuss relative freedom of media; the efficiency and democratic nature of the paper's multi-party control board; the objectivity and informational value of media coverage of campaigns; issues pertaining to free and paid media during the campaign; and the feasibility of various proposals for

		modification of the Law on Public Information. Contact information for the European Institute of the Media, which conducts media monitoring during election campaigns was requested of IFES and subsequently provided.
Vijesti Newspaper	Ljubisa Mitrovic, Editor-In-Chief Zeljko Ivanovic, Director	A meeting was held with the leadership of the newspaper to learn more about its content, editorial policies, and audience; the relative openness and competitiveness of the media environment; difficulties facing new and independent media; the voter, civic, and public information needs of the population; and the feasibility of certain proposals to modify the Law on Public Information.
Monitor Magazine	Drasko Djuranovic, Editor-In-Chief	IFES representatives met with the Editor-In-Chief of the magazine to discuss its content, editorial policies, and audience; the relative openness and competitiveness of the media environment; difficulties facing independent media; the voter, civic, and public information needs of the population; and the feasibility of certain proposals to modify the Law on Public Information.
Montenafax News Agency	Daniel Burin, Editor-In-Chief Stevo Vucinic, Director	Consultations were held with representatives of this news agency to discuss its products, services, and clients; its access to information and transparency levels within government, business, and political parties; the relative openness and competitiveness of the media environment; difficulties facing independent media; the public information needs of the population; and the feasibility of certain proposals to modify the Law on Public



		Information .
Faculty of Economic Sciences	Predrag Ivanovic, Dean Petar Ivanovic, Assistant Professor	A series of consultations was held with representatives of the Economic Faculty to discuss the activity of the academic community and students in the political and electoral spheres (as there is no political science faculty in Montenegro); the voter/civic information and education needs of young and first time voters; and the findings of a series of surveys tracking trends in Montenegro's media market, particularly with respect to young viewers. Sample IFES materials on voter and civic education were provided. Results of the surveys were requested.
Center for Reforms	Predrag Boskovic, President	IFES met with the President of the Center to discuss its mandate in support of young entrepreneurs, its activities in the political and electoral spheres, and its network and capacity for training.
Student Center	Ana Drakic, Vice-President Pedja Mitrovic, President of Student Club of Managers	A series of consultations was held with student leaders within the Economic Faculty to discuss the activity of students in the political and electoral spheres; the mandates or various student organizations; the voter/civic information and education needs of young and first time voters; and the findings of a series of surveys tracking trends in Montenegro's media market, particularly with respect to young viewers.
Student Union	Vladan Milatovic, President	IFES representatives met with the President of the Student Union to discuss its activities and outreach; its initiatives in the political and electoral spheres, particularly its efforts to

		ensure that young and first time voters were registered and had a means of getting to their polling sites; and the voter/civic information and education needs of this important constituency.
Council of Youth	Milic Popovic, President Pedja Zecevic, Vice-President	IFES representatives met with the leadership of the Council of Youth to discuss its activities and outreach; its initiatives in the political and electoral spheres in cooperation with the Student Union, particularly its efforts to ensure that young and first time voters were registered and had a means of getting to their polling sites; and the voter/civic information and education needs of this important constituency.
Helsinki Commission	Slobodan Franovic, President	Consultations were held with the President of the Helsinki Commission in Montenegro to discuss the organizations mandate and activities in the Republic; its observations of recent presidential elections; its position on proposed modifications to a host of legislation governing campaigns and elections and public information; and its impressions of the electoral reform process.
Center for Democracy and Human Rights	Srdjan Darmanovic, Director	IFES representatives also met with representatives of the Center for Democracy and Human Rights to discuss the organization's mandate and activities, particularly as they are distinct from the Helsinki Commission; its assessment of proposed modifications to a host of legislation governing campaigns and elections and public information; and its impressions of the electoral reform process.

US Embassy/Belgrade	Richard Miles, Charge d'Affairs Jack Zetkolic, Deputy Chief of Mission	The IFES team provided a de-briefing of its observations and impressions while in Montenegro including recommendations for US technical assistance leading into the parliamentary elections and in the longer term.
USAID/Belgrade	Keith Sherper, Representative	The IFES team met with USAID prior to being deployed to Montenegro to discuss the US position toward the developing political situation in Montenegro and priorities for technical assistance. A de-briefing was also conducted which included an overview of the team's initial findings, recommendations for immediate and longer term technical assistance, and options for funding.
National Democratic Institute	Paul Rowland, In-Country Representative, Serbia Robert Benjamin, Senior Program Officer Patrica Marlar, Program Assistant	The IFES team also met with an NDI team which was in Montenegro during the first week of its assessment. Impressions and information were exchanged at this time.

## ANNEX II: CONSTITUTION OF MONTENEGRO



# **Constitution of the Republic of Montenegro**

**The Secretariat of Information of the Republic of Montenegro**

**CONSTITUTION OF THE REPUBLIC OF MONTENEGRO**

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**CONSTITUTION OF THE REPUBLIC OF MONTENEGRO.**

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## CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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In accordance with the Amendment LXXXII, item 1, para. 7 of the Constitution of the Republic of Montenegro, the Assembly of the Republic of Montenegro, at its session held on October, 12, 1992, has passed

### THE DECISION

#### ON THE PROMULGATION OF THE CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

The Constitution of the Republic of Montenegro having been adopted by the Assembly of the Republic of Montenegro at its session held on October 12, 1992 is hereby promulgated.

No. : 02-2893

In Podgorica, on this 12th day of October 1994

The Assembly of the Republic of Montenegro  
President of the Assembly  
Dr. Risto Dj. Vukcevic  
(signature)

Mindful of the historical right of the Montenegrin people to have its own state, acquired through centuries-long struggle for freedom;

Dedication of the citizens of Montenegro to freedom, democracy and equality among peoples and friendship among nations;

In the belief that nature is the source of health, spirituality and culture, of the human kind, whereas the state is a guardian of sanctity and purity of nature;

Determination of its citizens for Montenegro to continue to live in the joint state of Yugoslavia as a sovereign and equitable republic;

The Assembly of the Republic of Montenegro, striving to provide permanent peace and secure all the tributes of tranquility, honour, justice and freedom,

hereby adopts and promulgates

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**CONSTITUTION OF THE REPUBLIC OF MONTENEGRO**

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**CONSTITUTION  
OF THE REPUBLIC OF MONTENEGRO**

**PART ONE**

**BASIC PROVISIONS**

**Article 1**

**STATE**

Montenegro is a democratic, social and ecological state.

Montenegro is a republic.

Montenegro is the member of the Federal Republic of Yugoslavia.

**Article 2**

**SOVEREIGNTY**

Montenegro shall be sovereign in all matters which it has not conferred on to the jurisdiction of the Federal Republic of Yugoslavia.

Sovereignty is vested in all the citizens of the Republic of Montenegro. Citizens shall exercise their sovereignty directly and through their freely elected representatives.

Any change in the status of the country, change of the form of government and any change of frontiers shall be decided upon only by citizens in a referendum.

**Article 3**

**DEMOCRACY**

No authority shall be either established or recognised which does not result from the freely expressed will of citizens.

**Article 4**

**RULE OF LAW**

The state is founded on the rule of law.

The government shall be in conformity with the Constitution and Law.

**Article 5**

**DIVISION OF POWER**

The government of Montenegro shall be arranged according to the rule of the division of power into the legislative, executive and judicial.



## CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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Legislative power is vested in the Assembly, the executive power in the Government and the judicial in the courts of law.

Montenegro shall be represented by the President of the Republic.

Constitutionality and legality shall be protected by the Constitutional Court.

### Article 6

#### THE STATE SYMBOLS

Montenegro shall have a coat of arms, a flag and a national anthem.

### Article 7

#### THE CAPITAL CITY AND ADMINISTRATIVE CENTRE

The administrative centre of Montenegro shall be Podgorica.

The capital city of Montenegro shall be Cetinje.

### Article 8

#### TERRITORY

The territory of Montenegro shall be a single and inalienable territory.

Montenegro shall be organised in territorial units - municipalities.

### Article 9

#### LANGUAGE AND ALPHABET

In Montenegro Serbian language of the iekavian dialect will be the official language.

Cyrillic and Latin alphabets shall be deemed to be equal.

In the municipalities in which the majority or a substantial number of population consists of the national minorities and ethnic groups, their respective languages and alphabets shall be in the official use.

### Article 10

#### CITIZENSHIP

Montenegro shall confer Montenegrin citizenship on its citizens.

No person may be deprived of the Montenegrin citizenship nor of the right to change the citizenship.

## **CONSTITUTION OF THE REPUBLIC OF MONTENEGRO**

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### **Article 11**

#### **RELIGION**

The Orthodox Church, Islamic religious community, the Roman Catholic Church and other faiths shall be separate from the state.

All the faiths shall be deemed to be equal and free in the performance of their religious rites and affairs.

All the religious denominations will independently arrange their interior organisation and religious affairs within the legal set-up.

The state shall offer material assistance to religious denominations.

### **Article 12**

#### **LEGISLATURE**

The law shall prescribe and regulate the following, in accordance with the Constitution:

- 1) Manner in which rights and freedoms shall be exercised if this is necessary for their exercise;
- 2) Manner of establishing, organising and competence of the state authorities and the procedure before the authorities if this is necessary for their proper functioning;
- 3) The system of the local self-government;
- 4) Other matter of interest for the Republic.

### **Article 13**

#### **LIMITS OF FREEDOM**

In Montenegro everything shall be deemed to be free if not prohibited by law.

Everyone is obliged to uphold the Constitution and the law.

Public officials must consciously and honestly perform their duties and shall be held responsible for their performance.

**PART TWO**  
**FREEDOMS AND RIGHTS**

**Article 14**

**BASIC PROVISIONS**

Freedom and rights shall be exercised in accordance with the constitution.

**Article 15**

**FREEDOM AND EQUALITY**

All citizens are free and equal regardless of any particularities and/or the personal attributes.

Everyone shall be equal before the law.

**Article 16**

**INVIOABILITY**

Freedom and rights are inviolable.

Everyone is obliged to respect freedom and rights of other.

Any abuse of the freedom and rights shall be deemed to be unconstitutional and shall be punishable according to law.

**Article 17**

**PROTECTION**

Everyone is entitled to an equal protection of his freedoms and rights in the procedure prescribed by law.

**RIGHT OF APPEAL**

Everyone is guaranteed the right to an appeal or some other legal remedy against the decisions deciding on his rights or interests based on the law.

**Article 18**

**LEGAL ASSISTANCE**

Everyone shall have the right to legal assistance.

Legal assistance shall be offered by the Bar Association, as an independent service and by other legal services.

## CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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### Article 19

#### **ENVIRONMENT**

Everyone shall have the right to a healthy environment and shall be entitled to a timely and complete information on its state.  
Everyone has the duty to preserve and promote the environment.

### **1. Personal Freedoms and Rights**

### Article 20

#### **PERSONAL INVIOABILITY**

Physical and psychological integrity of a man, his privacy and personal rights are inviolable.  
Dignity and safety of a man are inviolable.

### Article 21

#### **CAPITAL PUNISHMENT**

Human life is inviolable.  
The capital punishment may be ruled and pronounced only for the most serious criminal offence.

### Article 22

#### **DETENTION**

Every person is entitled to personal freedom.  
The seizure or detention must be understood by the arrested person to be an arrest, promptly and in his own language or in the language which he understands, and the reasons for the arrests must be communicated.  
Detained person must be promptly informed of his right to remain silent.  
At the request of the person detained, the arresting authority must promptly inform close relations of the detained about his arrest.  
Person detained shall have the right to have the defence council of his choice present at the hearing.  
Illegal arrest shall be deemed to be a punishable offence.

### Article 23

#### **CUSTODY**

A person reasonably suspected of having committed a criminal offence may be detained and held in confinement on the basis of the decision

## CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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by a competent court of law, only when this is indispensable for the conduct of criminal procedure.

A person detained must be given the warrant for the arrest with adequate explanation at the time of the arrest or within 24 hours at the latest from the moment of the arrest. The detained person shall have the right of appeal against the arrest which shall be decided upon by the court of law within 48 hours.

The length of detention must be of the shortest possible duration.

The detention ordered by a first instance court must not exceed three months from the day of arrest. This time limit may be extended for further three months by the decision of a higher court. If by the end of this period the indictment has not been filed, the accused shall be released.

The detention of persons underage (minors) may not exceed 60 days.

### Article 24

#### **RESPECT OF HUMAN DIGNITY**

Respect of human dignity and dignity in all criminal and any other proceedings is hereby guaranteed; both in the case of arrest or limitation of freedom and during serving of pronounced sentence.

#### **PROTECTION OF PHYSICAL INTEGRITY**

The use of force against a suspect who has been detained or whose freedom has been restricted and any forcible extraction of a confession or statement, shall be prohibited and punishable.

No one may be subject to torture, humiliating and degrading treatment or punishment.

Medical and other scientific experimentation may not be carried out on an individual without his consent.

### Article 25

#### **RULE OF LEGALITY**

No one may be punished for an act which did not constitute a penal offence under law or by-laws at the time it was committed, nor may a punishment be pronounced which was not envisaged for the offence in question.

Criminal offences and criminal sanction shall be prescribed by law. Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty by a valid decision of the court of law.

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## CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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### **COMPENSATION OF DAMAGE**

Any person wrongfully detained or wrongfully convicted shall be entitled to compensation of damages by the state.

### **RIGHT TO DEFENCE**

Every person shall be guaranteed the right to defend himself and the right to engage a defence counsel before the court of law or before some other body authorised to conduct proceedings.

### **Article 26**

All criminal and other punishable offences shall be determined and sentences pronounced according to legal regulation and provisions based on the law which was in force at the time the offence was committed, except if the new legal regulations and provisions are based on the law which is more lenient for the perpetrator.

### **Article 27**

Ne bis in idem

No person shall be tried twice for the same offence.

### **Article 28**

#### **FREEDOM OF MOVEMENT AND RESIDENCE**

Citizens shall be guaranteed the freedom of movement and residence. Freedom of movement and residence may be restricted only for purpose of conducting criminal investigations, for prevention of contagious diseases or when so required for the defence of the Federal Republic of Yugoslavia.

### **Article 29**

#### **HOME**

The home shall be inviolable.

A person in an official capacity may enter a dwelling or other premises against the will of the tenant and may search them, but only on the grounds of a search warrant issued by a court of law.

The search shall be conducted in the presence of two witnesses.

A person in an official capacity may enter dwelling or other premises without the court warrant and may conduct the search without the presence of two witnesses if so required for immediate apprehension of the perpetrator of a criminal act or for purpose of saving human lives and property.

## CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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### Article 30

#### PRIVACY OF MAIL

Privacy of mail and other means of communication shall be inviolable. Under a court decision the principle of inviolability of the privacy of mail and other means of communication may be put in abeyance if so required for purpose of criminal proceedings or for the defence of the Federal Republic of Yugoslavia.

### Article 31

#### PERSONAL DATA

Protection of secrecy of personal data shall be guaranteed. The use of personal data for purposes other than those for which they were compiled shall be prohibited. Everyone shall have the right of access to personal data concerning his own person and the right of judicial protection in case of their abuse.

## 2 Political Freedoms and Rights

### Article 32

#### VOTING RIGHT

Every citizen of Montenegro who has reached the age of 18 shall be entitled to vote and be elected to a public office. The voting right is exercised at the elections. The voting right is general and equal. Elections shall be free and direct and voting shall be by a secret ballot.

### Article 33

#### INITIATIVE, REPRESENTATION AND PETITION

Every person shall be entitled to a free initiative, to submit representation, lodge a petition or a proposal to a state authority and shall be entitled to receive an answer thereto. No person shall be held responsible and neither shall suffer any other detrimental consequences for opinions expressed and contained in the initiatives, representations, petitions or proposals, except in case the person in question has therethrough committed a criminal offence.

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## CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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### Article 34

#### **FREEDOM OF MAN**

Freedom of belief and conscience shall be guaranteed.

Freedom of thought and public expression of opinion, freedom of confession, public or private profession of religion and freedom to express national affiliation, culture and the freedom to use one's own language and alphabet shall be guaranteed.

No person shall be obliged to declare his opinion, confession and national affiliation.

### Article 35

#### **FREEDOM OF PRESS**

Freedom of press and of other public information media shall be guaranteed.

Citizens shall have the right to express and publish their opinion in the public information media.

Publication of newspapers and public dissemination of information by other media shall be accessible to everyone without prior permission, subject to registration with the competent authority.

Radio and television broadcasting organisations shall be established in accordance with law.

### Article 36

#### **RESPONSE, RECTIFICATION, COMPENSATION OF DAMAGES**

The right to a response and the right to rectification of incorrect published information or data as well as the right to compensation of damages caused by publishing of incorrect information or data shall be guaranteed.

### Article 37

#### **CENSORSHIP OF PRESS**

Censorship of press and of other forms of public information media shall be prohibited.

#### **DISTRIBUTION OF PRESS**

No person shall have the right to prevent distribution of press and dissemination of other information except when the competent court of law shall find that they call for a forcible overthrow of the order established by the Constitution, violation of the territorial integrity of Montenegro and the Federal Republic of Yugoslavia, violation of



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guaranteed freedoms and rights or incite and foment national, racial and religious hatred and intolerance.

### Article 38

Freedom of speech and of public appearance shall be guaranteed.

### Article 39

#### **FREEDOM OF ASSEMBLY**

Citizens shall be guaranteed the right to peacefully assemble without prior approval, subject to prior notification of the competent authorities.

Freedom of association and other peaceful assembly may be provisionally restricted by a decision of the competent authority in order to prevent a threat to public health and morals or for the protection of human lives and property.

### Article 40

#### **FREEDOM OF ASSOCIATION**

Citizens shall be guaranteed the freedom of political, trade union and other association and activities, without the requirement of a permit, subject to registration with the competent authorities.

The state shall offer assistance to political, trade union and other associations whenever there is a public interest thereof.

### Article 41

#### **PROHIBITION OF ORGANISATION**

Political organisation in the state authorities shall be prohibited.

Professional members of the police force may not be members of the political parties.

Judges, justices of the Constitutional Court and the public prosecutor may not be members of the bodies of the political parties.

### Article 42

#### **SECRET AND PARA-MILITARY ORGANISATIONS**

Activities of political, trade union and other organisations aimed at the violent overthrow of the constitutional order, violation of the territorial integrity of Montenegro and of the Federal Republic of Yugoslavia, violation of guaranteed freedoms and rights of man and

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citizen or inciting and fomenting of national, racial, religious and other hatred or intolerance shall be prohibited.

Establishment of secret (clandestine) organisations and paramilitary groups shall be prohibited,

### Article 43

#### **INEQUALITY AND INTOLERANCE**

Any incitement or encouragement of national, racial, religious and other inequality and incitement and fomenting of national, racial, religious and other hatred or intolerance shall be unconstitutional and punishable.

### Article 44

#### **CITIZEN AND INTERNATIONAL ORGANISATIONS**

Citizens shall have the right to participate in regional and international non-governmental organisations.

Citizens shall have the right to address international institutions for purpose of protection of their freedoms and rights guaranteed under the Constitution.

### **3. Economic, Social and Cultural Freedoms and Rights**

### Article 45

#### **PROPERTY**

Property shall be inviolable.

No person shall be deprived of his property, nor may it be restricted except when so required by the public interest, as prescribed by law, subject to fair compensation which may not be below its market value.

### Article 46

#### **INHERITANCE**

The right of inheritance shall be guaranteed.

### Article 47

#### **EARNING AND ENTREPRENEURSHIP**

Freedom of earning and freedom of entrepreneurship shall be guaranteed.

All acts and activities creating or instigating monopoly and preventing market oriented economic activities shall be prohibited.

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### Article 48

#### RESTRICTION OF OWNERSHIP AND EARNING

Right to own property and the freedom of earning may be restricted by law, i.e. legal regulations with the force of law, for the duration of a state of emergency, in times of immediate threat of war or a state of

### Article 49

#### TAXATION

Every person shall be obliged to pay taxes and other dues.

### Article 50

#### COPYRIGHT

Freedom of creation and publishing of scientific and works of art, scientific discoveries and technical innovations shall be guaranteed and their authors shall be entitled to moral and material rights.

### Article 51

#### STATE OF EMERGENCY

Everyone shall be obliged to participate in prevention and elimination of the general state of emergency.

### Article 52

#### RIGHT TO WORK

Everyone shall have the right to work, to a free choice of occupation and employment, to just and humane conditions of work and to protection during unemployment.  
Forced labour shall be prohibited.

### Article 53

#### RIGHTS OF WORK FORCE

All persons employed shall have the right to corresponding remunerations.

All persons employed shall have the right to limited working hours and a paid vacation.

All persons employed shall have the right to protection at work.

Youth, women and disabled persons shall enjoy special protection at work.

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### Article 54

#### **STRIKE**

All persons employed shall have the right to a strike for protection of their professional and economic interests.

Persons employed in the state administration and professional members of the police force shall not have the right to strike.

### Article 55

#### **SOCIAL SECURITY**

Under a mandatory insurance scheme all persons employed shall provide for themselves and members of their families all forms of social security.

The state shall provide social welfare for citizens unable to work and without livelihood, as well as for citizens without the means of subsistence.

### Article 56

#### **PROTECTION OF DISABLED PERSONS**

Disabled persons shall be guaranteed social protection.

### Article 57

#### **HEALTH CARE**

Everyone shall be entitled to health care.

Children, expectant mothers and elderly persons shall be entitled to publicly financed health care, if they are not covered by another insurance program.

### Article 58

#### **MARRIAGE**

Marriage may be contracted only upon a free consent of both bride and groom.

### Article 59

#### **FAMILY**

Family shall enjoy special protection.

Parents shall be obliged to care for their children, for their up-bringing and education.

Children shall be obliged to care for their parents whenever they should be in need of care.

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### Article 60

#### **FAMILY AND CHILD**

Family and child shall enjoy special protection.  
Children born out of wedlock shall have the same rights and obligations as children born in wedlock.

### Article 61

#### **PROTECTION OF CHILDREN**

Exploitation of children is prohibited.  
Employment of children and minors on jobs hazardous for their health and development shall be prohibited.

### Article 62

#### **EDUCATION**

Everyone shall be entitled to education under equitable conditions.  
Primary education shall be mandatory and free of tuition fees.

### Article 63

#### **AUTONOMY OF UNIVERSITIES**

Autonomy of universities, higher education institutions and scientific institutions shall be guaranteed.

### Article 64

#### **STATE CULTURE AND ARTS**

The state shall render assistance and instigate development of education, sciences, culture, arts, sports, physical and technical culture.  
The state shall protect scientific, cultural, artistic and historical values.

### Article 65

#### **STATE AND ENVIRONMENT**

The state shall protect environment.  
Freedom of earning and free entrepreneurship shall be restricted by environment protection.

#### **Local Self-Government**

### Article 66

#### **RIGHT OF LOCAL SELF-GOVERNMENT**

The right to a local self-government shall be guaranteed.  
Local self-government shall be exercised in the municipality and in the capital.

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Citizens shall decide through local self-government directly and through their freely elected representatives on certain public and other affairs of direct interest for the local population.

Local self-government in the municipality shall consist of the assembly and of the president of the municipality.

The Republic shall offer assistance to the local self-government.

### **5. Special Rights of National and Ethnic Groups**

#### **Article 67**

##### **PROTECTION OF IDENTITY**

The protection of the national, ethnic, cultural, linguistic and religious identity of the members of national and ethnic groups shall be guaranteed.

Protection of rights of members of national and ethnic groups shall be exercised in accordance with the international protection of human and civic right.

#### **Article 68**

##### **LANGUAGE, ALPHABET, EDUCATION AND INFORMATION**

Members of national and ethnic groups shall have the right to free use of their mother tongue and alphabet, the right to education and the right to information in their mother tongue.

#### **Article 69**

##### **SYMBOLS**

Members of national and ethnic groups shall have the right to the use and display of their national symbols.

#### **Article 70**

##### **ASSOCIATION**

Members of national and ethnic groups shall have the right to establish educational, cultural and religious associations, with the material assistance of the state.

#### **Article 71**

##### **EDUCATIONAL PROGRAMS**

Curriculum of educational institutions shall cover both history and culture of the national and ethnic groups.

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### Article 72

#### LANGUAGE

Members of the national and ethnic groups shall be guaranteed the right to the use of their mother tongue in the proceedings before the state authorities.

### Article 73

#### REPRESENTATION

Members of the national and ethnic groups shall be guaranteed the right to a proportional representation in the public services, state authorities and in local self-government.

### Article 74

#### CONTACTS

Members of the national and ethnic groups shall have the right to establish and maintain free contacts with citizens outside of Montenegro with whom they are having a common national and ethnic origin, cultural and historical heritage and religious beliefs, without any detriment for Montenegro.

#### RIGHT OF APPEAL

Members of the national and ethnic groups shall have the right to participate in the regional and international non-governmental organisations, and the right to address international institutions for the purpose of protection of their freedoms and rights guaranteed by the Constitution.

### Article 75

#### EXERCISE OF RIGHTS

Legal rights granted to members of the national and ethnic groups may not be exercised if they are in contradiction with the Constitution, principles of international law and principle of territorial integrity of Montenegro.

### Article 76

#### PROTECTION COUNCIL

A National Council for Protection of Rights of National and Ethnic Groups shall be established in Montenegro, for purpose of promotion and protection of the national, ethnic, cultural, linguistic

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and religious identity of national and ethnic groups and for the exercise of their rights prescribed by the Constitution.

Republican Council for Protection of Rights of National and Ethnic Groups shall be headed by the President of the Republic.

Composition and competencies of the Republican Council shall be prescribed by the Assembly.



**PART THREE**

**ORGANISATION OF THE STATE**

**The Assembly**

**Article 77**

**COMPOSITION AND ELECTION**

The Assembly shall consist of deputies elected by citizens in direct secret ballot, on the basis of a general and equitable voting

One deputy shall be elected for every six thousand voters.

**INDEPENDENCE OF DEPUTIES**

Every deputy shall decide and vote according to his own belief and may not be recalled.

**PROFESSIONAL FUNCTION**

Every deputy shall be entitled to a professional exercise of his function as deputy.

**Article 78**

**TERM OF OFFICE**

Term of office of the Assembly shall be four years.

In cases of the state of war the term of office of the Assembly shall be extended for as long as peace is not established.

At the proposal of not less than 25 deputies, Government or the President of the Republic, the Assembly may decide to shorten the term of office.

**Article 79**

**IMMUNITY**

A deputy shall enjoy immunity.

A deputy shall not be called to account for an opinion expressed or a vote cast in the Assembly.

No deputy may be subject to criminal proceedings nor detained without prior approval of the Assembly.

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A deputy may be detained without the approval of the Assembly if he should be apprehended during a criminal offence for which the penalty prescribed exceeds five years of prison sentence.

The immunity enjoyed by the deputies is also enjoyed by the President of the Republic, members of the Government, judges, justices of the Constitutional Court and the public prosecutor.

### **Article 80**

#### **PRESIDENT AND VICE PRESIDENT**

The Assembly shall have a president and one or more vice presidents to be elected from among the deputies for the term of office of four years.

President shall represent the Assembly, call elections for the President of the Republic and perform other tasks prescribed by the rules of procedure of the Assembly.

### **Article 81**

#### **COMPETENCIES**

The Assembly shall:

- 1) adopt the Constitution;
- 2) enact laws, other regulations and general enactments;
- 3) enact development plan of Montenegro, budget and annual balance sheet;
- 4) determine principles for organisation of the state administration;
- 5) ratify international treaties within the competences of the Republic;
- 6) announce a republican referendum;
- 7) float public loans and decide on entering into indebtedness of Montenegro;
- 8) elect and dismiss president and members of the government, president and justices of the Constitutional Court, president and judges of all the courts of law;
- 9) appoint and dismiss public prosecutor and other officials;
- 10) grant amnesty for criminal offences prescribed by the republican law;
- 11) perform other duties as prescribed by the Constitution.

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### Article 82

#### SESSIONS

The Assembly shall sit in regular and extraordinary sessions. Regular sessions of the Assembly shall be convened two times a year, in accordance with the rules of procedure of the Assembly. The first regular session shall begin on the first working day in March and the second session on the first working day in October. The Assembly shall convene in extraordinary session at the request of not less than one third of the total number of deputies, or at the request of the President of the Republic and of the Prime Minister.

### Article 83

#### DECISION MAKING

The Assembly shall decide if the session is attended by more than half of the total number of deputies, and the decision shall be made by a majority of votes of the deputies present, if not otherwise prescribed by the Constitution.

When the Assembly is deciding on the enactments regulating the manner in which the freedoms and rights are exercised, on the electoral system, on the material obligations of the citizens, on the state symbols, on the dismissal of the President of the Republic and on the vote of confidence to the Government, on a referendum, on shortening of the term of office and on its rules of procedure, decision shall be brought by a majority of votes of the total number of deputies.

### Article 84

#### DISSOLUTION OF THE ASSEMBLY

The Assembly shall be dissolved if it should fail to elect the Government within 60 days from the date when the President of the Republic proposes candidates for the Prime Minister.

The Assembly may not be dissolved during the state of war, in case of imminent danger of war or a state of emergency.

If the Assembly should cease to perform its duties as prescribed by the constitution for a considerable period of time, the Government may, after hearing the opinion of the president of the Assembly and the presidents of the clubs of deputies of the Assembly, dissolve the Assembly.

The Government shall not be entitled to dissolve the Assembly if a procedure had been instigated for the vote of no-confidence to the Government.

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Dissolution of the Assembly shall be prescribed by the decree of the President of the Republic and a date shall be set for the election of the new Assembly.

### Article 85

#### **INTRODUCTION OF BILLS**

The right to introduce bills, other regulations and general enactments shall be vested in the Government, deputies and at least six thousand voters.

## **2. President of the Republic**

### Article 86

#### **ELECTION**

The President of the Republic shall be elected in direct elections and by secret ballot, on the basis of a general and equitable voting right, and for a term of office of five years.

In the event of a state of war the term of office of the President of the Republic shall be extended for as long as the peace is not established.

The same person may be elected only two times for the President of the Republic.

### Article 87

#### **TERMINATION OF MANDATE**

The term of office of the President of the Republic shall cease when the term of office for which he has been elected expires, in the event of recall or by his resignation.

The President of the Republic may be recalled by the Assembly only in case the Constitutional Court should decide that he has breached the provisions of the Constitution.

The procedure to determine the breach of Constitution shall be instigated by the Assembly.

### Article 88

#### **COMPETENCIES**

The President of the Republic shall:

- 1) represent the Republic in the country and abroad;
- 2) promulgate laws by ordinance;
- 3) call elections for the Assembly;

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propose to the Assembly candidates for the Prime Minister, President and justices of the Constitutional Court;  
propose to the Assembly calling of a referendum;  
grant amnesty for criminal offences prescribed by the republican

confer decoration and awards;

perform all other duties in accordance with the Constitution.

The President of the Republic shall be a member of the Supreme Defence Council.

### Article 89

#### PROMULGATION OF LAWS

The President of the Republic shall promulgate a law by ordinance within seven days from the date of its adoption.

The President of the Republic may, within seven days from the date of adoption of a law, request the Assembly to decide again on the same

The President of the Republic shall be bound to promulgate a law passed for the second time by the Assembly.

### Article 90

#### PERFORMANCE OF DUTIES

In case of termination of the term of office of the President of the Republic, and until the election of the new President and in the case the President of the Republic is temporarily prevented to perform his functions, his duties shall be assumed by the President of the Assembly and in case the Assembly is dissolved, by the Prime Minister.

#### Government

### Article 91

#### COMPOSITION AND PRIME MINISTER

The Government is composed of the Prime Minister, one or more deputy prime ministers and ministers.

The Government shall be headed by the Prime Minister.

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### Article 92

#### **ELECTION**

The candidate for the Prime Minister shall present to the Assembly his program and shall propose the list of ministers of his Government to the Assembly.

If the Assembly should not adopt the proposed program, the President of the Republic shall propose a new candidate for the Prime Minister within ten days.

### Article 93

#### **INCOMPATIBILITY OF FUNCTION**

A member of the government may not serve as a deputy or perform any other public function and neither may he professionally engage in other activities.

### Article 94

#### **COMPETENCIES**

The Government shall:

- 1) determine and conduct interior and foreign policy;
- 2) enact and execute laws and other regulations necessary for the enforcement of law;
- 3) conclude international treaties within the competences of the Republic;
- 4) propose development plan, budget and the annual balance sheet of the Republic;
- 5) determine organisation and manner of work of state administration;
- 6) perform supervision over work of ministries and other state administration authorities, and shall annul and abolish their regulations;
- 7) enact decrees and enactments during a state of emergency, in the event of imminent war danger or in the event of a state of war, if the Assembly shall not be able to convene, and shall submit to the Assembly the said enactments for its approval as soon as the Assembly shall be in session;
- 8) perform all other tasks as prescribed by the Constitution and law.

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### Article 95

#### RESIGNATION AND RECALL

The Government and the member of the Government may submit their resignation.

Resignation by the Prime Minister shall be deemed to mean resignation of the Government.

The Prime Minister may propose to the Assembly to recall any member of the Government.

### Article 96

#### NOTE OF CONFIDENCE

The Government may raise the question in the Assembly of its vote of confidence.

### Article 97

#### NOTE OF NO CONFIDENCE

The Assembly may vote of no confidence for the Government.

The proposal for a vote of no confidence may be submitted by not less than ten deputies.

The vote of no confidence for the Government shall be performed three days at the earliest from the date the proposal to that effect had been submitted.

If the Government has received a vote of confidence, the proposal to vote of no confidence for the same reasons may not be submitted before a period of 90 days from the date of previous voting.

### Article 98

#### TERMINATION OF MANDATE

The Government shall terminate its mandate when the mandate of the Assembly is terminated, when the Assembly is dissolved, when it submits its resignation and when it receives the vote of no confidence.

The Government which has been voted of no confidence or whose mandate has been revoked because of the dissolution of the Assembly shall remain in office until the election of the new Government.

### Article 99

#### STATE ADMINISTRATION

The affairs of the state administration shall be conducted by the ministries and the state administration authorities.

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Certain tasks of the state administration may be transferred by law to the local self-government.

### **TRANSFER AND ENTRUSTING**

Certain tasks of the state administration may be entrusted by decree to the local self-government, to the institutions and legal persons.

## **4. Courts of Law and Public Prosecutor**

### **Article 100**

#### **INDEPENDENCE AND AUTONOMY**

Courts of law (judiciary) shall be independent and autonomous.

Courts of law shall rule on the basis of the Constitution and the law.

### **Article 101**

#### **JUDICIAL COUNCIL**

Courts of law shall adjudicate in a council, except in cases specified by law when a single judge shall rule.

#### **JUDGES**

Judicial functions shall be performed by the judge and jurors.

### **Article 102**

#### **PUBLIC TRIALS**

Trial before the court of law shall be public.

In exceptional cases only the court may decide that the public shall not be allowed to attend the trial or any part thereof.

### **Article 103**

#### **PERMANENT FUNCTION**

Judges shall have a life tenure.

A judge's tenure of office may be terminated at his own request or when he meets conditions for retirement, and if he should be sentenced to a prison sentence without the right of appeal.

A judge may be dismissed if he has been convicted of an offence making him unsuitable to perform judicial functions, or when he performs his judicial function unprofessionally and unconscionably, or when he has permanently lost the working capacity for performing judicial function.

A judge may not be transferred against his will.



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### Article 104

#### **SUPREME COURT**

The Supreme Court shall be deemed to be the highest instance court of law in the Republic.

### Article 105

#### **PUBLIC PROSECUTOR**

The Public Prosecutor shall perform the tasks of criminal prosecution, shall apply legal remedies for protection of constitutionality and legality and shall represent the Republic in property and legal matters.

#### **COMPETENCE**

The Public Prosecutor shall perform his function on the basis of the Constitution and law.

#### **TERM OF OFFICE**

The Public Prosecutor shall be elected for the term of office of five years.

### Article 106

#### **INCOMPATIBILITY OF FUNCTION**

Judges and the Public Prosecutor may not be delegates or perform any other public function and neither engage in any professional activity.

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### Article 113

The Constitutional Court shall:

- 1) decide on the conformity of law with the Constitution;
- 2) decide on conformity of other regulations and general enactments with the Constitution and law;
- 3) determine whether the President of the Republic has committed a violation of the Constitution;
- 4) decide on constitutional complaints for violation, by individual enactments or deeds, of the freedoms and rights of man and citizen as prescribed by the Constitution, whenever this protection is not within the competencies of the Federal Constitutional Court and whenever some other legal remedy is not prescribed;

### COMPETENCIES

- 5) rule on the conflict of competencies between the administrative and judicial authorities, on conflict of competence between these authorities and authorities of the local self-government and in conflicts of competencies between the units of the local self-government;
- 6) decide on conformity of statutes of a political party or association of citizens;
- 7) decide on banning of a political party and association of citizens;
- 8) decide on electoral disputes and disputes connected with a referendum, which are not within the competencies of the regular courts of law;
- 9) performs other task prescribed by the Constitution.

The Constitutional Court may rule on constitutionality and legality of laws which have ceased to be in force, if from the moment they have ceased to be in force until the procedure has been initiated a period of not more than one year has elapsed.

### Article 114

#### INITIATING PROCEEDINGS

All persons are entitled to initiate the proceedings of assessing the constitutionality and legality.

Proceedings before the Constitutional Court shall be initiated by state agencies and legal entities after finding that their rights or interest have been violated by the act whose constitutionality and legality are being challenged.

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The Constitutional Court may itself initiate the proceedings for assessing the constitutionality and legality.

### **Article 115**

#### **CESSATION OF VALIDITY**

When the Constitutional Court shall decide that the statute, other regulation or a general enactment is not in conformity with the Constitution or law, such a statute, other regulation or general enactment shall cease to be in force with the day of publication of ruling to that effect by the Constitutional Court.

#### **PROVISIONS ORDER**

During the proceedings and until the ruling, the Constitutional Court may order a suspension in the execution of an individual act or deed undertaken on the basis of the statute, other regulation or a general enactment whose constitutionality i.e. legality is being assessed, if such an execution would cause irreparable damage.

### **Article 116**

#### **DECISION**

The Constitutional Court shall decide by a majority of vote of the justices.

The decision of the Constitutional Court shall be generally binding and final.

Decision of the Constitutional Court shall be published together with the opinion of justices who did not vote in favour of the decision.

Whenever necessary execution of the decision of the Constitutional Court shall be enforced by the Government.

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### PART FIVE

### AMENDMENTS TO THE CONSTITUTION

#### Article 117

##### **PROPOSAL OF AMENDMENTS**

A proposal to amend the Constitution may be submitted by at least 10.000 voters, by not less than 25 deputies, by the President of the Republic and by the Prime Minister.

A proposal to amend the Constitution shall contain the provisions where amendments are requested and an adequate explanation thereof.

The Assembly shall decide on the proposal for amending the Constitution by the two third majority of votes of all of its deputies.

If the proposal to amend the Constitution should not be adopted, the same proposal may not be submitted again before one year has elapsed from the day the proposal was refused.

#### Article 118

##### **AMENDMENTS**

The Constitution shall be amended by the Constitutional amendments.

##### **DRAFT**

The Assembly shall provide the draft of the amendment to the Constitution.

The Assembly shall decide on the amendment to the Constitution by the two third majority of votes of all of its deputies.

#### Article 119

##### **SIGNIFICANT AMENDMENTS AND A NEW CONSTITUTION**

If the proposal to amend the Constitution shall pertain to the provisions regulating the status of the country and the form of rule, if it restricts freedoms and right or if the adoption of a new constitution is proposed, with the day of adoption of the amendment to that effect the Assembly shall be dissolved and a new Assembly convened within 90 days from the day such an amendment was adopted.

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The new Assembly shall decide by a two-third majority of votes of all the deputies only on those amendments to the Constitution which are contained in the adopted amendment, i.e. the adopted amendment for the promulgation of the new constitution.



## DECLARATION ON THE ECOLOGICAL STATE OF MONTENEGRO

*We, members of the Parliament of the Republic of Montenegro, are aware that, in view of the threat to nature, protection of the identity of the land in which we live and work has become our most immediate and pressing task.*

*Bearing in mind our debt to nature, a source of health and our inspiration for freedom and culture, we are devoting ourselves to its protection for the sake of our survival and the future of our posterity.*

*We recognize that all our differences are less important than the changes in the environment we live in. Regardless of our national, religious, political and other sentiments and convictions we are fully aware that dignity and blessedness of a human being are intrinsically connected with blessedness and purity of nature.*

*Man and creation in him and around him are one in their depths, their meaning and denotation.*

*Thus the abuse of man has always entailed the abuse of nature. And being committed to the struggle for the dignity of man, we are also called upon to struggle for the dignity of nature.*

*By adopting this Declaration, Montenegro defines its attitude towards nature as a state policy and calls upon all the people to show wisdom and prevent an impending ecological catastrophe.*

Žabljak, 20 September 1991

THE PARLIAMENT OF  
THE REPUBLIC OF MONTENEGRO

**ANNEX III: LAW ON ELECTION OF  
COUNCILORS AND REPRESENTATIVES (DRAFT)**

# DRAFT LAW OF THE ELECTION OF COUNCILLORS AND REPRESENTATIVES

## I - BASIC PROVISIONS

### Article 1

This Law regulates the election and termination of term of office of councillors in the assemblies of municipalities and the capital and representatives in the parliament of the Republic of Montenegro (hereinafter: the Republican Assembly) as well as the protection of suffrage.

### Article 2

Citizens shall elect the councillors and representatives on the basis of their free, universal, equal and direct suffrage, by secret ballot.

No one has the right, on whatever grounds, to take a citizen to account for voting, or ask him who he has voted for or why he has not voted.

### Article 3

In the assemblies of municipalities and the capital (hereinafter: Municipal Assembly) 30 councillors are elected and an additional councillor per every 5,000 electors.

### Article 4

Councillors and representatives are elected in the constituencies on the basis of lists submitted by political parties and the lists submitted by groups of citizens (hereinafter: electoral lists).

Seats for councillors and representatives shall be distributed in proportion to the number of votes obtained.

### Article 5

Councillors and representatives are elected for a four year term of office.

Councillors and representatives make a decision and vote in accordance with their conviction.

A councillor and representative cannot be recalled.



## Article 6

Citizens have the right to be informed via the media about the election programmes and activities of the submitters of electoral lists as well as about the candidates on the electoral lists.

To enable citizens to exercise their suffrage referred to in Paragraph 1 of this Article, the media are bound to ensure equality in informing about all the submitters of electoral lists and the candidates from electoral lists.

The election campaign in the media and by way of public gatherings shall cease 48 (forty eight) hours prior to the polling day.

## Article 7

The election administration bodies conducting the election are the election commissions and polling boards.

## Article 8

The protection of suffrage is provided by the election commissions, the Constitutional Court of Montenegro and competent courts.

## Article 9

The funds for conducting the election are provided for in the republican budget for the election of representatives and in the municipal budget for the election of councillors.

All deeds, enactments, petitions and other documents regarding the administration of the election and the termination of term of office of councillors and representatives are tax exempted.

## II - SUFFRAGE

### Article 10

Suffrage, as used in this Law, includes the following rights of citizens: to elect and be elected; to nominate and be nominated as candidates; to make decisions on the nominated candidates and electoral lists; to publicly put questions to the candidates; to be informed in time, truthfully, completely and objectively about the programmes and activities of the submitters of electoral lists and the candidates on electoral lists, as well as to exercise other rights provided by this Law.

## Article 11

A citizen of Montenegro or a citizen of Yugoslavia, who has come of age, has the business capacity and has been the resident of Montenegro for at least six months prior to the polling day (hereinafter: the Elector) shall have the right to elect and be elected a councillor and a representative.

A citizen residing on the territory of the constituency shall have the right to elect a councillor and a representative on terms referred to in Paragraph 1 of this Article.

## Article 12

The office of a councillor or representative is incompatible with the office of the president of the Republic.

## Article 13

The election of councillors is conducted in the municipality and the capital as one and the same constituency.

The election of representatives is conducted in the Republic in two constituencies.

The first constituency for the municipalities of:

Bar (excluding the territory of the community councils of: Ostros - polling station for the 1996 elections, Ckla, Arbneš, Ostros - Veliki Ostros, Koštanjica, Bobovište i Tejani), Andrijevica, Berane, Bijelo Polje, Danilovgrad, Nikšić, Plužine, Pljevlja, Žabljak, Cetinje, Podgorica I (excluding the territory of the community councils of: Tuzi, Mileš, Dinoše, Vuksanlekići - Pothum, Sukurić, Vranj, Hoti i Zatrijebač - "Official Gazette of the Republic of Montenegro - Municipal regulations", No. 19/95), Kolašin, Mojkovac, Šavnik, Budva, Kotor, Plav, Rožaje, Tivat i Herceg Novi.

The second constituency for the municipalities of:

Podgorica II (the territories of the community councils of: Tuzi, Mileš, Dinoše, Vuksanlekići - Podhum, Sukurić, Vranj, Hoti, Zatrijebač - "Official Gazette of the Republic of Montenegro" - Municipal regulations No. 19/95), Ulcinj, (including the territory of the community council of Ostros in the municipality of Bar - polling stations for the 1996 elections, Ckla, Arbneš, Ostros, Veliki Ostros, Koštanjica, Bobovište and Tejani).

The number of councillors and representatives in constituencies is determined by the Republican Assembly in by a special Decision.

#### IV - CALLING FOR ELECTION

##### Article 14

The election of councillors and representatives is called for by the President of the Republic who also sets the time-limits for the election procedures prescribed by this Law as well as the date for the polling day.

The Decision on calling for the election shall be published in the "Official Gazette of the Republic of Montenegro".

##### Article 15

The election of councillors and representatives is held no less than 15 (fifteen) days prior to the termination of the term of office of councillors and representatives.

No less than 60 (sixty) and no more than 100 (a hundred) days shall pass between the day of calling for the election and the polling day.

The term of office of councillors and representatives whose mandate is expiring shall end on the day of verification of terms of office of the newly elected councillors and representatives.

The terms of office shall be verified within 15 (fifteen) days of the polling day.

##### Article 16

In the event of the termination of the term of office of the Republican Assembly, the dissolution of the Republican Assembly, or the termination of the representatives' terms of office by a decision of the Republican Assembly, the President of the Republic shall call for the election within seven days of the day of the termination of term of office of the Assembly, or of its dissolution, or on the day of coming into effect of the decision on the termination of representatives' terms of office.

Provisions of Article 5, Paragraphs 2, 3 and 4 of this Law shall also be applied when the Assembly is dissolved and when the

representatives' terms of office are terminated by the decision of the Republican Assembly.

## V - ELECTION ADMINISTRATION BODIES

### Article 17

The bodies in charge of administering the election are self-governing and independent in their work and perform their duties in conformity with this and other laws as well as with regulations enacted on the basis of these laws.

The bodies administering the election are responsible for their work to the body that appointed them.

All state agencies and organizations are bound to offer help to the bodies administering the election and provide them with the data necessary for their work.

### Article 18

The election bodies may operate in their permanent (appointed members) or extended composition (authorized representatives).

The election bodies must have members of different political parties in their permanent composition, in proportion to the number of seats of each party in individual assemblies.

Any submitter of the verified and publicized electoral list shall have the right to appoint authorized representatives to the election bodies.

Two or more submitters of the electoral list can appoint a joint authorized representative to an election administration body.

### Article 19

Election commissions are appointed for the period of four years, and polling boards are appointed for each election of councillors and/or representatives.

Election bodies operate in their extended composition as from the day of the appointment of that composition, in conformity with the provisions of this Law, until the end of the election.

### Article 20

To the posts of the chairman, the secretary, the appointed and authorized members of the election commission, and their deputies,

as well as the chairman, the secretary, the appointed and authorized members of polling boards and their deputies, may only be appointed the persons who have suffrage and who cannot be nominated as candidates for councillors and representatives.

The persons referred to in Paragraph 1 of this Article shall leave their posts in the election bodies if they accept a candidacy for councillors and representatives.

#### Article 21

The election bodies take decisions by a majority of votes of their members.

#### Article 22

The work of the election administration bodies is public.

The election body members and other persons monitoring the operation of the election bodies are bound to act in line with the rules of conduct set down by the Republican Election Commission.

Should any of the persons referred to in Paragraph 2 of this Article break the rules of keeping order at the polling station, or in any other way disrupt the work of an election body, the election body may remove them and enter the data on this in the record.

A candidate from the verified and proclaimed electoral list cannot attend the work of the election administration bodies.

#### 1. Election commissions

#### Article 23

The election commissions are: the Municipal and Republican Election Commissions.

#### Article 24

The permanent members of the Municipal Election Commission are appointed by the municipal assembly upon the proposal of the political parties that are represented in the Parliament.

The composition of the Municipal Election Commission shall be published in the "Official Gazette of the Republic of Montenegro" - Municipal Regulations.

## Article 25

The Municipal Election Commission is composed of: the chairman, the secretary, three permanent members, and one authorized representative of each of the submitters of the electoral lists.

Also appointed are deputies of the chairman and permanent members.

The chairman of the commission and his deputy as well as the members of the commission are chosen from graduate lawyers, and the deputies of members, as a rule, from graduate lawyers.

## Article 26

Within 48 (forty eight) hours of the proclamation of the electoral list, the Municipal Election Commission shall pass a decision on which of the submitters of the electoral list have fulfilled the conditions for appointing their representatives in the extended composition of this body.

The decision on whether a submitter has or has not fulfilled the conditions for appointing its representative in the extended composition shall be delivered to each of the submitters of the electoral lists by the Municipal Election Commission within 24 (twenty four) hours of passing such a decision.

The submitter of the electoral list shall appoint its authorized representative in the extended composition of the Municipal Election Commission and notify the Commission of this, and the Commission shall, within no later than 24 (twenty four) hours of the delivery of the above stated notification, pass a decision naming their new members.

If the submitter of the electoral list fails to appoint its authorized representative to the extended composition of the Municipal Election Commission no later than five days prior to the polling day, the Municipal Election Commission shall operate and make valid decisions without those persons present.

## Article 27

The Municipal Election Commission shall:

- 1) be in charge of a lawful administration of the election;
- 2) do logistics for the administration of the election;
- 3) determine the polling stations for the election of councillors and representatives;

- 4) form the polling boards and appoint the chairman and members of the polling boards for the election of councillors and representatives;
- 5) determine the number of ballot papers for each polling station, stamp them, and together with the verified extract from the register of electors deliver them with a written record to the polling boards;
- 6) determine whether the electoral lists for the election of councillors and representatives have been made and submitted in conformity with this Law;
- 7) confirm and proclaim the electoral lists for the election of councillors;
- 8) establish the results of the election of councillors and the number of votes for each electoral list as well as the number of seats won by each electoral list for the election of councillors;
- 9) issue certificates to elected councillors;
- 10) establish the overall results of the election of councillors in its constituency by each polling station and submit a report on this to the Republican Election Commission;
- 11) make and submit to the Republican Election Commission a separate report on the election of representatives from the respective municipal district that, in accordance with this Law, is designated as a part of another constituency;
- 12) make the results of the election of councillors public;
- 13) submit a report on the results of the election of the Municipal Assembly councillors;
- 14) submit the data on the results of the election to the bodies in charge of the collection and processing of statistical data; and
- 15) perform other activities provided for by this Law.

#### Article 28

The Municipal Election Commission shall adopt a rule-book on its work.

The conditions for the work of the Municipal Election Commission are provided by the Municipal Assembly.

#### Article 29

The permanent members of the Republican Election Commission are appointed by the Republican Assembly, upon the proposal of political parties that are represented in the parliament.

The composition of the Republican Election Commission is published in the "Official Gazette of the Republic of Montenegro".

#### Article 30

The Republican Election Commission is composed of: the chairman, the secretary, five permanent members and one authorized representative of each of the submitters of the electoral lists.

Deputies are appointed to the chairman and permanent members of the Republican Election Commission.

The Chairman, the members and their deputies as well as the secretary are appointed from the ranks of graduate lawyers.

#### Article 31

Within 48 (forty eight) hours of the proclamation of the electoral list, the Republican Election Commission shall determine which submitters of the electoral list fulfill the conditions for appointing their representatives in the extended composition of this body.

The decision on whether a submitter of the electoral list has or has not fulfilled the conditions for appointing its representative in the extended composition shall be delivered to the submitters by the Republican Election Commission within 24 (twenty four) hours of rendering such a decision.

The submitter of the electoral list shall appoint its authorized representative in the extended composition of the Republican Election Commission and notify the Republican Election Commission of this, and the Republican Commission shall, within 24 (twenty four) hours of the delivery of notification, in the form of a conclusion, determine its new members by name.

If the submitter of the electoral list fails to appoint an authorized representative in the extended composition of the Republican Election Commission five days prior to the polling day at the latest, the Republican Election Commission shall operate and make valid decisions without those members.



## Article 32

The Republican Election Commission shall:

- 1) be in charge of the lawful administration of the election and unified observance of the provisions of this Law;
- 2) monitor and offer professional advice on the implementation of this Law;
- 3) coordinate the work of the Municipal Election Commissions, give instructions with regard to the implementation of this Law, and supervise their work;
- 4) set down unified standards for the election material;
- 5) set down the forms for carrying out the election procedures provided for by this Law;
- 6) determine which election documents shall be submitted to it;
- 7) determine the manner of proclamation of electoral lists;
- 8) determine the manner of handling and keeping the election material;
- 9) judge whether the lists for the election of representatives have been made and submitted in conformity with this Law;
- 10) render a decision on proclamation of the lists for the election of representatives;
- 11) establish the results of the election of representatives and the number of votes by respective electoral lists, as well as the number of seats belonging to each list for the election of representatives;
- 12) make public the overall results of the election of representatives, as well as the results by each polling station in the Republic;
- 13) submit a report to the Republican Assembly on the election of representatives;
- 14) issue certificates to the elected representatives;
- 15) submit data on the election of representatives to the bodies in charge of the collection and processing of statistical data, and
- 16) perform other activities provided for by this Law.

## Article 33

The Republican Election Commission shall take over the responsibilities within the competence of the Municipal Election Commission in case it fails to carry out its duties with regard to the election of representatives in conformity with this Law.

## Article 34

The Republican Election Commission shall adopt the rule-book on its work.

The conditions for the work of the Republican Election Commission shall be provided by the Republican Assembly.

## 2. Polling Boards

### Article 35

The Polling Boards are composed of: the chairman, two permanent members and one authorized representative of each of the submitters of the electoral list.

The chairman and the permanent members have their deputies.

A Polling Board is appointed for each polling station not later than 10 (ten) days prior to the polling day.

### Article 36

Within 48 (forty eight) hours of the proclamation of the electoral list, the Municipal Election Commission shall make a decision on which of the submitters of the electoral lists have fulfilled the conditions for appointing their representatives in the extended composition of the Polling Boards.

The Municipal Election Commission shall submit the submitters of the electoral list the decision on whether it has fulfilled the conditions for appointing a representative in the extended composition of the Polling Board within 24 (twenty four) hours of setting up the polling station.

The submitters of the electoral list shall appoint their authorized representative in the extended composition of the Polling Board and notify the Municipal Election Commission of this, and the Municipal Commission shall, not later than 24 (twenty four) hours of the delivery of such notification, designate by name the persons becoming the members of the extended composition of the Polling Board.

If the submitter of the electoral list fails to appoint its authorized representative in the extended composition of the Polling Board not later than 5 (five) days prior the polling day, the Polling Board shall operate and make valid decisions without these members.

#### Article 37

The Polling Board shall be in charge of direct administering the voting at the polling station, ensure the regularity and secrecy of voting, establish the results of voting at the polling station and perform other activities provided for by this Law.

The Polling Board shall be in charge of keeping order at the polling station during voting.

The Polling Board shall charge one of its members with the duty of administering the voting outside the polling station.

More detailed rules on the Polling Board activities shall be set down by the Republican Election Commission.

### VI - PROPOSAL AND PROCLAMATION OF THE ELECTORAL LISTS

#### 1. Candidacy

##### Article 38

The political parties registered in the Republic of Montenegro, either separately or jointly, as well as groups of citizens, shall nominate candidates for their electoral list on the basis of the prescribed number of electors' signatures.

The political parties shall propose the electoral lists on terms defined by this Law and through the procedures defined by the regulations of those political parties.

##### Article 39

One person may be nominated as a candidate for the election of councillors on only one electoral list and in only one constituency.

One person may be nominated as a candidate for the election of representatives on only one electoral list and in only one constituency.

One electoral list shall contain no less than 1/3 (one third), and no more than the total number of candidates elected.

The submitters of the electoral list may freely determine the order of candidates on the list.

##### Article 40

A submitter of the electoral list may withdraw the list not later than by the date set for the proclamation of the general electoral list.

Upon the withdrawal of the list, the term of office of the authorized representative of the submitter of the electoral list in all the election bodies shall cease as well as all the rights pertaining to him in this regard according to the provisions of this Law.

A candidate may withdraw his candidacy by the date of rendering the decision on the proclamation of the electoral list.

#### Article 41

If after the rendering of the decision on the proclamation of the electoral list, a candidate may be stripped of his business capacity by a finally-binding court decision, lose Yugoslav and/or Montenegrin citizenship, withdraw his candidacy, or if he may die, the submitter of the electoral list shall lose the right to nominate another candidate.

The position of the candidate referred to in Paragraph 1 of this Article shall be taken by the candidate who is next on the electoral list.

### 2. Title, Confirmation and Proclamation of the Electoral List

#### Article 42

The title of the electoral list shall be determined according to the name of the party submitting the electoral list.

If two or more political parties submit a joint electoral list, the name and other rights and responsibilities of the submitters of a joint electoral list shall be specified by way of an agreement, which shall be submitted to the relevant election commission together with the electoral list.

Together with the title of the electoral list of a group of citizens, the submitter shall also determine a more precise appellation of the list.

The title referred to in Paragraphs 1-3 of this Article may include the name and surname of the person designated as the first candidate on the list supported by their written consent.

#### Article 43

The electoral list for the election of councillors and/or representatives shall be deemed confirmed if supported by at least 1% of the electors out of the total number of electors in the constituency, based on the data of the previous election.

Electors signing the lists for the election of councillors must be residents of the respective municipality.

Electors signing the lists for the election of representatives must be residents on the territory of the respective constituency.

The Republican Election Commission shall prescribe the content and layout of the form for the signatures of electors referred to in Paragraph 1 of this Article.

#### Article 44

An elector may support with his signature only one electoral list for the election of councillors and only one list for the election of representatives.

#### Article 45

The collection of signatures for the proposal of candidates for the electoral list within the election campaign is initiated and performed by political parties, as well as the citizens, individually or collectively.

#### Article 46

The electoral list for the election of councillors shall be submitted to the Municipal Commission, and the list for the election of representatives to the Republican Election Commission, within not later than 15 (fifteen) prior to the polling day.

The following documents shall be submitted together with the electoral list to the election commission:

- 1) a written statement of the candidate of his accepting the candidacy;
- 2) the certificate of suffrage for each candidate on the electoral list;
- 3) the certificate of residence of each candidate;
- 4) electors' signatures showing they support the list; and
- 5) a written statement showing the first candidate on the list has been confirmed.

#### Article 47

Immediately upon the receipt of the electoral list, the competent election commission shall determine whether it has been submitted in the prescribed term, and whether it has been composed in conformity with the provisions of this Law.

If the competent election commission finds that the electoral list has not been submitted in time, it will render a decision on rejecting the electoral list.

If the competent election commission finds that the electoral list has certain faults, it shall render, within 24 (twenty four) hours of the receipt of the electoral list, a decision ordering the submitter of the electoral list to eliminate them within 48 (forty eight) hours of the delivery of the decision. The decision shall suggest the measures that are to be taken in order to eliminate those faults.

If the competent election commission finds that the electoral list does not meet the requirements prescribed by this Law, or if it finds that the faults in the electoral list have either not been eliminated at all, or have not been eliminated within the prescribed period, it shall render a decision on refusing to proclaim such an electoral list within the next 48 (forty eight) hours.

#### Article 48

If the competent election commission finds that the submitted electoral lists have no faults or that the faults have been eliminated, it shall render a decision confirming and proclaiming the electoral list of a political party (party electoral list), of a political party coalition (coalition electoral list), or of a group of citizens (the electoral list of a group of citizens).

The decision referred to in Paragraph 1 of this Article shall, without delay, be delivered to the submitter of the electoral list.

### 3. General Electoral List

#### Article 49

Upon the confirmation and proclamation of the submitted electoral lists, the competent election commission shall compose the general electoral list comprising all the electoral lists with names of all the candidates.

The order of candidates on the general electoral list shall be determined by the chairman of the election commission by drawing lots, in the presence of authorized representatives of the submitters of confirmed electoral lists.

The general electoral list is publicized by the competent election commission not later than 10 (ten) days prior to the polling day.

## VII - PRESENTATION OF SUBMITTERS OF ELECTORAL LISTS AND CANDIDATES FROM ELECTORAL LISTS

### Article 50

The submitters of electoral lists shall have the right to inform the citizens on an equal basis about their programmes and activities in the media within the same daily slots and daily columns.

No property of state authorities (money, technical equipment, facilities, etc.), public enterprises, public institutions and funds, as well as of the Chamber of Commerce and Economy of Montenegro can be used for the presentation of electoral lists.

### Article 51

From the day of calling for the election until the termination of the election campaign, Radio-television of Montenegro shall provide, within its political and information programmes that could be watched and heard all over the Republic, special programmes of equal length broadcast at the same time, in which submitters of the electoral lists shall present themselves and their political programmes.

The institution referred to in Paragraph of this Article shall on no conditions be allowed to broadcast the presentation of political programmes in commercial, entertainment or any other programmes except the political and information programmes.

### Article 52

From the day of calling for the election until the termination of the election campaign, "Pobjeda", the press public company, shall provide equal space, columns and terms in its daily paper for each submitter of the electoral list to present themselves and their political programmes.

### Article 53

Radio-television of Montenegro shall, at least five times during the election campaign, provide an announcement of a promotion rally free of charge and in conditions and on terms providing equal position for all the submitters of the electoral list.

The press public company "Pobjeda" shall announce all promotion rallies of the submitters of the electoral lists for the

election of representatives free of charge during the election campaign, on terms referred to in Paragraph 1 of this Article.

#### Article 54

The media that on commercial basis publicize the submitters' notices promoting the election, political programmes and candidates, shall indicate on each notice that it is a "paid notice".

#### Article 55

The rules on presentations of political parties in the election campaign shall be set down by the Republican Assembly not later than 30 (thirty) days prior to the expiry of the date of calling for the election, which is at the same time when the Assembly is dissolved, i.e. when the decision rendered on shortening the term of office is rendered.

ARTICLE 56 The editors and presenters of political, information and specialized programmes shall, during the election campaign, independently and objectively present all the candidates, and the presenters shall have an impartial attitude to all the political, social-welfare and ethnic and cultural programmes.

In agreement with the submitters of the electoral list, the editors referred to in Paragraph 1 of this Article shall determine the programme of their presentations, in accordance with the Law and the criteria for the programme and editing policy.

In conformity with the provision referred to in Paragraph 1 of this Article, and in conformity with Paragraph 2 of Article 6 of this Law, programmes shall be organized providing direct public confrontation of political programmes of the submitters of the electoral lists as well as the candidates on these lists.

#### Article 57

All other media founded by the Republic, the capital and municipalities, in conformity with this Law, shall provide equal terms for the presentation of all the submitters of the electoral list and candidates on those lists.

The media referred to in Paragraph 1 of this Article, together with the representatives of their founders and submitters of the electoral lists, shall set down more detailed rules for the presentation of the submitters of the electoral list, their election programmes and candidates on these list.



## Article 58

The submitters of the electoral lists and the candidates on these lists shall have the right to organize, during the election campaign and on equal terms, conferences and other public rallies with the purpose of presenting and promoting their election programmes, electoral lists as well as the candidates on those lists, in conformity with the regulations on public order and peace.

## Article 59

During the election campaign, the media founded by the Republic, the capital and municipalities, shall, in accordance with their financial and technical possibilities and on equal terms, inform about the activities of the submitters at all of their conferences and other public rallies in which they present their election programmes and their candidates for the election of representatives.

The submitters of the electoral lists and the media referred to in Paragraph 1 of this Article shall, by an agreement, set down the ways and terms of reporting from a public rally as well as the terms by which the submitters of the electoral list should inform the media of a public rally to be held.

## Article 60

During the election campaign, the submitters of the electoral lists and the candidates on these lists shall, have the right to prepare election posters, public notices, photographs, leaflets, promotional messages and the like and publicly display them, with no prior permission needed, in places designated by a competent municipal body.

## Article 61

The audio election campaign material shall be used at a time and in such a manner so as not to disturb the citizens and infringe their right to peace, in conformity with the regulations of public order and peace.

## Article 62

During the election campaign, the media shall publicize the findings of competent state bodies stating that a certain media has violated the principles of equality, parity and objectivity of their

informing the citizens about the election programmes and candidates of political parties and other submitters of the electoral lists.

#### Article 63

During the period of seven days prior to the polling day, it shall be forbidden to publicize in the media the results of polls, research and analyses with regard to the citizens' personal estimate of the election results.

On polling day, before closing the polling stations, it is forbidden to publicize preliminary results or the estimates of the election results.

#### Article 64

The provisions of this chapter shall also apply to the media founded by legal and physical entities performing their activity in conformity with the provisions of the Public Information Act.

### VIII - ADMINISTRATION OF ELECTION

#### 1. Polling Stations

##### Article 65

Voting for the election of councillors and representatives is conducted at polling stations.

Polling stations are set up by the Municipal Election Commission upon the proposal of the body in charge of keeping the register of electors not later than 15 (fifteen) days prior to the polling day.

Polling stations must be arranged in such a way so as to provide enough space for all the members of the Polling Boards so as to have insight, at all times, into the ballot box and the election material.

Not later than 10 (ten) days prior to the polling day, the Municipal Election Commission shall announce which polling stations have been set up and which electors shall vote at a particular polling station.

##### Article 66

A polling station is set up for up to 2,500 electors.

More detailed rules with regard to polling stations are set down by the Republican Election Commission.

## Article 67

An elector shall cast his vote at the polling station where he is entered in the extract from the register of electors.

Exceptional to the provision referred to in Paragraph 1 of this Article, an elector may cast his vote outside the polling station where he is entered in the extract from the register of electors by post, on terms prescribed by this Law.

The procedure of voting outside the polling station, as well as the number of electors who have exercised their right to vote in this manner, are entered in the record on the work of the Polling Board. More detailed rules on voting by post are set down by the Republican Election Commission.

## Article 68

The notice on the election is delivered to electors not later than 5 (five) days prior to the polling day.

Each elector is delivered an invitation stating the date and time of polling, the number and address of the polling station at which he should cast his vote, as well as his personal register number in the extract from the register of electors.

## Article 69

Each elector shall vote in person.

An elector may cast his vote only once during polling.

Voting is done in secrecy.

Voting is done on verified ballot papers.

An elector shall sign his name in the register of electors when taking the election material.

At the polling station and within the area of 50 (fifty) metres from the polling station, it is forbidden to display political party symbols and other promotional material that may affect the decision of electors.

No one is allowed to come to the polling station carrying arms or dangerous instruments.

Should the rules referred to in Paragraphs 1-7 of this Article be infringed during polling, the Polling Board shall be dissolved and polling at that polling station repeated.

More detailed instructions on the measures providing the secrecy of voting are set down by the Republican Election Commission.

## Article 70

Polling stations in the constituency shall be opened at 7 a.m. and closed at 8 p.m. During this interval the polling station must be open non-stop.

The electors who are present at the polling station at the time of its closing shall be allowed to cast their vote.

## Article 71

Should the order at the polling station be disturbed, the Polling Board may interrupt the polling until order is restored. The reasons for and duration of interruption shall be entered in the record on the work of Polling Board.

The police on duty may enter the polling station only with the permission of the Polling Board chairman and only if order and peace are disturbed at the polling station.

If polling is interrupted for more than an hour, it shall be prolonged for the time of duration of the interruption.

## Article 72

While the polling station is open and polling is in progress, all members of the Polling Board or their deputies must be present at the polling station.

Each polling station shall have a special room to ensure the secrecy of voting.

In the room in which the voting is conducted only as many voters can be present at a time as there are places ensuring the secrecy of voting.

Persons having no rights or duties with regard to the administration of the election, as prescribed by this Law, are forbidden to remain at the polling station.

If the rules referred to in Paragraphs 1-4 of this Article have been infringed, a complaint can be lodged to the Municipal Election Commission that shall then decide whether voting at that polling station shall be repeated.

## 2. Election Material

### Article 73

The ballot paper shall contain:

- 1) indication of the constituency and the polling station;

- 2) the ordinal number placed before each individual electoral list;
- 3) the titles of electoral lists, in conformity with Article 42 of this Law, according to the order determined on the general electoral list, with the name and surname of the first candidate on the list, of which the election commission shall be notified.
- 4) a remark stating that electors are to cast vote for one electoral list only, which is done by circling the ordinal number before the title of that list, or by circling either the title of the list or the names and surnames of the first candidates on the lists.

#### Article 74

The ballot papers are prepared and verified by the Municipal Election Commission.

The Municipal Election Commission shall determine the number of ballot papers which must correspond to the number of electors entered in the register of electors.

The Republican Election Commission shall control the preparation and verification of ballot papers and determine the number of reserve ballot papers for the election of representatives.

The Republican Election Commission shall prescribe in more details the layout and appearance of the ballot papers, the manner and control of their printing and handling.

#### Article 75

The Municipal Election Commission shall prepare in due time the election material for each Polling Board, and particularly the number of ballot papers required, the electoral lists, extracts from the register of electors, certificates of suffrage, special and official envelopes for ballot papers, as well as the form of record of the work of Polling Boards.

The delivery of the election material shall be performed not later than 48 (forty eight) hours prior to the polling day.

The competent municipal body shall be in charge of setting up the polling stations and preparing for each Polling Board the necessary number of ballot boxes with the means for sealing and other instruments for voting.

On polling day, before the beginning of polling, the Polling Board shall determine whether the election material for that Polling Board is complete and in proper state, whether the polling station has been organized in such a way to ensure the secrecy of voting, and whether polling may start, and shall enter all this in its record.

#### Article 76

The general register of electors, with the titles of electoral lists and names of all the candidates, must be displayed in a visible place at a polling station during polling.

The contents, form and manner of display of the general electoral list referred to in Paragraph 1 of this Article are prescribed by the Republican Election Commission.

#### Article 77

The representatives of submitters of the electoral lists and the candidates for councillors and representatives shall have the right of insight into the election material, into the extracts from the register of electors in particular, the records of the work of Polling Boards, the records of election commissions and ballot papers.

The insight into the election material may be carried out within 5 (five) days of the polling day.

#### Article 78

The election material shall be kept for a period of at least 4 (four) years.

Exclusive of the provision referred to in Paragraph 1 of this Article, the ballot papers shall be kept for 60 (sixty) days or until the termination of procedure on the infringement of rights during the election.

The manner of keeping and using the election material is prescribed by the Republican Election Commission.

#### Article 79

The Republican Election Commission shall prescribe the content and appearance of the forms and the election material needed for the administration of the election within 15 (fifteen) days of its appointment.

### 3. Polling

#### Article 80

The Polling Board shall check the ballot box in the presence of the elector who is first to come to the polling station. The result of this control is entered into the control sheet which shall be signed by both the members of the Polling Board, and the first elector.

The control sheet is placed in the ballot box which is then sealed in the presence of the first elector, and this is entered into the record of the work of the Polling Board.

Upon opening of the ballot box, it shall first be checked whether it contains a control sheet. If the ballot box does not contain the control sheet, the Polling Board shall be dissolved, a new one appointed, and voting at that polling station shall be repeated.

The form of the control sheet shall be prescribed by the Republican Election Commission.

#### Article 81

The elector shall first state his name and surname, hand over the notice of polling, and prove his identity by producing his ID or some other means of identification.

The elector may not cast his vote without proving his identity.

After having confirmed the identity of the elector, the chairman or a member of the Polling Board shall circle the ordinal number before his name in the extract from the register of electors, explain the voting procedure to him, and hand over the ballot paper.

#### Article 82

The members of the Polling Board may in no way influence the decision of the elector.

The members of the Polling Board shall explain the voting procedure to the elector again if requested by the elector.

The members of the Polling Board shall take special care that the elector is not disturbed by anyone while marking out his ballot paper, and that the secrecy of voting is completely ensured.

Should any of the rules referred to in Paragraphs 1-3 of this Article, the Polling Board shall be dissolved, and the polling at that station shall be repeated.

### Article 83

An elector may cast his vote for only one electoral list on the ballot paper.

Voting is performed by circling the ordinal number before the title of the chosen electoral list, by circling the title of the list, or by circling the name and surname of the first candidate on the list.

Electors shall fold the ballot papers themselves in such a manner as to conceal who they have voted for and place it into the appropriate ballot box, and shall then leave the polling station.

### Article 84

No alterations to the extracts from the register of electors may be made on the polling day.

If any of the activities are performed in contravention to the provision referred to in Paragraph 1 of this Article, the Polling Board shall be dissolved, and voting at that polling station shall be repeated.

### Article 85

An elector who cannot cast his vote in person (for reasons of his blindness, disability or illiteracy) has a right to bring another person with him who shall, in his stead, and according to his instructions, mark the ballot, that is perform the voting procedure.

The manner of voting for electors referred to in Paragraph 1 of this Article shall be entered into the record.

### Article 86

An elector who cannot vote in person (handicapped persons or those prevented) shall inform the Polling Board whether he wishes to vote. The Polling Board shall, through its members, enable that elector to cast his vote by post, in the manner ensuring directness and secrecy of voting.

After being informed of the elector's inability to come to the polling station, the Polling Board shall, through its members for voting by post, deliver to the elector the official envelope containing the verified ballot paper, general register of electors, and a special envelope in which to put his marked ballot paper and a certificate of his suffrage.

After the elector has voted, he shall place the ballot paper in the special envelope which is then sealed and wax-stamped in his presence by the members of the Polling Board. The closed envelope



containing the ballot paper and the certificate of suffrage is placed into the official envelope which is then sealed in the presence of the elector by the members of the Polling Board.

The members of the Polling Board shall deliver the official envelope to the Polling Board which shall then open it, state that it contains the certificate of suffrage, circle the ordinal number before the elector's name in the extract from the register of electors, and place the closed envelope containing the ballot paper into the ballot box.

The manner of voting of the electors referred to in Paragraph 1 of this Article is entered in the record.

More detailed instructions on the manner of voting referred to in Paragraph 1 of this Article shall be prescribed by the Republican Election Commission.

#### Article 87

Electors who are doing their national service or are taking part in a military exercise, or electors who are performing duties in units or institutions of the Yugoslav Army, shall cast their vote in those units and institutions.

On the basis of the data supplied by the bodies keeping the register of electors referred to in Paragraph 1 of this Article, the election commission shall make and verify special extracts from the register of electors for those electors and deliver them, together with the needed number of verified ballot papers, general register of electors, relevant certificates of suffrage, special and official envelopes, to the military units and institutions in which those electors serve.

After the elector referred to in Paragraph 1 of this Article has voted, he shall place the ballot paper into a special envelope which is then sealed and wax-stamped before him. The closed envelope containing the ballot paper and the certificate of suffrage shall then be placed into the official envelope which is sealed in the presence of the elector by the person in charge of the polling in military units and institutions.

The person in charge of polling in military units and institutions shall deliver the sealed official envelopes to the Municipal Election Commission.

More detailed rules on the manner of polling in military units and institutions shall be defined by the Republican Election Commission.

#### Article 88

The electors who on the polling day either work or study outside the place in which they are registered in the extract from the register of electors, may vote by post.

The electors referred to in Paragraph 1 of this Article shall apply to the Polling Board at the polling station where they are entered in the extract from the register of electors with the request to send them the notice of polling, the ballot paper, the general electoral list, a special envelope for the ballot paper, a certificate of suffrage, and an official envelope.

After the elector referred to in Paragraph 1 of this Article has voted, he shall place his ballot paper in a special envelope and close it. The closed envelope containing the ballot paper and the certificate of suffrage is then placed into the official envelope which is then posted to the Polling Board referred to in Paragraph 2 of this Article.

#### Article 89

Electors who at the time of the election are temporarily resident abroad shall vote at the polling station in the area of the last place of residence on the territory of the Republic of Montenegro where they resided before leaving the country.

#### Article 90

Electors who, as members of the crew of river and ocean going boats of the merchant navy sailing under the Yugoslav flag, are outside territorial waters of the Federal Republic of Yugoslavia, electors working in diplomatic and consular offices of the FR Yugoslavia abroad and members of their families who live abroad shall cast their vote on a ship or in the diplomatic or consular office.

The conditions for voting of persons referred to in Paragraph 1 of this Article shall be provided by the ministries in charge of water-borne transport and foreign affairs.

On the basis of the data of the body keeping the register of electors referred to in Paragraph 1 of this Article, the Municipal Election Commission shall make and verify special extracts from the register of electors for those electors and deliver them, together with

the needed number of verified ballot papers, general electoral lists, relevant certificates of suffrage, special and official envelopes, to the ship, or an office in which the electors work.

With the purpose of administering the election on a ship or in diplomatic or consular offices, the authorized officer on a ship, or in the office, shall form a Polling Board consisting of the electors on the ship, or in the office.

After the elector referred to in Paragraph 1 of this Article has voted, he shall place the ballot paper in a special envelope and close it. The closed envelope containing the ballot paper and the certificate of suffrage shall then be placed in the official envelope which shall be sealed in front of the elector.

The body in charge of administering the election on a ship, or in diplomatic and consular offices abroad shall immediately deliver the sealed official envelopes to the competent Municipal Election Commission.

More detailed rules on the manner of voting of electors referred to in Paragraph 1 of this Article shall be set down by the Republican Election Commission.

## Article 91

Persons in detention and persons serving a prison sentence shall vote by post.

On the basis of the data of the body keeping the register of electors referred to in Paragraph 1 of this Article, the Municipal Election Commission shall make and verify special extracts from the register of electors for those electors and deliver them, together with the needed number of verified ballot papers, general electoral lists, relevant certificates of suffrage, special and official envelopes to the institutions where those persons are under temporary arrest or serving a prison sentence.

After an elector referred to in Paragraph 1 of this Article has voted, he shall place the ballot paper in a special envelope and close it. The closed envelope containing the ballot paper and the certificate of suffrage shall be placed in the official envelope which shall then be sealed in the presence of the elector.

More detailed rules on the manner of voting of persons referred to in Paragraph 1 of this Article are set down by the Republican Election Commission.

## Article 92

In cases of voting by post, only those votes that are delivered to the polling station or the Municipal Election Commission by 8 p.m. on the polling day shall be considered valid.

Exceptional to the provision referred to in Paragraph 1 of this Article, if Polling Boards are unable, due to a great distance at which the electors are, to deliver the election material in time by the shortest route, they shall notify the election commission of this. The election material referred to in Paragraph 2 of this Article shall be delivered by the Polling Boards later, but not later than 8 p.m. on the day following the polling day.

In cases of voting by post, the number of electors who have voted and the manner of voting are entered in a special record, the content and form of which shall be determined by the Republican Election Commission.

## IX - ESTABLISHING AND PUBLICIZING OF ELECTION RESULTS

### 1. Establishing election results

#### Article 93

After the voting has been finished, the Polling Board shall proceed to establish the election results in their polling stations.

The Polling Board determines the number of unused ballot papers and places them into a special envelope which is then sealed.

Based on the extract from the register of electors, the Polling Board determines the total number of electors who have voted.

When the ballot box is opened, and after the control sheet has been checked, valid ballot papers are separated from the invalid ones.

The Polling Board states the number of invalid ballot papers and enters it into the record. It then states the number of valid ballot papers and the number of votes for each electoral list and also enters it into the record.

The following shall be deemed invalid ballot papers: unmarked ballot papers, ballot papers marked in such a way that it is not clear which electoral list an elector has voted for as well as the ballot paper in which more than one electoral list has been circled.

If a ballot has been cast by post, the ballot paper not accompanied by a certificate of suffrage shall also be deemed invalid.

If it is determined that the number of ballot papers found in the ballot box is larger than the number of electors who have cast their vote, the Polling Board shall be dissolved and a new one appointed, and polling at that polling station shall be repeated. The election results at that polling station shall be determined after the repeating polling.

#### Article 94

After the Polling Board has established the election results, the following shall be entered into the record on its work: the number of ballot papers received, the number of unused ballot papers, the number of used ballot papers; the number of invalid ballot papers, the number of valid ballot papers, the number of votes for each electoral list, the number of electors according to the extract from the register of electors, the number of electors who have voted who have voted according to the register of electors and the number of electors who have voted by post.

Also entered in the record are the remarks and opinions of the Polling Board members, submitters of electoral lists and joint representatives of submitters of electoral lists referred to in Article 35 of this Law, as well as all other facts that may be relevant to polling.

The record on the work of the Polling Board shall be signed by all the members of the Polling Board.

Each member of the Polling Board shall receive a copy of the record on the work of the Polling Board.

#### Article 95

After the election results have been established, the Polling Board shall deliver, immediately, and not later than 18 (eighteen) hours following the closing of polling stations, to the Municipal Election Commission the record on the work of the Polling Board, the extract from the register of electors, evidence on the basis of which the electors who were not entered in the register of electors in the relevant polling station have voted, unused and, separately, used ballot papers, invalid and, separately, valid ballot papers, as well as other election material.

## Article 96

The results of the election of councillors are established by the Municipal Election Commission on the basis of polling results at each individual polling station in the constituency.

Upon receipt of the election material from the polling stations, the Municipal Election Commission shall establish the following: the total number of electors entered in the register of electors, the number of electors who have voted at the polling stations, the number of electors who have voted by post, the total number of ballot papers received, the total number of invalid ballot papers, the total number of valid ballot papers, and the number of votes for each electoral list for the election of councillors.

The Municipal Election Commission shall establish the results of voting for the election of councillors at the polling stations within its constituency no later than 12 (twelve) hours following the receipt of reports from polling stations and shall submit a report together with the record on its work to the Republican Election Commission.

On the basis of the report of the Municipal Election Commission referred to in Paragraph 3 of this Article, the Republican Election Commission shall establish the results of the election of representatives.

The contents and appearance of the form of the record on the work of the Municipal Election Commission shall be prescribed by the Republican Election Commission.

## Article 97

The Municipal Election Commission for the election of councillors and the Republican Election Commission for the election of representatives, shall establish the total number of votes each electoral list has won and the number of seats belonging to each list. Each list shall be apportioned a number of seats in proportion to the number of votes it has won.

## Article 98

Only electoral lists that have won more than 4% (four percent) of the total number of votes of the electors who have voted in the constituency shall take part in the apportioning of the seats.

## Article 99

The number of seats apportioned to an individual electoral list shall be determined by dividing the total number of votes each electoral list in the constituency has won by numbers from one through to the number which corresponds to the number of councillors and representatives that are elected in the constituency. The quotients thus arrived at are sorted in the descending order, and the number of largest quotients taken into account corresponds to the number of councillors and representatives elected.

Each electoral list shall be apportioned as many seats as the number of such quotients it has.

If two or more electoral lists get the same quotient on the basis of which they would be apportioned a seat, it shall be decided by drawing lots which electoral list shall be apportioned that seat.

## Article 100

The seats within the total number of seats an electoral list has won shall be apportioned by apportioning one half of the seats to the candidates on the electoral list according to the order on the list, and the remaining seats to the candidates on the list in accordance with the decision of the submitter of the electoral list.

When an electoral list has won an odd number of seats, the number of seats apportioned to the candidates on the list according to their order on the list is increased by one.

## Article 101

In case that, according to the results of polling established in the manner referred to in Article 99 of this Law, a particular electoral list should win a larger number of seats than the number of candidates on the list, the seats shall belong to the electoral list having the next largest quotient.

## 2. Publicizing election results

### Article 102

The Municipal Election Commission for the election of councillors and the Republican Election Commission for the election of representatives shall publicize the overall election results including the following:

- 1) the number of electors entered in the register of electors;
- 2) the number of electors who have voted at the polling station;

- 3) the number of electors who have voted outside the polling station;
- 4) the number of electors who have voted;
- 5) the number of ballot papers received;
- 6) the number of unused ballot papers;
- 7) the number of used ballot papers;
- 8) the number of invalid ballot papers;
- 9) the number of valid ballot papers;
- 10) the number of votes individual electoral lists have won; and
- 11) the number of seats individual electoral lists have won.

### Article 103

The Republican Election Commission shall publicize the overall results of the election of representatives within 24 (twenty four) hours of the receipt of the reports on the results of voting from Municipal Election Commission.

The Republican Election Commission shall publicize the results of voting for the representatives at each polling station in the Pobjeda Daily not later than 7 (seven) days prior to the constitution of the new Republican Assembly.

The Municipal Election Commission shall publicize the overall results of the election of councillors within 24 (twenty four) hours of the receipt of reports on the results of voting from all the polling stations in the constituency.

The results of the election of representatives shall be published in the "Official Gazette of the Republic of Montenegro - Municipal Regulations", not later than 15 (fifteen) days following the polling day.

### Article 104

The elected councillors and representatives shall be issued by the Municipal Election Commission and the Republican Election Commission respectively the certificate that they have been elected councillors or representatives on the day of the verification of their terms of office.



## X - TERMINATION OF TERM OF OFFICE, REPEATED ELECTION, FILLING VACANT SEATS OF COUNCILLORS AND REPRESENTATIVES AND EARLY ELECTION

### 1. Termination of term of office

#### Article 105

Councillors' and representatives' terms of office shall be terminated before the expiry of the term for which they have been elected in the following cases:

- 1) if they resign;
- 2) if they have been convicted, by a finally-binding court decision, to an unconditional prison sentence of not less than six months, or to a prison sentence for a criminal act rendering them unworthy of this office;
- 3) if they have been stripped of their business capacity by a finally-binding court decision;
- 4) if they take over a function that is incompatible with the office of a councillor and a representative, in conformity with the Constitution and this Law;
- 5) if their Yugoslav and Montenegrin citizenship is revoked;
- 6) if they die; and
- 7) if they cease to be members of political parties on whose electoral lists they have been elected.

The term of office of councillors or representatives shall be terminated on the day of advent of any of the events referred to in Paragraph 1 of this Article.

Should the activities of the political party be banned, the term of office of councillors or representatives who were elected as candidates of these parties shall be terminated.

The termination of the term of office shall be stated by the assembly whose councillor or representative he is at the first session following the receipt of notification of reasons for the termination of the term of office of a councillor or representative.

The term of office of a representative shall be terminated before the expiry of the term he has been elected for upon the dissolution or termination of the term of office of the Republican Assembly, in conformity with the Constitution.

## 2. Repeated election

### Article 106

Repeated election shall be conducted if the competent election commission annuls the election as well as in other cases provided for by this Law.

### Article 107

If the competent election commission annuls the election at an individual polling station, the polling shall be repeated at this polling station only.

In the case referred to in Paragraph 1 of this Article, the election results shall be established after the repeated polling.

### Article 108

The repeated election shall be conducted in the manner and according to the procedure provided for by this Law for the administration of election.

The repeated election shall be called for by the competent election commission.

The repeated election shall be conducted not later than 15 (fifteen) days following the day the election was annulled.

In cases of repeated election referred to in Article 107, Paragraph 1 of this Law, the repeated election shall be conducted not later than 3 (three) days following the day on which the competent election commission passed the decision.

The repeated election shall be conducted on the same electoral list determined for the election which has been annulled.

## 3. Filling vacant seats of councillors and representatives

### Article 109

If the term of office of a councillor or a representative is terminated for reasons stated in Article 105, the seat shall be awarded to a new councillor or a representative, in the manner set down in this Article.

If on the electoral list from which a councillor or representative has been elected there remains the same or larger number of candidates than the number of councillors or representatives whose term of office has been terminated, elected shall be the candidate whom the submitter of the electoral list decides.

If on the electoral list from which a councillor or representative has been elected there are no other candidates, the candidate from the list having the next largest quotient shall be deemed elected a councillor or representative.

The term of office of a new councillor or representative shall last until the expiry of the term of office of councillor or representative whose term of office has been terminated.

The candidates referred to in Paragraphs 2 and 3 of this Article shall be required, prior to the confirmation of their terms, to present a written consent that they accept the term.

#### 4. Early election

##### Article 110

In the event of the dissolution or termination of term of office of the Republican Assembly, as well as in the event that the Republican Assembly passes a decision to terminate the term of office of representatives, the early election shall be called for.

The early election shall be conducted in the manner and according to the procedure set down by this Law for the administration of election.

### XI - PROTECTION OF SUFFRAGE

##### Article 111

The bodies in charge of administering the election are bound to notify the electors during the election procedure of their electoral right and the manner of protection of these rights.

##### Article 112

Every elector, candidate and submitter of the electoral list have the right to lodge a complaint to the competent election commission because the electoral rights have been infringed during the election. The complaint referred to in Paragraph 1 of this Article shall be lodged within 24 (twenty four) hours of the hour at which the decision was made or the act performed.

##### Article 113

A complaint against a decision, act or failure of the Polling Board shall be lodged to the Municipal Election Commission.

A complaint against a decision, act or failure of the Municipal Election Commission shall be lodged to the Republican Election Commission.

#### Article 114

The competent election commission shall render a decision within 48 (forty eight) hours of the hour of receipt of the complaint and shall deliver it to the submitter of the complaint.

If the competent election commission finds the complaint is justified, it shall annul the decision or the act.

If the competent election commission fails to render a decision on the complaint within the terms set down by this Law, the complaint shall be deemed justified.

#### Article 115

Against the decision of the competent election commission by which the complaint has been rejected or accepted as justified, a complaint may be lodged to the Republican Election Commission.

The complaint is to be lodged to the election commission that rendered a decision on the previous complaint within 48 (forty eight) hours of the delivery of the decision.

The election commission referred to in Paragraph 2 of this Article shall, within 24 (twenty four) hours of the receipt of complaint, deliver to the Republican Election Commission the complaint and all the necessary documents.

A complaint against the decision of the Republican Election Commission rejecting or accepting as justified the earlier complaint can be lodged to the Constitutional Court.

#### Article 116

All the procedures with regard to the delivery of decisions, conclusions, and other documents, means of identification, petitions and the like shall be regulated in accordance with the rules regulating the delivery in the administrative procedure.

## XII - ELECTION ADMINISTRATION AND ELECTION CAMPAIGN EXPENSES

### Article 117

The nominated representative or a councillor proposed by a group of citizens and a political party for their nominated representatives or councilors on its electoral list shall be awarded an allowance the amount of which is determined by the Republican and Municipal Assemblies.

### Article 118

State and local administration bodies shall make their premises, equipment, means and other facilities for conducting the election campaign available and provide equal conditions to all the submitters of electoral list using them.

Within 10 (ten) days of calling for the election, the bodies referred to in Paragraph 1 of this Article shall define, by an agreement with the submitters of electoral lists, the conditions and manner of using the facilities referred to in Paragraph 1 of this Article.

## XIII - PENAL PROVISIONS

### Article 119

Any person committing the following act shall be either fined or imprisoned for up to one year:

- taking an elector to account after the election for voting or asking the elector to say who he has voted for or why he has not voted.

If the act referred to in Paragraph 1 of this Article is committed by a member of an election commission, a polling board or another person carrying out duties with regard to the election, such a person shall be punished with a prison sentence from three months to three years.

### Article 120

On any person committing any of the following acts shall be imposed a fine of twenty-fold minimum wage in the Republic or sentenced to imprisonment of up to 60 (sixty) days:

- 1) agitating contrary to the provision of Article 6 of this Law;
- 2) accepting the candidacy contrary to the provision of Article 39 of this Law;
- 3) signing at nominating a candidate contrary to the provision of Article 44 of this Law;
- 4) disturbing the work of the Polling Board, the administration of the election, voting or the work of the election commission;
- 5) remaining at the polling station after voting in spite of the warning of the chairman of the Polling Board, contrary to the provision of Article 72 of this Law; and
- 6) coming to the polling station armed or with dangerous instruments, contrary to the provision of Article 69.

Together with the punishment for the infraction of the Law referred to in Paragraph 1, Line 6 of this Article, the committer of this act shall be also punished with taking away the arms or dangerous instruments.

#### Article 121

A fine of fifty-fold to three hundred-fold minimum wage in the Republic shall be imposed on a state media or any other public media if it:

- 1) does not act in conformity to the provisions of Articles 51, 42, 56, 57, 59, and 62 of this Law;
- 2) act contrary to the provision of Article 63 of this Law.

A fine of five-fold to twenty-fold minimum wage in the Republic shall be also imposed on a person in charge at the state media or any other public media for committing acts referred to in Paragraph 1 of this Article.

### XIV - TRANSITIONAL AND FINAL PROVISIONS

#### Article 122

The chairman, the secretary, election commission members and their deputies in their permanent composition shall be, in conformity with this Law, appointed not later than 7 (seven) days following the day of this Law coming into force.

The Republican Election Commission shall set down regulations for the implementation of this Law within 15 (fifteen) days of this Law coming into force.

#### Article 123

The Municipal Assembly shall bring its regulations on the election into accord with the provisions of this Law within 15 (fifteen) days of this Law coming into force.

#### Article 124

On the day that this Law comes into force, the Law of the Election and Recall of Councillors and Representatives ( "Official Gazette of the Republic of Montenegro", Nos. 49/92, 55/92, 16/95 and 21/96) shall become invalid.

#### Article 125

This Law shall come into force on the eighth day following the day of its publication in the "Official Gazette of the Republic of Montenegro".

## Commentary on the Draft Law

### I Constitutional grounds for this Draft Law

The constitutional grounds for this Draft Law are contained in Article 12, Paragraph 4 of the Constitution of the Republic of Montenegro prescribing that the Republic regulates, by its legal provisions that are in conformity with the Constitution, among other issues, the issues of significance to the Republic.

### II Reasons for passing this Law

The work on preparing a new Law of the Election of Councillors and Representatives commenced with the purpose of creating further conditions for the development of democratic processes and parliamentary democracy in Montenegro in accordance with the Agreement on the minimum principles for the development of democratic infrastructure in Montenegro, concluded between the parliamentary parties and the Government of the Republic of Montenegro. The passing of this Law helps create the conditions for further modification, improvement and finalization of the electoral system in the Republic as well as realize the guidelines contained in the aforementioned Agreement for the preparation and administration of free, just and democratic parliamentary election.

### III Explanation of basic legal instruments

This Draft Law deals with significant issues regarding the election in great detail, in accordance with the principles of the Constitutions of the Republic of Yugoslavia and Montenegro, the principles of modern electoral system in the conditions of parliamentary pluralism and parliamentary democracy. That is to say, the electoral system, as a system of principles, rights, guarantees and technical procedures, provides for the participation of electors in the election of citizens' representatives to the government institutions.

The basic principles, explained in more details in this Law, are free, universal, equal and direct suffrage, as well as the secrecy of voting. A unified implementation of this principle, as well as the need for a timely organization of both state and local authorities, have imposed a commitment that this Law is to regulate all the issues concerning



the electoral system with regard to the election of representatives to the Republican Assembly and councillors to the Municipal Assemblies.

In addition, in conformity with the commitment to keep and further develop the proportional electoral system in the republican electoral legislature, this Law also regulates the subject of constituencies.

The proposed provisions regulate the subject of terms of office in such a manner that it is, in conformity with constitutional decisions, free. In other words, the principle of a free term of office is based on the principle that a representative, i.e. representative of electors, presents the electors and that he is, accordingly, bound to act in accordance with his consciousness only. In that respect, it is for the fact that the election is conducted by casting a vote for the electoral list of a political party, and that by doing so, the elector simultaneously casts his vote for the programme of that relevant party, while the candidate, or the elected representative from that list commits himself to implementing that programme and to loyalty to that party for his membership in the parliament, that a special provision is foreseen that a representative of a political party who has been elected from the electoral list of that party, should lose his term of office if the activities of that political party are banned.

Within the basic provisions of this Draft Law, there are provisions regulating the principles of the public media informing about the election programmes, the bodies for the administration of elections and their functions, bodies in charge of the protection of suffrage, as well as the duty of providing funds for the administration of the election.

In order to explain the aforementioned legal instruments in great detail, the subject of this Draft Law has been divided into fourteen sections and deals with all the issues relevant to the suffrage, electoral system and electoral procedure.

The section on Suffrage contains the definition of suffrage, as one of the basic political rights of citizens and the cornerstone of establishing modern political representative institutions. In its general sense, the suffrage includes the following rights: active

suffrage, passive suffrage, right to be nominated as a candidate, right to a timely, truthful and objective information about the programmes and activities of those participating in the election process, right to vote and make decisions on the submitted lists, right to a freedom and secrecy of voting, while also taking into account other standards of universality, directness and equality of the voting.

The provisions of this section regulating the incompatibility of the office of a councillor or a representative with the office of the president of the Republic present the modified valid provisions regulating the same matter. That is to say, the incompatibility of offices of councillors or representatives with the office of the president of the Republic is regulated in the Constitution of the Republic so that the previous provision stipulating the incompatibility of the offices of councillors and representatives with the office of the president or judges of the Constitutional Court of the Republic of Montenegro and officials holding positions in judicature has proved unnecessary.

The decision to adopt the proportional electoral system is based on the definition of a constituency as a district within which representatives are elected, as well as of the electoral formula by which the number of votes is calculated in terms of seats. Taking into account the need to adopt the most modern proportional system and its functioning in the organization of authorities in the Republic, it is proposed that the election of representatives be conducted in two constituencies trying to ensure an adequate representation of the Albanians in the Republican Assembly, while the number of seats in the constituencies shall be determined by the Republican Assembly, by a special decision.

The election of councillors and representatives is called for by the President of the Republic. The decision on calling for the election shall determine the polling day and beginning of terms for individual electoral procedures, taking into account the fact that the period between the calling for the election and the polling day is to last not less than 60 (sixty) and not more than 100 (one hundred) days.

In order to settle the situation in cases when the Republican Assembly is dissolved or when the term of office of representatives is terminated on the basis of the decision of the Republican Assembly, the same terms shall be applied for the calling for and holding the election of councillors and representatives and verification of their terms of office.

The election administration bodies are self-governing and independent in their work and are responsible to the body that has appointed them. The work of these bodies is public and the decisions are made by a majority of votes.

The composition and competence of the election commissions is determined in such a way to ensure complete, lawful and efficient administration of the election, with the possibility of controlling their work. They work in its permanent composition (appointed members) and extended composition (authorized representatives), which means that members appointed to the extended composition have authority and responsibilities to participate in the work of this body and make valid decisions.

The commitment to apply the principle of multiparty control of the election in every phase and in all its forms has brought about the principle of the law that the permanent composition of the election administration bodies must be multiparty, in proportion to the party representation in the Republican Assembly. In accordance with this, the Republican Election Commission in its permanent composition is also appointed by the Republican Assembly upon the proposal of the parties that are represented in the Republican Assembly.

As to the appointment of chairmen of commissions and their members as persons carrying out election activities, this Draft Law prescribes that these persons are to be appointed from among graduated lawyers and not from among officials in judicature posts, as it has been stipulated so far, thus providing a wider choice for the appointment of these persons.

The electoral list is such a form of nomination of candidates that provides the electors with a possibility to simultaneously decide on a large number of representatives within a constituency.

In comparison to the section PROPOSAL AND ESTABLISHMENT OF ELECTORAL LISTS, with regard to the nomination of candidates on the electoral list, there is a new provision prescribing that one electoral list should have no less than 1/3 (one third) and not more than as many candidates as the number of candidates elected, thus providing for the seriousness of candidacies and safeguarding the will of citizens in the Assembly.

The electoral list is submitted to the competent election commission for verification and proclamation.

There is a possibility to withdraw the electoral list and give up the candidacy up to the day of passing the enactment on the proclamation of the electoral list. If upon the passing of the aforementioned enactment there occurs an objective reason disqualifying the candidate from the electoral list, the submitter has no right to nominate another candidate. In this case, nominated shall be the next candidate on the list.

The title, establishment and proclamation of the electoral list are the most important phases in the process of nominating candidates.

The electoral list for the election of councillors and representatives shall be deemed established if supported by signatures of at least 1% of the total electorate in the constituency based on the data on the number of electors from the penultimate election.

The reason for such a proposal is the fact that the experience shows that in the previous elections the participating parties have not had a real support of the electorate, which is essential for the seriousness of the election.

An elector may support with his signature only one electoral list for the election of councillors and only one list for the election of representatives.

The time limit for the submission of electoral lists to election commissions is not later than 15 (fifteen) days prior to the polling day. All electoral lists must be accompanied by the prescribed documentation.

The election commission makes a collective electoral list out of all the submitted lists and determines their order by drawing lots.

The presentation of submitters of electoral lists and candidates on those lists is the issue crucial to the equality of all the participants in the election process. Therefore, it is prescribed by the proposed provisions that state media and other public media have to provide for equal, objective and impartial presentation of political parties and candidates, as participants in the election process.

Special provisions have been provided for the public media founded by the Republic prescribing that they are to provide equal, objective and impartial presentation of submitters of electoral lists, their programmes and candidates, as well as other election activities. This is binding to all other media performing their activities in accordance with the law and other regulations on public information services.

The proposed provisions on the presentation of submitters of electoral lists, their election programmes and candidates envisage that the rules on the presentation of political parties in the election campaign should be laid down by the Republican Assembly no later than 30 (thirty) days before the expiry of the term of calling for the election, or when the Assembly is dissolved, or when the decision on termination of term of office is passed, which is meant to ensure timely activities of political parties in the election campaign and the conditions for equal, objective and impartial presentation of all the participants in the election process.

One of the important provisions of this Draft Law, aiming at eliminating the privileges of a certain political party currently in power, stipulates that the property of state bodies (money, technical equipment, facilities, and the like), public enterprises, institutions,

funds and the Chamber of Commerce and Economy of Montenegro cannot be used for the presentation of electoral lists.

The administration of election is conducted at polling stations that are designated in order to enable a citizen to exercise his right to vote as easily as possible taking into account the distance between the polling station and electors' places of residence.

Each elector shall vote at a particular polling station only, except in some special cases where an elector shall be allowed to vote elsewhere. All the special cases are defined in this Draft Law in great detail. With this regard, there is a provision for voting by post. The following persons shall be allowed to vote by post: persons temporarily absent, persons in pretrial detention, or persons sentenced to imprisonment. In order to provide validity of voting by post, terms by which ballot papers must be returned have been determined. Each polling station has a polling board in charge of the voting process.

The section of this Draft Law dealing with the arrangement of polling stations contains a provision envisaging that there must be enough space in each polling station for all the members of the polling board to have insight at all times into the ballot boxes and the election material thus enabling all the members of the polling board to control the polling:

In order to protect suffrage and secure regularity of the election, there is a provision prescribing that each elector should sign his name in the register of electors when taking the election material and voting.

Election results, i.e. the results of voting at a polling station are determined by the polling board and delivered to the election commission of a relevant constituency, with the purpose of establishing the overall results of the election in the constituency.

The establishing of the election results, i.e. the results of the election, is conducted according to the prescribed procedure and under the

supervision of competent election commissions and participants in the election that are interested in it. All the election administration bodies shall make records on their work in which they enter the prescribed data. They also have to publicize the overall election results and the results by each polling station.

in which they enter the prescribed data. They also have to publicize the overall election results and the results by each polling station.

Election results of the election of councillors are established by the Municipal Election Commission, and of representatives by the Republican Election Commission, by establishing the total number of votes won by each individual electoral list and determining the number of seats (of councillors, or representatives) belonging to each list.

Each electoral list shall be awarded the number of seats in proportion to the number of votes it has won.

The apportioning of seats, in conformity with the provisions of this Law, is done according to the Daunt's formula, i.e. by dividing the number of votes each electoral list has won by 1, 2, 3... conclusive with the number of representatives elected in the relevant constituency. The quotients thus arrived at are then sorted in the descending order, taking into account as many "largest" quotients as there are councillors or representatives elected. Each electoral list shall be awarded as many seats as the number of such quotients it has.

The seats, within the total number of seats a list has won, shall be apportioned according to the order of appearance of candidates on the electoral lists.

In case that two or more list should have the same quotients on the basis of which they would be awarded a seat, it shall be decided by drawing lots which list shall be awarded that seat. If a particular list should be awarded a larger number of seats than the number of its

candidates on the list, the seats shall be awarded to the lists having the second largest quotient.

The competent election commissions shall publicize the final election results.

The provisions of this Draft Law have established the instruments of repeated, by-election and early election.

The repeated election shall be conducted when the election commission annuls the election at an individual polling station and in certain other cases defined by this Law.

In cases prescribed by this Law, the by-election shall be conducted when the term of office of a representative is terminated before the expiry of the term he has been elected for. The provisions regulating the by-election envisage that the by-election shall not be conducted if there remains on the list from which a representative has been elected either the same or larger number of candidates than the number of candidates whose term of office has been terminated. In that case, deemed elected for a councillor or a representative shall be the candidate who is next on the electoral list. Furthermore, if there are no more candidates on the list from which a councillor or a representative has been elected, deemed elected for a councillor or a representative shall be the candidate from the list having the second largest quotient. In this manner the principle of proportional representation in the parliaments is secured thus avoiding unnecessary and expensive administration of the election for only one to three representatives, which is a very small number compared to the total number of representatives in the parliament.

The early election shall be conducted in case the Republican Assembly is dissolved, or the term of office of the Republican Assembly terminated, as well as in case the Republican Assembly passes the decision on the termination of terms of office of representatives. The early election is conducted in the same manner as the regular election.



The protection of suffrage encompasses a number of legal instruments available to every elector, candidate for a representative in the parliament, or submitter of the electoral list in case their suffrage is violated during the election. According to this Draft Law, this protection is realized through competent election commissions, the Constitutional court and competent courts.

The part of this Draft Law dealing with the expenses for the administration of election contains a provision stating that each elected representative or councillor is entitled to an amount of money to compensate for his expenses incurred in the election.

Within these legal provisions, with the purpose of creating as favourable prospects as possible to all political parties, i.e. all submitters of electoral lists, on the principle of equality, there are provisions prescribing that state authorities offering their premises, equipment and other facilities to be used in the election process should do so on the basis of the aforementioned principle.

The provisions of this Draft Law contained in the section on PENAL PROVISIONS envisage adequate legal protection of all the participants in the election process, since there is a need for a complete lawfulness of the election, protection of suffrage and the lawfulness of the elected authorities.

TRANSITORY AND FINAL PROVISIONS prescribe the terms for passing regulations with the purpose of implementing this Law, as well as the terms for appointing the commissions.

**ANNEX IV: LAW ON THE REGISTRY OF ELECTORS (DRAFT)**

**PROPOSED  
LAW ON REGISTERS OF ELECTORS**

Article 1

The Register of Electors is a public document for keeping records of citizens with the electoral right.

Article 2

The Register of Electors is kept *ex officio*.

The Register of Electors is single, permanent, and updated every year, particularly in the election year.

Article 3

The Register of Electors is kept for the territory of the municipality.

An elector may be entered in the Register of Electors in one municipality only.

The Register of Electors is kept by a local government authority.

Article 4

The Registers of Electors by polling stations processed in municipalities are compiled in a single (central) Register of Electors kept by a government body in charge.

The Registers of Electors referred to in Article 3 above and Paragraph 1 of this Article are, as a rule, maintained by computer data processing.

Article 5

The Register of Electors records all citizens who have reached the age of 18, by reference to their place of residence.

The Register of Electors also includes the citizens who are temporarily living abroad, by reference to their last place of residence before going abroad.

The citizens doing their national service in the army or taking part in military exercises, as well as the citizens in detention or serving prison sentences, are included on the Register of Electors by reference to their last place of residence.

The persons who have been deprived of civil capacity by an irrevocable court order cannot be included on the Register of Electors. If such persons had been included on the Register of Electors they shall be deleted from it, and shall be re-entered upon the restoration of such capacity by an irrevocable court order.

#### Article 6

The inclusion on the Register of Electors and deletion from it are done ex officio on the basis of information from the vital statistics, other official records, public documents and direct checking.

The authorities keeping the relevant official records of citizens are obliged to furnish the authorities in charge of maintaining Registers of Electors with information which may affect the accuracy and up-to-dateness of Registers of Electors within 15 days after the date as of which any such change has occurred.

The inclusion on the Register of Electors and deletion from it are also done on the request of electors, as well as on the basis of other valid evidence.

The Register of Electors records: name and surname, date and place of birth, address, residence and personal identification number of electors.

The ministry in charge of administration affairs shall govern in more detail the manner of keeping, correcting, supplying, concluding, copying and publicizing the Register of Electors and other matters needed for the maintaining of complete, accurate and up-to-date registers and shall supervise the compliance of the regulations governing the maintaining of Registers of Electors.

#### Article 7

Within three days following the day of call for elections, the authority responsible for keeping the Register of Electors shall inform the citizens that they can inspect the Register and ask to be entered or deleted, or ask for changes, amendments or corrections of the Register of Electors.

Notification in the sense of Paragraph 1 of this Article is done by means of a public notice and, if the need arises, in the mass media and in other ways.

A request for entering in, deletion from, amendment to, change or correction of the Register of Electors is filed with the authority in charge of compiling and keeping the Register. Such a request shall be supported by proper evidence.

The authority in charge shall decide on the request referred to in Paragraph 3 of this Article within 48 hours from the day when it was filed. The decision shall be delivered to the requesting party without delay.

A petition can be presented to the Supreme Court of Montenegro (hereinafter: the Court) against the decision referred to in Paragraph 4 of this Article within 48 hours from the hour of receiving the latter.

The petition is submitted through the authority that has rendered the decision, that body being obliged to forward the petition together with the necessary documents within 24 hours from the hour of receipt of the petition.

The Court decides on the petition in the contentious proceedings within 24 hours following the hour of receiving the petition.

The Court's decision is irrevocable and binding.

#### Article 8

The Register of Electors is concluded not later than 15 days prior to the polling day. The respective authority shall render a decision on conclusion of the Register of Electors that shall contain the total number of citizens entered in the Register of Electors and the date of the conclusion of the Register.

The decision on the conclusion of the Register of Electors is submitted to the relevant municipal election commission not later than 24 hours from the hour of making such decision.

The municipal election commission submits, through its officer in charge of the Register of Electors, the data on the total number of electors in the respective constituency to the Republican Election Commission within 24 hours from the hour of receiving such decision.

On the basis of the data supplied by municipal election commissions, the Republican Election Commission publicizes, within the following 24 hours, the total number of electors, both as a whole and by individual municipalities.

Upon conclusion of the Register of Electors, new entries, deletions, amendments, changes or corrections of it may be done only by the Court's order and not later than 48 hours prior to the polling day.

#### Article 9

The authority in charge of compilation/keeping of the Register of Electors makes a verified extract from the Register for each polling station. This extract is submitted to the relevant municipal election commission within 24 hours from the hour of conclusion of the Register of Electors.

In addition to the information referred to in Paragraph 3 of Article 6 above, the extract from the Register of Electors shall contain: name of the authority which made it, the date of producing it and a designation of the polling station for which the extract has been prepared.

The authority in charge of maintaining the overall (central) Register of Electors is obliged to supply the party submitting the election list, upon its request, with the concluded Register of Electors, in the form of a computer diskette, within 48 hours of filing such request.

#### Article 10

A fine amounting to at least the five-fold officially publicized minimum salary in the Republic shall be imposed for the following offences upon:

- (1) the responsible person entrusted with maintaining of Registers of Electors in case of failure to secure their accuracy and up-to-dateness;
- (2) the responsible officer of the local government authority in case of failure to control the accuracy and up-to-dateness of Registers of Electors;
- (3) the responsible officer in the ministry in charge of administration affairs in case of failure to pass the regulations referred to in Paragraph 5, Article 6 hereof, or failure to supervise and take necessary measures for the proper enforcement of the regulations;
- (4) the responsible officer of the body which is obliged to supply the data referred to in Paragraph 2, Article 6 hereof in a timely manner;
- (5) the responsible officer of the body in charge of maintaining a single tim (central) Register of Electors in case of failure to supply data within the e prescribed in Paragraph 3, Article 9 hereof.

#### Article 11

The ministry in charge of administration affairs is obliged to pass the regulations referred to in Article 6 above within the period of 30 days from the day of coming into force of this Law.

#### Article 12

As an exception to the provision of Article 4 above, in case of failure to establish keeping of Registers of Electors by electronic data processing for the territory of the Republic of Montenegro, the Registers of Electors may be kept in the form of books.

#### Article 13

The Law on Register of Electors (Official Gazette of the Republic of Montenegro No.49/92) shall cease to be valid on the date of coming into effect of this Law.

#### Article 14

This Law comes into effect on the day of its publication in the Official Gazette of the Republic of Montenegro.

## COMMENTARY

### I. Constitutional Basis for Passing This Law

The constitutional basis for passing this Law is contained in the item 4 of Article 12 of the Constitution of the Republic of Montenegro, stating that the Republic shall regulate by law, under the Constitution, *inter alia*, matters of interest for the Republic.

### II. Reasons for Passing This Law

The electoral/voting right is one of the basic political rights of citizens and the basis for the constitution of modern political institutions. Consequently, it was necessary to regulate the matters relating to the right to vote and, in connection with it, the registers of electors, which prompted starting the procedure for enacting this law.

The importance of the electoral/voting right and its exercising through all the forms of personal expression - in the first place in the elections where it is called the election right, in referenda, in various types of gatherings and other forms of direct expression - has led the legislators to pass this particular law regulating the records of electoral rights, the so-called Register of Electors.

### III. Explanation of Basic Legal Institutes

According to the solutions of this proposed Law, the Registers of Electors are public documents recording the citizens which have the right to elect and be elected, and serving as a proof of such rights.

The right to elect and be elected is not acquired by mere entry in the Register of Electors but upon fulfilment of certain conditions stipulated by the Constitution and the Law. It means that the Registers of Electors do not constitute the electoral right; they are the documents stating the fulfilment of the constitutional conditions for exercising the electoral rights of citizens. However, the citizen who fulfils these conditions for the obtaining of electoral right must be included on the Register of Electors in order to be allowed to cast his vote in the elections.



A citizen with the electoral right may be entered in only one Register of Electors. Any changes must be recorded in the Register of Electors. Every citizen has the right to review the Register of Electors and to ask that appropriate changes and amendments be made in it.

With a view to the fact that Registers of Electors are extremely significant, primarily for the exercise of the voting right and, thereby, active participation in the execution of government functions, the solutions presented in this proposed Law establish a single (central) Register of Electors. In that manner, the voter registries can be maintained more efficiently and more promptly, which all impacts the regular and proper administration of the election process.

Moreover, this Law governs the manner, conditions and procedure of making entries into and keeping the voter registries, the acting of competent government authorities, the protection of the rights of citizens in connection with this type of records, obligations and capacities of the bodies responsible for administration of elections, etc.

As the right to vote is a basic condition for the participation of citizens in elections, and as this right is exercised in the place of residence and on the basis of the records from the Register of Electors, this proposed Law provides for fines for offences committed by responsible persons in charge of the keeping of Registers of Electors, as well as responsible officers of local government bodies and/or relevant ministry.

**ANNEX V: LAW ON THE FINANCING OF POLITICAL PARTIES (DRAFT)**

**LAW**  
**ON THE FINANCING OF POLITICAL PARTIES**

Podgorica, September 1997

**LAW**  
**ON THE FINANCING OF POLITICAL PARTIES**

**Article 1**

This Law governs the conditions and manner of providing financial resources for the work of political parties, and the manner of allocation of portion of these funds for the election campaign.

**Article 2**

Political parties may raise funds for their activities from: the membership fees, contributions, income from their own assets and enterpreneurial activities, credits, donations, legacies, endowments, budget and other sources, as provided by the law.

**Article 3**

The Republic, or the municipality, provides within the budget a part of the funds for:

- 1) the work of political parties, whose candidates have been elected for representatives or councilmen, and
- 2) the covery of expenses of elections campaign for the political parties with verified election lists, for the election of representatives or councilmen.

**Article 4**

The financial resources referred to in Para 1 of Article 3 above are determined by the budget of the Republic, or the budget of the municipality, given that such funds cannot be lower than 0.3% of the total budget revenues for the year for which such budget has been passed.

**Article 5**

The funds referred to in Article 4 above, to the extent of 30%, are distributed in equal amounts to all parties having their representatives in the Assembly, while the rest is distributed proportionally to the total number of their representation seats.

The ministry in charge of finances shall transfer the funds referred to in Para 1 above to the political parties on a monthly basis, by the fifth day in a month for the previous month.

#### Article 6

The funds for the cover of expenses of election campaign for the election of representatives are provided in the budget of the Republic in the year in which the elections have been called.

The distribution of the funds referred to in Para 1 above shall be made in such a manner as to provide:

- a) one-third of the funds to the parties with representatives in the Assembly, which have expressed their intention to take part in the elections;
- b) one-third of the funds to the political parties with verified election lists;
- c) one-third of the funds to the political parties which have won representation mandates, proportionally to the number of the won mandates in the Assembly in relation to the total number of mandates.

Application for the funds referred to in Para 1 above shall be filed with the Republican Election Commission.

#### Article 7

The funds for the cover of expenses incurred in the election campaign for the election of councilmen are provided in the budget of the municipality, in the year in which the elections have been called, and are distributed in the manner set forth in Para 2 of Article 6 above.

Application for the funds referred to in Para 1 above shall be filed with the Municipal Election Commission.

#### Article 8

The parties with verified election lists may themselves provide funds to cover the expenses of their election campaign and other pre-election activities.

The political parties with verified election lists and the candidates may, in order to cover the expenses referred to in Para 1 above, collect donations.

Collection of the donations referred to in Para 2 above may be done in the official premises of the nominating parties, in public places following the permission of the ministry in charge of internal affairs, on public performances and gatherings organized by the parties with verified election list, or by means of direct payments to a specified account of such political party.

Contributions to individual candidates or election lists can be made by individual citizens.

#### Article 9

The expenses of election campaign of a political party are its financial expenditures for the following forms of election propaganda:

- posters,
- advertisements,
- radio and television broadcasts,
- advertising spots,
- publications.

The expenses of election campaign, referred to in Para 1 above, shall not exceed the amount equivalent to \_\_\_\_\_ net officially publicized average salaries paid for the month preceding the month in which the elections have been called.

#### Article 10

The parties which have representatives in the Assembly shall enter, within 15 days of the day of the call for elections, into a special agreement ensuring compliance with the limits set for the election campaign expenses.

The agreement, referred to in Para 1 above, shall specify the manner of the control of the funds spent for the election campaign.

Results of the control shall be published in the news media.

#### Article 11

The political parties shall keep records of their revenues and expenditures.

The financial operations of political parties is subject to the control of the authority in charge of controlling the financial and material operations of legal entities.

#### Article 12

The noted irregularities in the use of budgetary resources determined by this Law shall be reported by the authority referred in Para 2 of Article 11 above to the ministry in charge of finances.

In the event as specified in Para 1 above, the ministry in charge of finances may deny further payment of these funds.

Administrative litigious proceedings may be taken against the decision on denial of funds, referred to in Para 1 above.

#### Article 13

A fine equal to the 10-fold to 150-fold amount of the officially publicized minimum salary in the Republic shall be imposed upon a political party:

- 1) if it raises funds contrary to the provision of Article 2 above;
- 2) if it fails to keep records of its financial operations in compliance with the provision of Article 11 above.

For the infraction referred to in Item 1, Para 1 above, the benefit obtained by commitment of such infraction shall be taken away.

A fine equal to one half up to the 10-fold amount of the officially publicized minimum salary in the Republic shall be imposed for the infraction, referred to in Para 1 above, upon the responsible person in the political party.

#### Article 14

A fine equal to one half up to the 10-fold amount of the officially publicized minimum salary in the Republic shall be imposed upon:

- 1) the person who has raised funds contrary to the provision of Article 8 above.

For the infraction referred to in Para 1 above, the benefit obtained by commitment of such infraction shall be taken away.

**Article 15**

The provisions of this Law accordingly apply to the political parties nominating a joint candidate and to the candidate of a group of citizens.

**Article 16**

On the day of this Law being in effect, there expires the validity of the Law on the Financing of Political Parties (Official Gazette of the Republic of Montenegro No.21/93) and Articles 117, 118 and 119 of the Law on the Election of Councilmen and Representatives (Official Gazette of the Republic of Montenegro Nos. 49/92, 16/95 and 21/96).

**Article 17**

This Law shall be in effect on the eight day of the day of its publication in the Official Gazette of the Republic of Montenegro.



## COMMENTARY

### I. CONSTITUTIONAL BASIS FOR PASSING THIS LAW

The constitutional basis for passing this Law is contained in the item 4 of Article 12 of the Constitution of the Republic of Montenegro, stating that the Republic shall regulate by law, under the Constitution, inter alia, matters of interest for the Republic.

### II. REASONS FOR PASSING THIS LAW

The present Law on the Financing of Political Parties was passed in June 1993, after the adoption of the Law on the Election of Councilmen and Representatives, which governed, inter alia, the matters concerning the financing of political parties. It therefore became necessary to regulate the matters of financing the political parties by one law, i.e., to have the financing of political parties governed by the Law on the Financing of Political Parties only. The reason for passing this Law is also intended towards strengthening of political parties with the won political mandates in relation to other political parties, towards more equal treatment of political parties standing for elections, i.e., more equitable allocation of financial resources to these parties, and towards limitation of the portion of funds allocated to election campaign.

### III. EXPLANATION OF BASIC LEGAL INSTITUTES

The text of the Law provides that the budget shall allocate funds for the covering of election campaign expenses only to the parties whose election lists have been approved, and not to the political parties - proposers of election lists, as it has been until now.

Considering the importance of the parties which have their representatives in the Assembly, i.e., greater number of representation seats in relation to the parties with smaller number of seats, the text of the Law provides that the funds provided in the budget should be distributed pro rata, so that the political parties shall be allocated funds proportionately to the total number of their representation seats, and not as in the present Law, equal amounts notwithstanding the number of their representation seats.

With a view to more significant strengthening of the funding for political parties enjoying the trust of a large number of voters, the text of the Law provides distribution of funds to political parties which have their representatives in the Assembly and which have expressed their intention to stand for the elections, to political parties with the won representation mandates proportionately to the number of the won representation mandates in the Assembly in relation to the total number of mandates in the Republican Assembly or the Municipal Assembly.

The text of the Law foresees the possibility that, in addition to the funds from the budget, political parties whose election lists have been approved may themselves raise funds to cover the expenses of election campaign and other pre-election activities.

The text of this Law provides for the restriction of the expenses of election campaign as well as for the making of an agreement among the parties with representatives in the Assembly which shall define the mode of control of the funds spent in the election campaign, with the results of such control beign published in the news media.

The penal clauses have been harmonized with those in the relevant Law on Infractions.

**ANNEX VI: LAW ON PUBLIC INFORMATION (DRAFT)**

## DRAFT VERSION

# PUBLIC INFORMATION ACT

## I BASIC PROVISIONS

### Article 1

With the aim to ensure constitutionally granted freedom of thought and of opinion expressed in public, the freedom of press and other media as well as ensuring the citizens right to be impartially and timely informed about all events and issues that are important both for their living and their work, the Republic of Montenegro (hereinafter referred to as: the Republic) ensures and guarantees the freedom of public information.

Public information freedom is granted at the level of standards comprised in international acts on human rights and freedoms (the United Nations, the OESCE, the European Council, the European Union).

### Article 2

Censorship of the press and other public information media is prohibited. No person shall have the right to unlawfully restrict public information freedom, operation of any public information medium or its representatives or to impose any kind of compulsion as to their activities. The Court shall have authority rule at emergency procedure about any case of violation of public information freedom.

### Article 3

The provisions of this Act define public information activity as any activity of informing citizens by all means of public information media.

The provisions of this Act define Public information as any kind of news reporting that contains a fact, an opinion or a viewpoint which has been made public in a public information medium or in any other way.

Public information freedom comprises the freedom of expressing different opinion, freedom of inquiry, collection, dissemination as well as publicizing and receiving information, a free access to all sources of information and the freedom of setting up the press and broadcasting institutions, agencies and enterprises of any kind of ownership status whatsoever.

### Article 4

Any legal or natural person shall have right to take part in public information service and to be granted equal terms at that.

The Republic is obliged to stimulate and support the diversity of all kinds of public information activities, complexity of ideas and thoughts in public

information and the implementation of modern technologies which enable direct communication with the sources of information both in our country and abroad.

#### Article 5

Public information activities are performed by means of public information media.

By provisions of this Act, the Public information medium is defined as either the press institutions, radio and television broadcasting stations, news agencies or other public information media.

The provisions of this Act prescribe that the Press items shall be defined as newspapers, magazines, periodicals or other periodical and non-periodical publications.

The provisions of this Act prescribe that the Radio and Television Stations shall be defined as broadcasting institutions and companies whose basic business activity is the production and broadcasting of radio and television programs.

The provisions of this Act prescribe that the News Agencies shall be defined as institutions or enterprises which on market terms collect, process and disseminate information to their audience.

The provisions of this Act prescribe that Other Public Information Media shall be defined as printed, audio-visual and other kinds of production and distribution of information intended for the public and done in a way specific for public information media.

#### Article 6

The provisions of this Act prescribe that the News Publishing Activity shall be considered any information collection and processing as well as editing, publishing and distributing newspapers.

The provisions of this Act prescribe that the Broadcasting Activity shall be defined as the production and broadcasting of radio and television programs and building, maintenance and development of the broadcasting network.

The Broadcasting activity is performed by means of the Republican broadcasting network which is developed and functions as a technically linked and integral system.

#### Article 7

Public information mediums are obliged to provide faithful and complete information about all events in compliance with journalist ethics and professional codes.

Public information media are obliged to be respectful of citizens privacy and dignity.

The secrecy of the letter and other means of citizens private communication is considered inviolable and shall not be abused in public information services.

It is prohibited by this Act to publicize an information that was unlawfully obtained (bugging devices, candid cameras, obtained from intelligence services secret files or through the act of thieving or any other kind of abuse).

#### Article 8

Any information at the disposal of the legislative, executive and judiciary authorities as well as of the local authorities and companies and institutions which were granted public authority, shall be available to the journalists at equal terms which are prescribed by regulations defining operational procedures and in compliance with the openness of that source of information to the public.

Authorized person representing the authority as referred to in paragraph 1 of this Article shall provide information regarding its activities at the request of journalists unless this information was declared a secret by provisions of law or any other regulation for the purpose of protecting either public or private interests.

The responsible person shall be held accountable for the accuracy, completeness and timeliness of information he issues.

#### Article 9

The State shall ensure provision of the funds for realization of the citizens right to be informed which is granted by the Constitution and law.

Public information media shall be funded by founders, by funds earned on market and by other funds in accordance with law.

The State shall ensure support for public information activities in languages and alphabets of national and ethnic groups.

The State provides funds as required for making information programs for persons with either sight or hearing disability.

The State financially supports associations of public information services, regardless of their ownership status, in accordance to association agenda.

## Article 10

Public information media provide fulfillment of public interest which is prescribed by law.

The responsibility for supervision of public media activities is entrusted to the Republican public information authority.

Note: Basic provisions of this draft version of the Public Information Act should be made more defined and its norms rationalized in further elaboration of the content of this Act.

## II FOUNDATION, MANAGEMENT, FINANCING, PUBLICIZING, ORGANISATION AND TERMINATION OF PUBLIC INFORMATION MEDIA

### 1. Foundation of Public Information Media

#### Article 11

Public information media services can be founded by any legal entity whatsoever and within all forms of ownership.

Foreign legal entities are not allowed to be founders of public information media.

Foreign legal entity is allowed to invest in a local legal entity which has the status of the founder of public information media unless the invested share entitles it to a majority management share.

#### Article 12

Public information media can be founded freely, without obtaining an approval and shall be registered with the Republican public information authority.

Radio and TV broadcasting stations are founded upon the permit issued by the authority referred to in the paragraph 1 herein which shall define particular technical details related to the use of frequency and compliance with minimum technical conditions prescribed for radio and TV broadcasting.

#### Article 13

Public media are founded by institutions, firms or agencies that are registered in the Press and Broadcasting Register.

Institutions, firms or agencies referred to in the paragraph 1 herein can be founded by any physical or legal entity in compliance with related law.

Political parties, civil associations, religious, educational, cultural, sport, medical and other institutions can found the press media without complying with regular foundation procedure and registration of a firm or institution.

#### Article 14

Public information medium is founded by the Deed of Foundation in compliance with law. The Deed of Foundation of a public information medium comprises the following particulars:

SYMBOL 183 \f "Symbol" \s 12 \h the name of the public information medium

SYMBOL 183 \f "Symbol" \s 12 \h headquarters i.e. main offices of the founder and editor

SYMBOL 183 \f "Symbol" \s 12 \h public information medium's scope of activities

SYMBOL 183 \f "Symbol" \s 12 \h sources and means of financing

SYMBOL 183 \f "Symbol" \s 12 \h rights and obligations of the founder as related to public information medium

SYMBOL 183 \f "Symbol" \s 12 \h medium's managerial bodies, their composition, rules of appointment and powers

SYMBOL 183 \f "Symbol" \s 12 \h name of the editor-in-chief

SYMBOL 183 \f "Symbol" \s 12 \h name of the person authorized for lodging the application for registration into the register of public information media.

#### Article 15

It is prescribed that legal entities which are the founders of the public information media whose activity is a crucial prerequisite for fulfilling constitutional and statutory rights of citizens to be publicly informed are exclusively founded by the state or local authority.

The Deed of Foundation that is proposed by a legal entity as referred to in paragraph 1 of this Article shall be adopted by the Republican Parliament or the assembly of a local authority.

Pursuant to the provisions of the Deed of Foundation as referred to in paragraph 2 of this Article, the legal entity can be granted certain public authority and specific authority in relation to its the internal organization, method of operation, fulfillment of obligations as from its reference, status changes etc. when this is considered crucial for satisfying public interest.

The state can opt for taking measures for safeguarding public interest in the legal entity referred to in paragraph 1 herein, in compliance with law.

#### Article 16

Prior to putting the public information medium into operation, the founder is obliged to lodge an application for registration into the register of public information media to the Republican public information authority.



The application for registration into the register of public information media shall be lodged by an authorized person. The documents required by provisions set out in this Act and in other regulations shall be enclosed with the application.

The registration procedure and the record keeping protocol are defined by the Republican public information authority.

#### Article 17

Republican public information authority is obliged to perform the registration of the applicant information medium into the register of public information media subject to fulfillment of prescribed requirements for foundation of the public information medium and to notify the founder hereof not later than 15 days upon the receipt of the application.

If the authority referred to in the paragraph 1 of this Article fails to notify the founder hereof within 15 days upon the receipt of the application, the registration of the medium shall be considered completed.

Public information medium acquires the status of a legal entity by its registration into the register of public information media i.e. by expiration of the deadline as defined in the paragraph 2 of this Article.

#### Article 18

The founder, i.e. editor of the public information medium, is obliged to notify to the Republican public information authority about any amendment to the provisions set out in the Deed of Foundation or about a termination of the public information medium in a written notice that shall be forwarded to it not later than 15 days upon modifications being made.

#### Article 19

Public information medium shall be removed from the register of public information media if :

it fails to set off its activities of publishing, radio and TV broadcasting or news servicing, within 6 months upon its registration into the register of public information media.

it terminates its activities of publishing, radio and TV broadcasting or news servicing for a period exceeding 6 months.

its distribution was at least twice suspended by judicial decision

## 2. Management of Public Information Medium

#### Article 20

This Act, the Deed of Foundation and mediums general by-law prescribe a management model for a related public information medium.

The legal entity founded by the state or a local authority, which is also the founder of a public medium by means of which public interest related to information is ensured, shall have the following managing bodies:

Board of Directors, Supervisory Board, Program Policy Board and director.

The provisions of this Act, the Deed of Foundation and general by-law of a public information medium define competencies, powers (mandate), composition and a method of work as well as the decision-making policy of the Board of Directors, Supervisory Board, Program Policy Board and the director of the subject legal entity.

Representatives of the staff employed in a legal entity that is a founder of a public information medium shall take part in management activities by terms and conditions as set out both in this Act and the Foundation Deed.

#### Article 21

The Board of Directors of the legal entity as referred to in Article 21 of this Act, founded either by the state or a local authority, shall be appointed and dissolved by the Parliament.

The Board of Directors comprises eleven appointed members. Seven of these are appointed by the Parliament proportionately to a party's representation therein, other two members represent the employees while other two are appointed by the Government of the Republic of Montenegro or, if relevant, by the executive body of a local authority

The Board of Directors decides by simple majority of votes and shall have a four-year term of office.

The Board of Directors shall perform activities as set out in a specific act that prescribes public enterprise activities and by provisions of the Deed of Foundation and a medium's regulations.

#### Article 22

Supervisory Board of a legal entity as referred to in Article 20 of this Act shall be appointed and dismissed by the Parliament for four-year term of office and at the proposal of the Government of the Republic of Montenegro or of a related executive local authority. Supervisory Board has three appointed members, at least, and these are nominated in capacity of economic experts in business management.

#### Article 23

The Supervisory Board is mandated with supervisory activities as to control the lawfulness of managerial activities.

The Deed of Foundation and mediums general by-law define more closely the mandate and activities of the Supervisory Board.

Supervisory Board is obliged to make a report on mediums material-financial dealings at the founders request and at least once a year , when program policy of the public information medium is formulated.

The report as defined in the previous paragraph shall obligatorily be forwarded for consideration of the budget proposer of the Republican government or local authority.

#### Article 24

Public mediums Program Policy Board is appointed by the Parliament to a four-year term of office.

Program Policy Board consists of one representative from each political party that is represented in the Republican Parliament i.e. in the assembly of a local authority if relevant.

Within the mandate of the Program Policy Board, a party can withdraw its representative from the Board and appoint a new one.

The Program Policy Board formulates the program policy of a public information medium and continuously analyses its implementation as well as supervises the mediums activities in terms of ensuring freedom of public information and considers claims of parliamentary parties, citizens and journalists against the mediums work.

The Program Policy Board renders decisions on proposal and implementation of mediums program policy and on the election of the editor-in-chief by two-thirds majority of votes.

If the Program Policy Board finds that editor-in-chief failed to comply with adopted program policy, it shall forward a proposal to the Board of directors as to his dismissal by the emergency procedure.

The founder shall dismiss the Board of Directors if it does not act at the request of the Program Policy Board as referred to in the paragraph hereinbefore.

#### Article 25

Director of the legal entity as defined in Article 20 of this Act shall be appointed by the Board of Directors after an open competition called and to a four-year term of office.

Candidates for the post of a director are obliged to submit their development programs for an enterprise, institution or agency incorporating established program policy of a related public information medium.

The Board of Directors is obliged to reconsider directors accountability at the request of Supervisory Body.

The founder shall dismiss the Board of Directors if it fails to act on the request of Supervisory Body.

Note: There is an actual proposal suggesting that the director of a company which is the founder of a public information media is appointed by the Government of the R. of M. However, the Information Secretariat favors the procedure as prescribed in this draft Act since the Government directly controls directors work through activities of Supervisory Board.

Financing a public information medium

#### Article 26

The Legal entity which is a founder of a public information media can generate its income from: user fees, production/trade of goods, offering services, interests and dividends from invested funds, income yielded from author rights and patents, legacies, presents and endowments, citizens contributions and other income sources that comply with provisions of law.

#### Article 27

The legal entity from Article 20 of this Act is entitled to budgetary funds subject to adoption of the action program by its the Board of Directors.

Action program prescribes type, scope and quality of products and services offered and their economically reasonable price i.e. it sets out elements for assigning the prices which shall ensure duration, stability and quality of information services.

Program Policy Board and Supervisory Board give their opinion about Action program in written form.

Action Program has to be approved by the Government of Montenegro i.e. executive local authority by the end of November at latest for the subsequent year.

#### Article 28

Radio and television broadcasting stations can introduce a user fee for their programs.

The general by-law of a radio and television station, which is adopted upon the approval by Republican public information authority, sets out terms, amounts, distribution and use of the funds as referred to the line 1 of this Article.

#### Article 29

If a legal entity which was founded by the State i.e. local authority and itself a founder of a public information medium which caters for satisfying public interest in field of information, reports a loss in its annual balance sheet – founder is free to decide whether to keep on pursuing its public interest

through that medium and to provide funds for loss covering unless the loss was incurred by uneconomical and misdirected utilization of provided funds.

In case that founder chooses to decline services of a public information medium as referred to in line 1 of this Article, in pursuit of its public interest, it shall cover for the losses incurred in the course of mediums operation i.e. in time when the medium was satisfying established public interest. Hereupon, liquidation or bankruptcy proceeding is instituted on the legal entity which is a founder of the said medium.

## Publishing & Broadcasting

### Article 30

Public informations publisher/broadcaster as to the provisions of this Act shall be any legal entity or natural person which publicizes public information medium through which it completely or partially provides material and other conditions for mediums publicizing activities.

If a founder is not a publisher/broadcaster of a public information medium, their common rights, obligations and responsibilities shall be defined by some other contractual act.

### Article 31

Each published newspaper copy shall bear the following designations: name and address of founder and publisher, the name of the press plant, name and surname of the editor-in-chief, registration number and date, place and year of publishing or copying.

The paragraph 1 of this Article does not refer to printing and coping services ordered by a foreign customer for the purpose of being circulated abroad.

Radio and television programs shall bear the following designations: name of radio/television broadcasting station, title of the program, name and surname of the editor-in-chief.

### Article 32

Printing plant or a publisher of the printing edition that was not printed in the referred printing plant are obliged to promptly deliver first copies of each edition to a competent public prosecutor, the Council for Protecting Freedom of the Press and to the Republic public information authority.

## 5. Editing of the Public Information Media

### Article 33

Program policy, method of work, rights and liabilities related to editing a public information media are performed by each medium freely and in compliance with the law and their respective deeds of foundation.

Program policy of a public information media must not aim at: violent destruction of the constitutional order, violating territorial integrity, infringement of constitutionally granted human and civil freedoms or rights neither rousing racial or religious intolerance/hatred.

### Article 34

The Republican Parliament, or a local authority if relevant, shall establish program policy of a public information medium by means of which the State or a local authority pursues assurance of the public interest in field of information. It shall rely on a proposal submitted by the Program Policy Board and the opinion of the Republican information authority.

### Article 35

Program policy of public information medium as referred to in Article 34 hereinbefore shall be formulated by the end of November of a current year with its reference to subsequent year and it is also prescribed that at the request by the Parliament and minimum once a year, the Parliament is reported on realization of the program policy.

If Program Policy Board fails to submit its program policy proposal by the deadline referred to in paragraph 1 of this Article or its report on realization of the program policy is not approved, it shall be dissolved by the founder by the emergency procedure.

### Article 36

Public information medium has its editor-in-chief.

It is prescribed by this Act that editor-in-chief shall be held accountable for any information whatsoever provided by a public information medium.

Public information medium can have more than one editor who are in charge of editing a particular issue or column or particular radio or television program and who are appointed by editor-in-chief and supported by approval on the part of Program Policy Board.

Editor-in-chief is obliged to submit a program policy proposal to the Program Policy Board by the end of October each year, with its reference to subsequent year.

#### Article 37

Editor-in-chief of a public information medium by means of which the State, or a local authority if relevant, pursues assurance of its public interest in terms of information, shall be appointed by the medium founders Board of Directors and at a proposal by the Program Policy Board. The Board of Directors shall render decision by simple majority of votes and after the completion of the open competition procedure.

Nominees for the post of editor-in-chief who apply to competition are obliged to enclose with application a copy of their own editorial agenda referring to relevant public information media.

#### Termination of Public Information Medium

#### Article 38

Public information medium shall be terminated upon the decision rendered by the founder of a relevant public information medium.

The decision referred to in paragraph 1 of this Article shall be notified to Republican information authority for the purpose of its removal from the register of public information media, not later than 8 days upon adjudication of this decision.

#### Article 39

Public information medium shall be terminated without decision of its founder if within six-month period founder or publisher/broadcaster fails to publish a new periodical or newspaper issue or does not broadcast radio, television or news service programs.

Republican information authority shall remove from the register any medium that discontinues its operation as by the definition of paragraph 1 of this Article.

### III JOURNALISTS RIGHTS AND OBLIGATIONS

#### Article 40

Journalists rights and obligations are prescribed by general by-laws of relevant public information medium in compliance with law, collective agreement and codes of journalism.

Any journalist is entitled to express his viewpoint as regarding any events or phenomena whatsoever and he shall not be dismissed from his job, lose his position in editorial board or have his salary reduced on the grounds of his opinion expressed.

#### Article 41

Any journalist has a right to refuse writing, preparation or making contribution for an article/reporting the content of which violates provisions of law and codes of journalism.

A journalist who refuses to carry out an order that would infringe law or codes of journalism shall not be dismissed from his job, lose his position in editorial board or has his salary reduced.

#### Article 42

A journalist is not obliged to notify to government authorities or local authorities as to the source of information that was publicize, if the source of information demanded to remain unknown.

Any news item whose content was changed through editing procedure shall not be made public by either authors name or his pseudonym prior to a consent obtained from the author.

Editor-in-chief shall be held accountable for publicizing news items contrary to provisions of paragraph 2 of this Article.

Any author is entitled to claim damage for his reputation tarnished as to his news item being published/broadcast contrary to provisions of paragraph 2 of this Article.

### IV PUBLICIZING STATEMENTS, RESPONSES, CORRECTIONS AND OPINION

#### Article 43

Upon the request of a competent state authority, public information medium by means of which the state pursues the assurance of its interest in domain of information is obliged to promptly and in its authentic length publicize a statement on facts that are considered urgent and particularly important for citizens and legal entities and which statement refers to a threat to peoples lives and health, their property and the countrys defense and security.

#### Article 44

Each physical person or legal entity is entitled to give a statement or correction in case a publicized information violated his right or interest.

Editor-in-chief is obliged to publicize a statement or correction to the information that was made public.



#### Article 45

Response or correction as by provisions set out herein shall be defined as any information which in terms of completeness and authenticity supplements the facts and data that are a part of publicized information.

Response or correction shall be publicized without any modification of supplement and in the same column i.e. television/radio program which publicized the information addressed to in the response or correction. It shall be published in the second issue of the related press issuer and in the first or in second next radio/TV broadcast program at latest after receipt of the response or correction.

It shall not be allowed to publicize information and a related commentary or correction at the same time.

#### Article 46

If an editor-in-chief declines to publicize a response or a correction of an incorrect information the publication of which violated someones right or interest while he opts for publicizing a commentary to the response or correction without duly and timely presentation of correction as to provisions of this Act – submitter of a response or correction shall be fully entitled to institute a law suit at a competent court with territorial jurisdiction in the area of the mediums headquarters or residence of a submitter of the response/correction.

If the law suit is upheld, the court shall by its decision order editor-in-chief to publicize response or correction as prescribed by Article 45 of this Act i.e. in the first or at latest second issue of related press and in the first or at latest in the second next radio/TV program after the receipt of a valid court decision.

#### Article 47

Proceedings of the law suit for publicizing response or correction is urgent. Correction and response are publicized free of any charge.

#### Article 48

Editor-in-chief is not obliged to publicize a response or correction if:  
a response or correction does not refer to the subject information or if neither of them contains true data referring to publicized information;  
a response or correction contests the content of a publicized information which was verified by a valid decision of a competent authority.  
a response or correction was submitted by an unauthorized person or if a person who submitted correction or response failed to put down his identity card number and residential address on it.

a response or correction disproportionately exceeds the length of a related information and a submitter thereof fails to observe the written claim of the editor-in-chief requesting appropriate shortening of the response or correction.

#### Article 49

Public information medium is obliged to keep all texts and information recordings for minimum 7 days upon their publication and to make them available to persons who can claim their right on correction or response by provisions of this Act.

A public information medium is obliged to forward texts and information recordings to the Republican information authority, upon its written request, to for the purpose of instituting administrative-supervisory measures.

### V POLITICAL PARTIES RIGHTS IN RELATION TO PUBLIC INFORMATION SERVICES

#### Article 50

Editorial policy of the public information media by means of which the state or local authorities pursue assurance of the public interest in field of information is non-party and impartial policy which reflects the entire palette of political thoughts, stimulates pluralism of ideas and ensures equitable and efficient access to all political parties that are represented in the Republican Parliament or in local authorities.

#### Article 51

Public information media by means of which the state or local authorities pursue assurance of the public interest in field of information are obliged to ensure impartial reporting on political parties viewpoints and activities in their programs and in compliance with the rules that are formulated by their program policy boards as well as to provide direct coverage of the Republican Parliaments sessions or sessions of the assemblies of local authorities, subject to their decisions as to this.

In case of nonobservance of this Article, Program Policy Board shall propose dismissal from the office of a mediums editor-in-chief.

#### Article 52

Fulfillment of political parties rights as regarding public information media in times of electoral promotions shall be prescribed by a special regulation formulated and passed by mediums founder and the implementation of which shall be supervised by the Program Policy Boards.

## VI RESPONSIBILITIES IN RELATION TO PUBLIC INFORMATION

### Article 53

The Editor-in-chief is responsible for implementation of a mediums program policy.

The Editor-in-chief is responsible for any publicized information unless the information was publicized upon the request of a competent authority.

If Republican information authority finds that editor-in-chief violates provisions of this Act, it is entitled to propose the action for calling him to account after a notification forwarded to the Program Policy Board.

### Article 54

Any person who issues information i.e. the author shall be accountable for authenticity of publicized information.

If a public information medium publicizes information that may harm reputation or interest of a person it refers to or which insults the honor and respectability of that person, gives or transmits a false information about his private life, education or abilities, or in some other way harms his dignity – a person concerned has full right to institute a law suit for claiming damages against author, editor-in-chief, founder or public information medium at a court of the relevant jurisdiction.

## VII DISTRIBUTION BAN ON PRESS AND OTHER PUBLIC INFORMATION MEDIA

### Article 55

Distribution of the press and other public information media shall be banned exclusively by judicial decision if the findings substantiate that media call for violent disintegration of constitutional order or territorial integrity of the Republic of Montenegro and of the Federal Republic of Yugoslavia, violation of statutory freedoms and rights or rouse national, racial or religious hatred and intolerance.

Competent prosecutor is entitled to propose a measure of temporary ban on distribution of the press and other public information media exclusively subject to substantiating the grounds for initiating criminal proceedings for criminal act officially (ex-officio) prosecuted.

The decision on placing temporary ban on the distribution of the press and other public information shall be ruled by a competent court at a proposal of the competent prosecutor and within a 12 hour – deadline from the receipt of the proposal.

#### Article 56

Competent court is obliged to forward decision on temporary banning the distribution of the press and other public information to founder and editor-in-chief or to printing plant, and also enclosing therewith the order that suspends distribution of the press or dissemination of information by means of other media prior to rendering absolute decree is rendered.

Court shall order Republican internal affairs authority that all published items or other medias news items be temporarily taken away and dispatched to the court deposit archives or sealed.

#### Article 57

Upon the proposal for placing a ban on the press and other media distribution forwarded by competent prosecutor (hereinafter referred to as: the proposal), court shall summon a hearing not later than three days after receipt of the proposal.

In proceedings initiated upon the proposal, court is entitled to carry out hearing procedure and rule a decision even if the parties to the proceedings, duly summoned, fail to appear at hearings whereof the parties shall be explicitly warned in the wording of summons writ.

#### Article 58

If the court overrules a proposal or annuls the decision on placing a temporary ban, it shall be ordered that all copies of the press or any news item of other media that were taken away or sealed are given back or unsealed within 12 hours.

The appeal of the competent prosecutor against the court decision referred to in paragraph 1 of this Article does not suspend its execution.

#### Article 59

If the court overrules a proposal, the injured party shall be entitled to reimbursement for the damage incurred by groundless temporary ban and this shall be claimed with competent court through a lawsuit.

Court shall act on the proposal by promptly ruling after hearing procedure is over and it shall publicize the decision.

#### Article 60

A decision of a first instance court ruling upon the proposal by competent prosecutor can be appealed to a competent court of second instance within three days from forwarding a copy of the decision.

An appeal shall not be forwarded for being replied to.

#### Article 61

The first instance court shall forward an appeal that is considered a timely and founded one to the second instance court together with all procedural documents within 2 days upon the receipt of the appeal.

The second instance court is entitled to summon and hear any party.

The second instance court is obliged to rule on the appeal within two days upon the receipt of the appeal and relevant procedural documents.

An appeal is excluded against the decision of the second instance court.

#### Article 62

Unless this Act prescribes otherwise, proceedings instituted on the proposal for banning distribution of press and other media shall be governed by relevant provisions of the Act of Criminal Proceedings.

### VII RADIO BROADCASTING NETWORK

#### Article 63

As to the provisions of this Act, the broadcasting activity shall be considered as any radio or television production and broadcasting activity by means of radio-relay, ground, cable and satellite transmission as well as of ground or cable distribution systems.

Radio broadcasting shall be performed over the Republican radio broadcasting network which shall be built and operated as an integrated and compatible system.

#### Article 64

Production, broadcasting and transmission of radio and television programs that are intended for public reception and aimed at fulfillment of their constitutional and statutory rights in terms of being publicly informed and also at catering for their cultural, educational and other needs, shall be carried out within the Republican radio broadcasting network.

The Republican radio broadcasting network that broadcasts program of the public information media by means of which the state or local authorities pursue assurance of public interest is the public property and shall be assigned the status of a national interest.

#### Article 65

Radio and television broadcasting stations as to the provisions of this Act shall be considered as any broadcasting institution or enterprise whose basic activity is production and broadcasting of radio and television program.

The broadcasting license for setting up a radio or television station shall be granted by the Republican public information authority to any legal entity

which is a founder of a public information medium subject to fulfillment of the following requirements:

obtaining license for radio frequency granted pursuant to regulations on telecommunication links;

satisfying minimum technical conditions for radio and television broadcasting;

Minimum technical conditions for radio and television broadcasting shall be prescribed by the Republican public information authority.

#### Article 66

Radio broadcasting frequencies, being a state-owned resource, shall be leased to any legal entity that has a broadcasting license subject to conclusion of a special contract between the Government of the Republic of Montenegro and a related legal entity licensed for broadcasting activities.

Radio broadcasting frequencies as referred to in paragraph 1 of this Article shall be considered as frequencies designated for transmission of broadcast programs on the basis of international treaties and regulations effective in the Republic and in the Federal Republic of Yugoslavia.

Broadcasting frequency lease shall be duly charged for.

The price and terms for broadcasting frequency lease shall be prescribed by the Government of the Republic of Montenegro.

#### Article 67

Radio and television broadcasting stations are entitled to create and broadcast programs, built, develop and maintain their technical capacities and to develop market-oriented production of programs, video and audio cassettes, broadcasting of commercials and other activities in compliance with law.

#### Article 68

Radio and television broadcasting stations are obliged to comply with regulations on telecommunication and related international treaties effective in the territory of the Federal Republic of Yugoslavia.

#### Article 69

Legal entities that are founders of radio or television broadcasting stations are entitled to broadcast programs of other radio or television broadcasting centers in addition to their own ones.

Two or more legal entities are free to arrange for joint production and broadcasting of the programs.

Mutual relations of the legal entities referred to in paragraphs 1 and 2 are defined by a relevant contract.

#### Article 70

Broadcasting network is an integral entity in terms of its technical-technological properties.

Legal entities that are founded by a local authority and which themselves are founders of radio or television broadcasting stations shall adjust their programs time schedule to those broadcast by radio or television stations founded by the state.

If any radio or television broadcasting station, referred to in paragraph 2 of this Article, fails to adjust its program time schedule, the Republic information authority shall render a decision for its temporary adjustment.

#### Article 71

With a view to providing public with information and direct influence on the program structuring, radio and television broadcasting stations are obliged to timely publicize their daily and weekly program schedules.

### IX THE COUNCIL FOR PROTECTING FREEDOM OF PUBLIC INFORMATION

#### Article 72

Considering the need for protecting freedom of public information, and particularly catering for citizens right on an authentic and integral information i.e. ensure terms for responsible activities of all persons that participate in public information, the Council for Protecting freedom of Public Information (hereinafter referred to as the Council) is set up.

The Council shall consist of the chairman and eleven members to it.

The Chairman and seven members to the Council shall be appointed by the Parliament proportionately to parties representations therein, and other ones each by the President, the Government, University of Montenegro and Montenegrin Academy of Science and Arts respectively.

The Chairman and members to the Council shall be appointed to the four year term of office.

The Method for the Council activities shall be set out in the Regulation on Council Operation.

#### Article 73

The Council shall make analyses and monitor activities of the press, and broadcasting media, movie production and news services and shall propose to the Parliament and other authorities measures to be taken with the aim to

protect and promote freedom of public information and pursue assurance of public interest.

In its terms of reference as set out in paragraph 1 of this Article, the Council particularly considers and adjudicates the following issues:

objections put forward by citizens and legal entities as regards information publicized by public information media;

objections put forward by journalists and publishers as to any action on the part of either state or local authority which infringes public information freedom;

objections put forward by journalists as to any action on the part of either state or local authority acting as the source of information;

objections put forward by journalist, editor or journalist association to any action on the part of founder or publisher/broadcaster of a public information medium as regards freedom of thought.

#### Article 74

The proposals forwarded by the Council shall be considered and adjudicated by the Parliament, competent state authorities or relevant local authority.

Public information media are obliged to publicize free of charge any statement of the Council related to their work.

The Republic shall provide conditions required for the Councils operation.

The Republican public information authority shall perform administrative and other services for the Council.

Note: The work team has suggested reconsideration of relevance of this Councils further existence.

### X ADMINISTRATIVE SUPERVISION OF PUBLIC INFORMATION MEDIA

#### Article 75

The supervision on fulfillment of statutory requirements prescribed for setting up a public information media and on lawfulness of their activities shall be conducted by the Republican public information authority.

#### Article 76

If the authority as referred to in Article 75 herein determines that a public information medium does not fulfill requirements for setting into operation or resuming its activities or that it fails to observe the law, other regulations and by-laws – it shall order a deadline for remedial activities and inform the founder hereon.



If a public information medium fails to timely take remedial activities for deficiencies, the authority as referred to in paragraph 1 of this Article shall render decision on banning its further operation and notify the founder hereon.

## XI PENAL PROVISIONS

### Article 77

A fine in the amount from fifty-fold to hundred-fold minimum salary in the Republic shall be imposed on a founder of publisher/broadcaster for infraction of law if:

a public information medium is set into operation prior to its registration or expiration of the registration deadline (Article 17);

a modification to the Deed of Foundation is not duly notified to the Republican public information authority (Article 18);

any copy of the press or any radio/television news item is not duly designated (Article 31);

upon its termination, a public information medium fails to duly notify the Republican public information authority with a view of mediums removal from the register.

The infraction as set out in line (1) herein shall be sanctioned on the authorized person of founder or publisher/broadcaster and chargeable from ten-fold to twenty-fold average salary in the Republic.

### Article 78

A fine chargeable from ten-fold to twenty-fold amount of minimum salary in the Republic or 60 prison sentence alternatively shall be imposed on founder of publisher/broadcaster for the infraction of the law if:

upon the request of competent state authority, the medium fails to promptly and authentically publicize a statement in terms of provisions set out in Article 43 herein;

it does not inform about viewpoints and activities of political parties in terms of provisions set out in Article 51 herein.

The infraction as set out in line (1) herein shall be sanctioned on the founder or publisher/broadcaster chargeable from hundred-fold to three-hundred-fold minimum salary in the Republic.

### Article 79

A fine chargeable from ten-fold to twenty-fold amount of minimum salary in the Republic or 30 prison sentence alternatively shall be imposed on founder of publisher/broadcaster for infraction of law if:

by provisions as set out by this Act, he fails to publicize a response or correction to the information that was previously publicized and which violates someones right or interest (Article 44 and 45);  
if commentary to response or correction is publicized at the same time as the referred response or correction (Article 46);

The infraction as set out in line (1) herein shall be sanctioned on the founder or publisher/broadcaster chargeable in the amount of fifty-fold to hundred-fold minimum salary in the Republic.

#### Article 80

A fine in the amount of ten-fold to twenty-fold amount of minimum salary in the Republic or 60 days of prison sentence alternatively shall be imposed on the author or a person who gives a false information or untruthfully disseminates it with a purpose of publicizing it in public information media. (Article 54).

#### Article 81

Fine in the amount of twenty-fold to hundred-fold minimum salary in the Republic shall be imposed on the printing press or the publisher of the news item that was not printed in referred printing plant, if it fails to forward to the Republican public information authority one copy from the first copies of each printed item (Article 32).

The infraction as set out in paragraph (1) herein shall be also sanctioned on the authorized person of the printing plant or of publisher for items not printed in the referred printing plant, chargeable in the amount of ten-fold to twenty-fold minimum salary in the Republic.

## XII TRANSITIONAL AND FINAL PROVISIONS

#### Article 82

On the day of coming into effect of this Act, public information media shall continue their work under terms and conditions as prescribed on their registration into the register of public information media, while they are obliged to perform procedure of restructuring their organization model and rewriting their general by-laws in compliance with provisions of this Act within 60 days of the date of its coming into effect.

#### Article 83

Procedure of appointing managerial bodies of legal entities founded by the state or a local authority which are founders of public information media by means of which the state or a local authority pursues assertion of public

interest, shall be performed within 60 days from the date of coming into effect of this Act.

Directors and editor-in- chiefs as referred to in paragraph 1 of this Article shall be appointed within 60 days from the date of coming into effect of this Act.

#### Article 84

The Republican Parliament or assemblies of local authorities shall pass their respective regulations on political parties rights in public information media in terms of election campaign within sixty days from the date of coming into effect of this Act.

Regulations for enforcement of this Act shall be enacted within 30 days from the date of coming into effect of this Act.

#### Article 85

The Public Information Act (“Official Gazette of the Republic of Montenegro”, No. 56/93) as well as the statutory provisions and other regulations that are contrary to provisions of this Act shall become inoperative on the day of coming into effect of this Act.

#### Article 86

This Act shall come into effect on the day of its publication in the Official Gazette of the Republic of Montenegro.

Note: The section: Transitional and Final Provisions prescribes deadlines for appointment of managerial bodies as well as the procedure of making organization and other general by-laws with this Act – which should be discussed and agreed on separately.

Public Information Act

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**ANNEX VII: AGREEMENT ON MINIMUM PRINCIPLES FOR THE  
DEVELOPMENT OF DEMOCRATIC INFRASTRUCTURE**

**Convinced that further democratic reforms are a necessary prerequisite for the establishment of Montenegro as a free and open civic society, and that the current political crisis can seriously undermine the process of democratisation and for a long period render impossible Montenegro's integration into the community of democratic nations,**

**Aware of the sensitivity, import and significance of the historic moment, as well as of the responsibility and obligations to ensure, for the citizens they represent and future generations, peace and the conditions for a prosperous life,**

**Firmly committed and resolved to seek to overcome the crisis by accelerating democratic processes on the basis of a consensus of all the democratic, political and social forces on democratic values recognised by the civilised world,**

**Fully respecting mutual political differences and the autonomy of party programmes,**

**presidents of the parties represented in the Assembly of Montenegro and the Assembly of FRY, as well as representatives of the Government of the Republic of Montenegro, have concluded**

## **A G R E E M E N T**

**on the minimum of principles for the development of democratic infrastructure in Montenegro**

**1. The Signatories to this Agreement agree that in order to overcome the current crisis and create the conditions for a lasting stabilisation of democratic processes in Montenegro it is necessary to accomplish the following:**

**a) Ensure civic peace and security and prevent any form of political manipulation with regional, religious, ethnic, ideological, historical and other differences and divisions. In that regard the signatories will, through their activities, affirm the spirit of tolerance, compromise, respect for differences and discussion as methods for resolving all social and political issues and they consider this their permanent task.**

**b) Accelerate the process of democratisation. In that context the Signatories reaffirm their commitment that preparations for free, fair and democratic parliamentary elections would be made and that such elections would be held at the latest by the end of May 1998, including their commitment to shortening the term of office of the assembly in such a way as to ensure the continuity of its work until the elections are held. In order that the elections should be properly prepared the following activities should be taken:**

**- intensify the work of an all-party task force aimed at upgrading the law on election of deputies and councillors, the law on information, the law on the financing of political parties and the law on voting registers. The upgrading of the above legislation should be aimed at: making sure that all the voters have the opportunity to cast their ballot freely; establishment of a proportional voting system (Montenegro - one electoral unit, modified so as to ensure adequate representation of the Albanians in the Assembly of Montenegro); improvement of mechanisms of control of the election process and election results; further democratisation of the state-owned news media and ensuring equal access to the media for all the participants in the elections; ensuring fair financing of the parties and public control of their revenue; ensuring up-to-dateness, accuracy and accessibility of voting registers, as well as other conditions which the signatories shall consider as a contribution to the democratic quality of the election process,**

- the legislation should be ready by the end of September and should be passed at the first sitting of the regular autumnal session of the Assembly. The adopted solutions should be enforced without delay, in particular those related to the election of the new managing bodies and editorial teams of the state-owned news media, up-to-dateness of the voting registers and financing of the political parties.

The Signatories have agreed that the Government and state bodies should extend an invitation to the OSCE to monitor all the activities related to preparations for and carrying out of the elections.

c) Affirm the rule of law and the professionalism of government and judicial apparatus, in particular in the field protection of the social and state property and ownership rights. The signatories agree that the mechanism of parliamentary control over the exercise of power should be affirmed and that the transparency and openness of the work of state bodies should be enhanced.

d) The property which was utilised by the former League of Communists and other political entities from that period and which had been financed from the state sources, is to be placed under the regime of state ownership and its economic and equitable use by political and social entities is to be ensured. By the end of the current year the Government is to make an inventory and disclose the condition of such property and the Assembly is to promulgate enactments regulating its legal status and mode of utilisation.

e) Review the organisation of the state along the lines of requests for its decentralisation, affirmation of local self-government and its stable financing. In that context the territorial organisation of Montenegro in terms of requests for the establishment of new municipalities should be reconsidered, too. The Signatories believe that the work on such tasks is of a more long-term character and that it is best that it be carried out through the competent ministries, with an active participation of representatives of local communities.

f) Accelerate the process of privatisation taking account in particular of its social component and equitableness and within that framework examine the realistic possibilities of denationalisation. The Signatories agree that a speedy, controlled and fair privatisation, as well as a possible denationalisation, represent an important condition for the establishment of a sound economic system and social security. The existing legal solutions are open to new privatisation models and control over the privatisation process shall include also the Assembly and independent professional associations, both local and foreign.

g) Enhance the protection of human rights and in particular the rights of the minorities, including the protection mechanisms provided for by the Constitution. In that context particular attention should be given to an adequate definition of the position, protection of rights of the minority peoples and the exercise of their equal treatment in Montenegro. The protection of human rights and the achievement of ethnic and religious harmony are regarded by the Signatories as an extremely important prerequisite for lasting stability and stable democracy in Montenegro. The Signatories agree that these are sensitive matters which require a caution, patient and tolerant work. In that regard an analysis of the past practice will be started without delay, as well as an exchange of opinions on all the outstanding issues through all the suitable forms and institutions (dialogue, round table discussions, symposia, news media, scientific and scholarly institutions, non-governmental organisations etc.) and the issue of amendments to the Constitution in this field will be addressed on the basis of a democratic consensus of all the relevant political entities.

2. The agreed principles and the deadlines for their implementation are deemed by the Signatories to represent a minimum and the Signatories undertake to ensure that they are consistently complied with.

3. The Signatories undertake to ensure, through their representatives in the state bodies, the implementation of the above, including a possibility of formation of a multiparty government.

4. The Signatories agree that the implementation of this Agreement shall be monitored by the respective presidents of the parties or their authorised representatives.

5. The Signatories make a solemn pledge to implement this Agreement in good faith and in mutual trust.

#### **SIGNATORIES TO THE AGREEMENT**

**DEMOCRATIC PARTY OF SOCIALISTS OF MONTENEGRO**

**Dr Milica Pejanović-Đurišić**

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**PEOPLE'S PARTY**

**Dr Novak Kilibarda**

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**LIBERAL ALLIANCE OF MONTENEGRO**

**Slavko Perović**

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**DEMOCRATIC ACTION PARTY FOR MONTENEGRO**

**Harun Hadžić**

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**DEMOCRATIC LEAGUE IN MONTENEGRO**

**Mehmet Bardhi**

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**DEMOCRATIC UNION OF ALBANIANS**

**Bajram Redža**

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**SOCIAL-DEMOCRATIC PARTY OF MONTENEGRO**

**Žarko Rakčević**

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**GOVERNMENT OF THE REPUBLIC OF MONTENEGRO**

**Milo Đukanović**

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## **ANNEX VIII: IFES ADMINISTRATIVE ANALYSIS**



## **PRELIMINARY ADMINISTRATIVE REVIEW**

Law on Election of Councilors and Representatives  
The Republic of Montenegro

*Prepared by Catherine Barnes for IFES  
December 1997*

### **INTRODUCTION**

The Government and legislature of Montenegro should be commended for their commitment to bring the country's political and election related legislation into conformity with democratic practices and norms. Evidence of this effort can be found in the formation of the multi-party working group and the "Agreement on Minimal Principles for the Development of Democratic Infrastructure in Montenegro." At the same time, it should be recognized that the very real political pressures to hold new legislative elections by May significantly compress the timeframe in which modifications to existing legislation and the drafting of new laws can be thoroughly considered and aired to public debate. While a substantial overhaul of the electoral system is probably required, the working group may want to focus in the immediate term on priority issues such as the system of representation to be employed, including adjustments to accommodate the Albanian minority, and on issues which proved problematic in the recent presidential elections, such as disenfranchisement of voters due to inaccuracies in voter registries, qualification of nominating entities (submitters of electoral lists) for the ballot, the adjudication of grievances process, and the integrity of election results.

A more exhaustive review of the practical experience of presidential and parliamentary electoral process can and should be undertaken after the elections with the intent of further refining legislation. In particular, the laws require significantly more detail to adequately guide participants in the election campaign, those tasked with administering it, and those responsible for adjudicating complaints. Currently, there is simply not sufficient substance to the laws to assist political parties and candidate organizations, election commissions, and the courts in making crucial decisions required of the campaigns and election process. Similarly, the potentially short the campaign and extremely taut timetables in the law for all phases of the administrative and judicial process are not realistic and may actually serve to undermine the democratic nature of elections. While the involvement of the multi-party working group brings a positive diversification of views to the election reform process, any exhaustive review and subsequent amendment or redrafting process should include the input of practitioners in the field, in particular election officials, if not members of the legal and judicial community.

Also with respect to the working group, it would be advised that its two "sub-groups," the one tasked with revisions to the election law and the law on voter registries and the other on the political party financing law and public information law establish some sore of routine interface to undertake a comparative review of all proposed legislation. This essential to ensure that consistent terminology and requirements as well as compatible timetables are applied. A cursory review of the four pieces of legislation suggests that such a review is greatly needed and that further modifications will be required.

## BASIC PROVISIONS

- ◆ Absent codification of all election-related legislation, consideration should be given to breaking out provisions pertaining to the election of municipal legislatures and incorporating them into stand-alone legislation. Similarly, all articles of the Law on Election of Representatives that apply to the Election of the President of the Republic of Montenegro should be fully incorporated into the latter.
- ◆ In addition to establishing the scope of this Federal Law, Article 1 should reference the Constitutional basis for guarantees of voter's rights and conduct of elections. If this Federal Law is to serve as the foundation law, language might also be included that "in compliance with the Constitution of the Republic of Montenegro, other statutory legal acts of legislative bodies shall not contradict this law."
- ◆ Before proceeding into issues of suffrage and representation, an article should be inserted that outlines basic terms and definitions to be consistently used in this Federal Law *AND* applied to other laws pertaining to the preparation and conduct of elections.
- ◆ Examples of terms/phrases requiring explanation are: Party Electoral List, Coalition Electoral List, Citizen Group Electoral List, General Electoral List, Submitters of Electoral Lists, Voting by Post, Voting Outside the Polling Premises.
- ◆ Article 4 requires some clarification. Councilors are elected within each municipality on the basis of lists submitted by political parties. Representatives are elected within a national constituency (or dual constituencies if a special constituency is to be established for the Albanian minority -- more on this below) on the basis of lists submitted by political parties.

## SUFFRAGE

- ◆ According to Article 13 (see additional commentary at the end of the law on minority voting), two constituencies are to be established for elections to the Assembly. The proportional representation system has been adjusted to provided representation in the legislature for Montenegro's prominent national minority, Albanians. As such, the first constituency will function as a national constituency with mandates to be distributed on the basis of party lists, providing the nominating entity has surpassed a 4% threshold. The second constituency, which incorporates Albanian communities in Montenegro, will be allotted 4 seats to be distributed on the basis of party lists forwarded in that constituency with no threshold applied. While adjustments are frequently made to proportional systems to contend with the very real political pressure to include minorities, this particular solution may violate the "one man one vote" principal implied by the Constitutional guarantee that *the voting right is equal* (Article 32). That is to say that if the Albanian community is awarded 4 seats without meeting the threshold requirements of all other participants in the electoral process, their votes may, in fact be worth more. Moreover, the fact that Albanians constitute 7% of the population means that their inability to meet the threshold is due in larger part to the fragmentation of political parties representing their interests (there are currently two Albanian parties and Muslim-based political parties also enjoy a portion of the Albanian electorate). Consideration might be given to employing a single national constituency with a lowered threshold, eg. A three percent threshold could most likely be met by

the two Albanian parties, as an alternative solution.

## **CALLING OF ELECTIONS**

- ◆ With respect to the routine elections, the cycle should be established in law, ex. The elections for representatives of the Assembly will be held the third Sunday prior to the expiration of the term of the sitting Assembly. In an election year, the Republican Election Commission can then announce the election date. Only a special election would then need to be called by the president. The administrative calendar for campaign activities and election preparations should be the responsibility of the Republican Election Commission and not the executive authority.

## **ELECTION ADMINISTRATION BODIES**

- ◆ Language should be included which specifically enumerates the criteria for removal of members of election commissioners to ensure that such actions are undertaken for legal rather than political reasons.
- ◆ The law should also clarify the relative duties of core and expanded members of election commissions, for example are expanded members prohibited from fulfilling certain functions particularly at the polling site level.
- ◆ In addition, the expiration of the terms of expanded members' terms also requires clarification, ie. what constitutes the *end of the election*? Election night? The completion of aggregation of vote totals and determination of results? The end of the post-election adjudication of grievances period? The official publication of results?
- ◆ Are decisions of election commission based on the majority of members . . . or the majority of members present? Is there are requirement for quorum?
- ◆ The role of the permanent Republic Election Commission during municipal elections must be defined. Is it consultative or advisory?
- ◆ To enhance the independence of commissions and their internal democratization, the Chairman, Vice-Chairman, and Secretary should be elected by secret ballot from among the commissions' membership rather than being appointed directly to leadership posts.
- ◆ The wording of articles 26 and 31 is convoluted. The articles indicate that within 48 hours of the determination of parties which have qualified for the ballot, the election commission shall decide which political parties have fulfilled conditions for appointing authorized representatives to the expanded membership of the commissions. This suggestions that there are additional conditions beyond qualifying for the ballot. This needs to be reworked to the affect that: upon acceptance (certification) of individual party lists or upon the announcement of the general electoral list, by the Republican Election Commission parties qualifying for the ballot are eligible to appoint the authorized representatives to the expanded membership of the respective election commissions.
- ◆ Some consideration may be given to enhancing the responsibilities of the municipal

election commissions and the Republican Election Commissions in recognition of their permanent status and duties between elections, eg. Maintenance of a central voter registry, development of conduct of professional training programs, design and delivery of voter education programs, etc.

- ◆ For the purposes of control, Article 37 should be modified to require two members (due to the size of polling boards this will have to include the expanded membership) of different political parties to administer voting outside the polling station.

## **PROPOSAL AND PROCLAMATION OF THE ELECTORAL LISTS**

- ◆ To facilitate the development of a viable multi-party system, consideration should be given to building in certain advantages for nomination through political parties rather than amorphous citizen's groups. Instead of having established political parties expend resources each election cycle to collect signatures, those political parties with mandates in the Republic Assembly or in municipal councils could be exempted from collecting signatures. To guard against further empowering the successor parties of the Socialist Party to the detriment of smaller parties, a minimum threshold could be employed which is lower than that required to win a legislative mandate. For example, if political parties must garner 4% of the vote to win a mandate in the Republic Assembly, all political parties surpassing a 3% threshold in the previous election could be exempted from signature collection.
- ◆ With respect to those entities required to collect signatures, further consideration should be given to whether or not differing criteria should be applied to political parties and to citizen's groups with respect to ballot access.
- ◆ To safeguard the intent of requiring signatures in support of nominating entities, language should be incorporated into the law which prohibits the use of cash payments or other forms of bribery to voters in exchange for their signature.
- ◆ The law should include prohibitions on places where signatures in support of party lists can be collected, such as places of employment or offices where salaries or benefits are distributed, to protect against undue influence or outright coercion of voters.
- ◆ Additionally, the law makes no reference to the legal status of signature collectors. Ultimately, who is responsible for the authenticity and accuracy of the lists, the signature collector or the nominating entities' authorized representative?
- ◆ Article 46 (if the translation is correct) indicates that signature lists in support of a slate of candidates nominated by a political party or citizen's group can be submitted to the Republican Election Commission as late as 15 days prior to the election. In a 60 to 100 day campaign period as stipulated under Article 15, it is unclear why such an extensive period for the nomination of party slates (or those by citizen groups) and the collection of signatures would be deemed necessary or beneficial. Given the eventuality that a list could be submitted exactly 15 days prior to the election, denied by the REC with the option of rectifying problems with the list (w/in 24 hours), resubmitted (w/in 48 hours), again denied, and a complaint subsequently lodged with the Constitutional Court (no timeframe established in law), it is indeed possible that the REC will run dangerously close to the "10 days out" deadline for publicizing the

general electoral list. This creates unnecessarily tight time constraints and presents considerable organizational and logistical challenges to a host of campaign and election activities ranging from the printing and distribution of ballots to the appointment of expanded members of election commissions and from informing the electorate of their actual choices on election day to agitating for their support. It is also unclear how this deadline fits into the broader administrative calendar of the campaign period. For example, Article 51 stipulates that *from the day of calling of elections* state radio and television must provide equal time to the *submitters of electoral lists* and that the state newspaper shall provide equal space for each submitter of electoral lists. First of all, what does the term submitters of electoral lists mean? Those political parties and citizens groups with the intent of forwarding a slate of candidates and in the process of collecting signatures or only those entities whose electoral lists have been accepted (certified) by the Republic Election Commission? If the total number of entities competing in the election is not known until 10 days out, is it possible for state media outlets ensure equal time/space given subsidized time and paid time commitments to early entrants into the campaign and public service oriented programming leading into the elections.

- ◆ Typically, a political party with the intent of collecting signatures on behalf of its slate of candidates is required, in accordance with specific requirements of the law, to submit its list along with pertinent legal documents for review and certification by the Republican Election Commission *prior* to collection of signatures. In such cases, an authorized representative of the political party delivers to the Republican Election Commission the list of candidates (including their full names, dates of birth, and addresses), a copy of the party's certificate of registration, their registered charter, and a copy of the minutes from the party convention at which the slate of candidates was determined. In the case of a coalition, the agreement between political parties to form the coalition is provided at this time. In the case of citizen's groups, written notification is provided to the Republican Election Commission which includes the full names, dates of birth, and addresses of candidates on their slate. In keeping with the requirements already included in the Montenegrin law, certificates of suffrage and proof of residency for each candidate on the slate could be provided at this time. These documents are then reviewed by the commission and, if found to be in order, the political party, citizen's group, or coalition's slate of candidates is certified and the authorized representative is provided with standard forms for the collection of signatures in support of the certified list.
- ◆ Similarly, the precise information to be included in the signature forms should be elaborated upon in the law. For example the law may stipulate that the first names (precise number to be determined) appearing on the slate should be filled in at the top of the form (and that a copy full certified slate of candidates be provided at the request of the voter) as well as the name of the nominating party, citizen's group, or coalition. The law may also require that each form include detailed information on the person collecting signatures. For verification purposes, voters should be required to include their full names, date of birth, address, identification number, at the *date of their signature*.
- ◆ Upon the submission of the signature lists, along with written statements of each candidate accepting his/her nomination, the Republican Election Commission can then proceed with its review, determining whether or not the documents have been

submitted in conformity with the law and whether or not the signature lists contain the number of *valid* signatures required under the law. As it stands, the draft makes no mention of valid signatures, but refers only to signatures. The law should also clearly define the procedures by which signature lists will be evaluated, and dictate the specific grounds on which a petition must be rejected. Without specific legal guidelines, administrative steps in the review of petitions will remain potentially subjective. For example, are lists checked for forged signatures, duplicate entries, incorrect residence, birth dates (do signatories meet suffrage requirements?), or identification numbers? Consideration might be given to establishing a double threshold: the signature list must contain valid signatures equivalent to at least 1% of the total number of electors in the constituency *AND* errors or invalid signatures in excess of a legally established threshold will cause the signature list to be declared null and void.

## **PRESENTATION OF SUBMITTERS OF ELECTORAL LISTS AND CANDIDATES FROM ELECTORAL LISTS**

- ◆ The prohibition on the use of state resources for campaign purposes which appears in Article 50 might be expanded to also deny the use of state employees (in their professional capacity) for campaign purposes.
- ◆ For the purposes of public disclosure, it is recommended that language be included in the law which clarifies what information must be provided in identifying the individual or legal entity responsible for campaign material. This might include the name of the sponsoring individual or legal entity and perhaps even the number and hold of the bank account from which the costs were paid. Such a measure would help reduce opportunities for circumvention of the laws and provide a tangible basis of evidence in the adjudication of complaints.

## **ADMINISTRATION OF ELECTIONS**

- ◆ The number of electors assigned to individual polling sites, up to 2,500 is extremely high and may hinder the efficient and orderly processing of voters, is likely to undermine the secrecy of the ballot, and endanger the security of the ballot box which may be obstructed from the view of polling site members and observers. Moreover, it may be impossible to handle this number of voters in the prescribed voting hours, ie. this presumes 3 people will vote every minute steadily for 13 hours. Particularly in light of the decision to require voters to sign the extract of the voter registry upon receipt of ballots -- which is a positive move even though it adds to the amount of time required to process each voter-- the size of polling stations should be reduced.
- ◆ All mechanisms for voting outside of the polling site premises should be clearly defined and distinguished. The procedure for voting outside of the polling station and the criteria under which voters can utilize this option (as well as the requirements to apply for it) should be clarified in the law (see comments on Article 81 below).
- ◆ Language throughout the law, such as appears in Article 69, which provides for the nullification of voting based on technical violations should be removed. It is possible that minor technicalities may be breached as a result of mistakes rather than malfeasance. Moreover, the ease with which polling stations can be dissolved and

voting nullified is open to purposeful manipulation by political participants. The invalidation of election results should be based only upon fraudulent acts which can be proven in a court of law to have affected the outcome of elections. Technical violations should be dealt with through a graduated penalty system.

- ◆ Article 72 stipulates that persons having no rights or duties with regard to the administration of the election are forbidden to remain in the polling station. This language could be interpreted to disallow election observers, whose rights and status are not mentioned in the law. The rights and obligations of international observers should be incorporated into the law. And, while multi-party commissions provide the motive and means for effective control, consideration should be given to providing legal status to indigenous NGO observers. Due to the potential of sizable commissions in their permanent and expanded (and deputy) membership and, thus to limit the congestion in polling stations, this right might be limited to NGOs whose charters provide for a clear mandate in the area of elections and human rights monitoring, such as the Helsinki Commission, which has a chapter in Montenegro. The law should also clarify that observers have the right to accompany the delivery of materials and the election results to the Municipal Election Commission and to remain to observe the aggregation of vote totals.
- ◆ Because ballot papers are validated in advance of the election rather than at the time they are distributed to voters, every precaution must be undertaken to secure ballots during transit and storage prior to election day. The law should define the audit trail by which at each transfer point, quantities are verified and receipts are signed by delivery personnel and those taking receipt. Provisions should also require that ballots be maintained in locked and secured storage.
- ◆ Serious consideration should be given the shifting the process of ballot verification (validation) from the Municipal Election Commissions to the polling site stations. The validation of ballots is intended to be a security measure by which to recognize officially issued ballots from others which may have been put into the ballot box fraudulently. This is effective only if issued ballots are validated. The law should make it clear that all verifying stamps and signatures should be affixed on election day and only the number of ballots needed should be certified. If done in advance, or if unissued ballots are also validated, the intended security factor is nullified.
- ◆ Article 75 stipulates that certain preparations are to be undertaken prior to the opening of the polls and that these preparations are to be entered into the polling site's record. It is also possible that certain base line data can be entered into the record at this time (and announced to commission members, observers, and voters present) rather than at the close of the polls. This information includes the number of ballots received and the number of voters entered into the extract of the voter registry as well as the number of application to vote outside of the polling site via the post (if this must be completed prior to election day).
- ◆ This may be a translation problem, but Article 76 requires that the "general register of electors" with the titles of electoral lists and names of all the candidates must be displayed at the polling station. What is actually required, in this case, is the general electoral list (in its entirety) be posted for familiarization by voters. The terminology used can be confused with the general registry of voters which is something quite

different.

- ◆ Article 77 stipulates that election materials, including the extracts from the register of voters, can be reviewed by the submitters of electoral lists and candidates within five days of polling day. All of the materials listed in this article should be part of the public record and should be available at any time upon request. While political parties are particularly interested in the extracts of voter registries for campaign purposes, they can also play a positive role in identifying inaccuracies in and omissions from the lists.
- ◆ If voting outside the premises of the polling station is to be allowed on election day, the practice of checking the stationary ballot box in the presence of the first voter and completing a control sheet which is then placed in the box should be repeated for any and all portable ballot boxes.
- ◆ Article 81, which states that *upon confirming the identity of the voter a member of the polling board shall circle the ordinal number before his/her name in the extract of the voter registry . . . and shall hand over the ballot paper* is inconsistent with Article 69 which requires that the voter sign the voter registry upon receipt of election materials. The language of Article 81 should be brought into conformity with Article 69 which better safeguards against official abuse of the process at the polling site level.
- ◆ Currently, there exists no language in the law for dealing with spoiled ballots. Language should be incorporated which would empower polling site boards to issue a new ballot if a voter incorrectly marks his/her ballot at the polling site, provided proper audit trail is kept and the spoiled ballot is immediately invalidated. Absent this practice, voters who make a mistake in filling out their ballot are effectively disenfranchised.
- ◆ The language which is utilized in Article 86 (and again may be the result of translation) is confusing and requires clarification. Specifically the practices of absentee voting by mail and of voting outside the polling site premises -- traditionally by use of a portable ballot box) is confused. It would appear, in fact, that upon notification of intent to vote outside of the polling site premises, members are dispatched to the home of the voter who is provided with a validated ballot, the general electoral list (again misuse of the word "register") and a special envelope. At that time, the voter marks his/her ballot places it in a special envelope which, along with his/her certificate of suffrage, is placed in the official envelope and then sealed by members of the polling board who then return to the polling board. The official envelope is opened, confirm the presence of the certificate of suffrage, circle the ordinal number on the extract of the voter registry, and space the closed special envelope in the ballot box. There are many details about this process which remain unclear, however, and need to be clarified in the law. Voters should be required to request this service in writing and a deadline for the receipt of the request should be established. Commissioners should be dispatched in pairs and representing different political parties to dispatch of this duty and observers should be expressly permitted to accompany them. If all requests are being handled during one deployment (or several limited ones), the responsible commission members should be required to sign for the number of ballots they take from the polling site which should be equal to the number of written requests to vote outside the polling station that are being handled during any particular deployment. The names of commission members facilitating voting outside the polling station and any accompanying observers should be noted in the record of the polling station.



- ◆ It is not entirely clear why the system of envelopes is used in lieu of a portable ballot box, which might provide for greater security and control. If these ballots were placed in a portable box and kept there until the close of voting, a separate data control entry could be made for these ballots and, if there were any discrepancies, only those ballots cast outside the polling site premises would have to be nullified. Along similar lines, these ballots should be packaged separately. By keeping them segregated, should there be a challenge to voting outside the polling site premises, they would not taint the results of the count for votes cast in person at the polling site.
- ◆ The distinct procedure for absentee voting by mail is stipulated in Article 88. This article should clarify that a written application must be made for absentee voting and a deadline established for receipt of the application (actual absentee ballots must be received by 8 pm the day of elections to be counted, see Article 92). Security precautions for storage of absentee ballots received prior to the election and their handling on election day, should also be stipulated.

### **ESTABLISHING AND PUBLICIZING OF ELECTION RESULTS**

- ◆ In addition to the criteria which have been established for the invalidation of ballots listed in Article 93, the following should appear: ballots which are not of standard form, ie. those which are not of the official format approved by the REC and which do not contain the validation marks of the responsible election commission (stamp or signatures) and ballots which have been completed in pencil.
- ◆ As noted earlier, some base line data can and should be entered into the record of the polling board prior to the conduct of voting. These include: the number of ballot papers received, the number of voters who appear on the extract of the voter registry, the number of applications received to vote via post and on election day, but outside of the polling site premises. If provisions for the handling of spoiled ballots are introduced, the number of spoiled ballots will also need to be recorded at the end of voting.
- ◆ Article 94 requires that all members of the polling board sign the record of the work of said polling board. It should be clarified whether this is required only of core membership of the polling board or also the expanded membership.
- ◆ Language should also be included in Article 96 which allows accredited observers present at the counting of the votes to receive a copy of the report of the work of the polling board.
- ◆ Article 96 is devoid of any language requiring the reports of Municipal Election Commissions to be signed by all members of the commission, who -- preferably along with any present accredited observers -- have the right to receive a copy of the report. This needs to be brought into conformity with the practice of polling boards.
- ◆ Article 98 establishes the threshold for receiving mandates at 4%. The possible ramifications of adjusting this threshold to increase the possibilities for representation of Montenegro's national groups and ethnic minorities is noted above under the heading "SUFFRAGE."

- ◆ Article 100 provides parties that have won mandates in the Assembly to distribute half of their seats according to the rank order of candidates on their party slate and the remainder as they see fit. Typically, in closed proportional systems (those in which the parties rank order their slates and in which electors have no opportunity to influence the ordering of candidates through their vote) all seats are apportioned according to the rank order of the slate which was forwarded by the party, certified by the Republican Election Commission, and presented to voters during the signature collection process and on election day. Under Article 100, rank-ordered slates which were supposedly reached through a democratic decision making process at party conventions could conceivably be re-ordered by the party elite after elections. Consideration should be given to requiring political parties to commit to their rank-ordered list prior to election day.
- ◆ According to Article 105, the mandates of representatives of political parties which have subsequently been *banned* shall be terminated. The law should reference which Constitutional provisions form the basis for banning of political parties and which would thus apply to the termination of mandates.

#### **ELECTION ADMINISTRATION AND ELECTION CAMPAIGN EXPENSES**

- ◆ The wording of Article 118, which requires state and local administrative bodies to make their premises and resources available for the conduct of the election campaign is inconsistent with the intent of Article 51 which prohibits the use of state resources for the collection of signatures in support of the electoral lists of political parties, coalitions, or citizen's groups. The law must definitely prohibit the use of government resources for purposes of influencing or affecting election outcomes. Laws should apply to both executive and legislative officeholders and employees and impose personal liability upon such persons for violations.
- ◆ The chapter on, what is affect campaign financing, is extremely vague. It fails to provide for periodic reporting of contributions and post-election reporting of contributions and expenditures, thereby precluding public disclosure. The introduction of reporting requirements will require the establishment of a special bank account by each submitter of electoral lists for campaign purposes. Periodic reports should be required by the REC and should be published so that the electorate is aware of the potential influences of those backing candidates to public office. As it stands the system by which campaigns are funded in Montenegro is entirely nontransparent.
- ◆ To introduce a modicum of regulation into the campaign financing system (beyond the reporting requirement), rules should be introduced which deal with such issues as: the establishment of ceilings on private contributions made by individuals and legal entities; prohibitions on contributions, ex. From foreign individuals and entities; handling and reporting in-kind contributions; dealing with unexpended monetary resources upon the conclusion of the election campaign; and auditing requirements. Ceilings should not be so low, or regulations so extensive that they encourage circumvention. Rather the intent of regulation should be to bring campaign finance within the scope of the law and to make it transparent to the public, which can ultimately decide on election day whether a political party or candidate has over-stepped the bounds of acceptable campaign financing practices.

- ◆ The preparation of stand-alone legislation on financing of political parties should significantly benefit effective regulation of campaign finances. A comprehensive federal law could include provisions regarding public disclosure of financial activity of political parties, not only during the election but between elections. Such laws relative to campaign financing and reporting by political parties and nominating organizations would also create a basis for distinguishing the campaign activities of political party organizations and their candidates from those special interest or support groups over which they may have no control. At the same time, the regulation of political coalitions and citizen's groups established only for specific election campaigns will still have to be regulated, either through election or campaign financing laws.
- ◆ There should be created a structure of fines, penalties, and punishments for violations which is clearly defined, graduated, proportionate, and consistently enforced. Personal responsibility of candidates and authorized representatives of political parties and other nominating entities should be established to encourage accountability and compliance.

#### **TRANSITIONAL AND FINAL PROVISIONS**

- ◆ The requirement stipulated in Article 122 that the Republican Election Commission shall draft all administrative regulations in support of this (draft) law within 15 days of its coming into force is unrealistic, particularly if the law is passed in its current form, which relegates a considerable amount of detail to the REC.

**ANNEX IX: IFES TECHNICAL ANALYSIS  
OF VOTER REGISTRY PROPOSAL**



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**To: Keith Sherper, USAID Representative, Belgrade  
381-11-646-870**

**From: Alexandra Levaditis, Program Assistance, Europe and Asia**

**Re: Technical Evaluation of Proposal for Computerization of Voter Registries,  
Republic of Montenegro**

**Date: 2 January 1997**

The Ministry of Development in the Republic of Montenegro has submitted to the Office of Transition Initiatives (OTI) in Montenegro a proposal for the creation of a voter registration system. In response to a request by USAID, a review of the technical aspects of the proposal was completed by IFES consultant Michael Yard, who has extensive experience in the design of registration systems, including those used recently in Bosnia and Ghana. The review attempts to clarify the feasibility of the proposal and does not delve into the deeper issues of legislation and institutional responsibility, which still need to be resolved. Institutional responsibility must be determined and stipulated in the law and a responsible authority must be vested with the necessary authority to undertake all phases of this process from the takeover of lists from municipalities to updating and changing voter data.

IFES has submitted a proposal to USAID for a no-cost extension of the existing Delivery Order which would allow for the review of draft legislation on voter registries (in addition to legislation on financing of political parties and elections to the Assembly and local councils) by election law specialist Daniel Finn. Mr. Finn, if approved, will incorporate this technical review into his commentary on the voter registration law and make recommendations accordingly.

### ***Background***

The voter registration system is designed to be part of an extensive integrated database that includes real-time synchronization between a centralized voter database and partial replications distributed throughout the 21 municipalities. In addition, the proposed system provides for sharing of data with a central Population Register. The Population Register, while not a part of the current proposal, is designed to track permanent residence addresses, births, marriages, deaths, and citizenship.

The project proposal calls for two stages of implementation. The first stage consists of the takeover of manual voter lists from the twenty-one municipalities to create a centralized database. This stage would include:

- ▶ Development of application software for entering, comparing, and editing voter data

- ▶ Distribution of this software and required hardware to the Podgorica center and the 21 municipalities
- ▶ Data entry and cleanup in each municipality
- ▶ Transmission of data to Podgorica center
- ▶ Import into a single database

The second stage calls for the creation of a system that will allow continuous updating of the voter data. This system provides the ability to :

- ▶ Update polling station data, multiple registers for different types of elections, code list for objection types, code list for street addresses
- ▶ Produce registers at the municipal level
- ▶ Update change of address, name change, change of citizenship, death
- ▶ Multiple reports including control list, invitation to vote, certificate of eligibility to vote

### ***Evaluation of Proposal***

The initial proposal presents a carefully thought out plan for meeting a clearly defined need. The design, if successfully implemented, would meet the immediate need for a clean voter register and provide the capacity for maintaining this register for several years.

On the other hand, the proposal is ambitious, requiring a significant commitment of resources from the beginning. And as with any large time-critical software development project, there is a risk of failure to complete all required tasks on schedule. Because of its focus upon the development of the required computer systems the plan omits significant detail concerning the physical processes required, including:

- ▶ Evaluation of accuracy of existing data
- ▶ Comparison of voter data with other existing data sources
- ▶ Registration of new voters
- ▶ Allowing existing voters to update registration information
- ▶ Opportunity for political parties and individuals to file objections

The systems software and development tools selected for this project are more powerful, complex and expensive than required for creating a useful and versatile voter registration system. The Unix operating system requires a more powerful hardware platform than Windows NT or Novell, and database development software for Unix is considerably more expensive than comparable Windows-based software.

The choice of platforms may have been dictated by the desire for tight integration between the voter registration system and other government information systems. While this integration is desirable from a database planning perspective, it is questionable whether real-time sharing of data between government databases is necessary or cost-effective. This is also the case with the planned sharing of data between municipalities and Podgorica via a wide-area-network (WAN). While computer systems in each municipality, and a good communications link between municipalities and the central office would provide significant benefits, the time and resources required to create such a

distributed system may be excessive for meeting the requirements for a May election with fewer than a half-million voters.

### ***Alternative Proposal***

The biggest problem with the proposed system is the risk of undertaking such an ambitious development project in such a limited timeframe. Since many of the elements of the proposed system are not necessary for producing a one-time voter register, it would be advisable to divide the project into more stages, focusing immediately only on those tasks which must be completed in order to have a May election. In the following proposed stages, only Stages 1 and 2 are in this category. Other stages may be completed later, if it is determined that these stages are necessary or desirable.

### ***Stage 1 - Takeover of lists from municipalities***

In this stage, all voter data would be gathered from the municipalities and entered into a database in Podgorica. The method for this takeover would depend upon the current state of the data in the municipalities. The proposal indicates that the data is currently kept manually by each municipality, but does not describe whether the lists are in any machine-readable format. If the lists are in any data format, they could be imported into a central database. This step might require some significant “data massaging” to create a common format, but it is almost always possible with minimal programming to integrate similar data from a variety of sources into one common data format, and then to import the data into a single database. If the lists are only available on paper, there will be a requirement for data entry. Number of workstations, data entry personnel, and method depend upon the actual format of the data. Even in a worst case scenario, this stage could be accomplished with stand alone workstations running a fairly simple data-entry application.

### ***Stage 2 – Publish existing data, allow re-registration, update VR database, and print required voter lists***

Following the creation of a single centralized database, preliminary voter lists should be published, and voters should be given the opportunity to examine the lists and file an amendment form to update or change their own data. This step would require development of a more detailed data-entry program than required for Stage 1. Data entry staff would require the capability to search for a voter’s data, then make changes. The program should also maintain a transaction log, tracking what changes were made, when, and by whom. Following this update, voter registers could be printed for the May election.

### ***NOTE:***

If the data exists only in manually compiled lists it may be easier to begin with a new registration process. One efficient and cost-effective option would be to use Optical Mark Recognition forms and scanners to do the registration. This method has been used in Ghana, Sierra Leone, and Bosnia to do initial data collection with very positive results. This method would eliminate the requirement for manually typing in the data.

### ***Stage 3 – Develop communication between municipalities and Podgorica***

A number of options exist for creating a data communications link between the municipal offices and Podgorica. The exact method for creating this link depends upon a number of factors including

the quality of phone lines in the country, available Internet Service Providers, and distance and terrain between offices. A full wide area network (WAN) has been proposed; while this provides a desirable real-time connection, it may not be the most cost-effective solution.

***Stage 4 – Provide for replication between municipalities and central database***

For longer term maintenance of the voter data, it would be helpful to allow updating of voter records at the local level. For comparison and publication, it is desirable to have the data available at the central Podgorica office. The best way to accomplish both of these goals is to replicate the data. This can be accomplished with any client-server database system. The frequency of update depends upon the type of communication link available.

***Stage 5 – Provide for sharing of data between voter register and other government databases***

Sharing data between the voter register and other databases would be simplified if all agencies shared a common database platform. This may be the purpose for specifying Informix on a Unix platform. However, almost all modern database systems provide the capability to exchange and share data.

***Recommendation***

The immediate focus of any development project should be the scheduled election in May. Activities that are not critical to this election should be delayed until all requirements of the election have been completed. Stage 1 and 2 described above are required for conducting a May election. These steps could be accomplished using a simple windows-based network, using Microsoft Access as the database software. Access has a practical upper limit of around a million rows of data, adequate for all voter data. Optionally, one or two OMR scanners could be used to do the data entry. Two high-speed laser printers could be used to print all required lists. A thorough, objective analysis of future requirements for the voter registration system should be completed before additional development is undertaken.



**ANNEX X: OFFICIAL PRESIDENTIAL ELECTION RESULTS,  
REPUBLIC OF MONTENEGRO**

REZULTATI IZBORA ZA PREDsjedNIKA REPUBLIKE CRNE GORE 19. OKTOBRA 1997. GODINE

	A	B	C	D	E	F	G	H	I	J	K
OPŠTINA	Broj birača upisanih u birački spisak	Broj bir. koji su gl. na bir. mj.	Br. bir koji su gl. van bir. mjesta	Ukupan broj bir. koji su glasali	Broj prim. glas. listića od RIK-a	Broj neup. glas. listića	Broj upotr. glasačkih listića	Broj nevažećih gl. listića	Broj važećih gl. listića	Kandidat Momir Bulatović	Kandidat Milo Djukanović
1	2	3	4	5 (3+4)	6 (7+8)	7	8(9+10)	9	10 (11+12)	11	12
ANDRIJEVICA	4.875	3.653	305	3.958	4.877	919	3.958	26	3.932	3.384	548
BAR	29.096	20.233	428	20.661	29.090	8.429	20.661	231	20.429	7.125	13.304
BERANE	27.759	20.487	800	21.287	27.759	6.472	21.287	330	20.957	12.201	8.756
BIJELO POLJE	41.920	29.435	1.183	30.618	41.920	11.302	30.618	345	30.273	16.226	14.047
BUDVA	10.330	7.353	194	7.547	10.287	2.740	7.547	88	7.459	3.798	3.661
DANILOVGRAD	12.290	8.307	421	8.728	12.225	3.497	8.728	83	8.645	4.765	3.880
ŽABLJAK	3.520	2.512	235	2.747	3.519	772	2.747	27	2.720	1.856	864
KOLAŠIN	8.101	6.182	354	6.536	8.101	1.565	6.536	42	6.494	4.611	1.883
KOTOR	17.315	11.917	306	12.223	17.315	5.092	12.223	168	12.055	5.643	6.412
MOJKOVAC	8.140	6.023	194	6.217	8.133	1.916	6.217	52	6.165	4.070	2.095
NIKŠIĆ	56.043	41.669	857	42.526	55.924	13.398	42.526	493	42.033	20.108	21.925
PODGORICA	121.951	86.279	1.615	87.894	120.854	32.960	87.894	740	87.154	45.396	41.758
PLAV	11.904	8.141	-	8.141	11.903	3.762	8.141	27	8.114	2.261	5.853
PLUŽINE	3.559	2.395	351	2.746	3.558	812	2.746	16	2.730	2.212	518
PLJEVLJA	29.561	22.561	890	23.451	29.257	5.806	23.451	177	23.274	16.471	6.803
ROŽAJE	16.960	12.367	335	12.702	16.942	4.240	12.702	44	12.658	1.049	11.609
TIVAT	10.190	6.944	229	7.173	10.190	3.017	7.173	120	7.053	2.946	4.107
ULCINJ	16.515	11.539	332	11.871	16.515	4.644	11.871	66	11.805	1.684	10.121
U. NOVI	22.745	15.596	362	15.958	22.745	6.787	15.958	352	15.606	10.203	5.403
ŽETINJE	14.937	11.951	629	12.580	14.902	2.322	12.580	204	12.376	1.941	10.435
ŠAVNIK	2.780	1.937	187	2.124	2.780	656	2.124	54	2.070	1.307	763
UKUPNO	470.491	337.481	10.207	347.688	468.796	121.108	347.688	3.685	344.002	169.257	174.745

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PO MENA: ZBIR VAŽEĆIH I NEVAŽEĆIH GLASAČKIH LISTIĆA (20.660) U OPŠTINI BAŔ ZA JEDAN GLASAČKI LISTIĆ JE MANJI OD BROJA UPOTRIJEBLJENIH GLASAČKIH LISTIĆA (20.661) JER JE JEDAN BIRAČ UZEO GLASAČKI LISTIĆ, ALI GA NIJE UBACIO U GLASAČKU KUTIJU

**Translation by IFES**

**RESULTS OF ELECTIONS FOR PRESIDENT OF THE REPUBLIC OF MONTENEGRO  
19 OCTOBER 1997**

- A. Number of voters written into the registry book
- B. Number of voters who voted at the voting location
- C. Number of voters who voted outside of the voting location
- D. Number of voters who voted
- E. Number of ballots received by RIK
- F. Number of unused ballots
- G. Number of used ballots
- H. Number of invalid ballots
- I. Number of valid ballots
- J. Candidate Momir Bulatovic
- K. Candidate Milo Djukanovic



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