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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of obligations and commitments by Montenegro

Information note by the co-rapporteurs on their fact-finding visit to Podgorica (8-10 July 2013)¹

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¹ This information note was made public by decision of the Monitoring Committee dated 7 November 2013.

I. Introduction

1. The Parliamentary Assembly of the Council of Europe adopted in June 2012 Resolution 1890 (2012) on "*The Honouring of obligations and commitments by Montenegro*", in which the Assembly decided to pursue the monitoring procedure, while encouraging Montenegro to make progress on 5 "key issues", namely the independence of the judiciary; the situation of the media; the fight against corruption and organised crimes; the rights of minorities and the fight against discrimination; and the situation of refugees and IDPs.

2. For this first fact-finding visit to Podgorica from 8-10 July 2013, we decided to look at the implementation of Resolution 1890 (2012), to follow-up on the PACE observation reports of the parliamentary elections (14 October 2012) and the presidential elections (7 April 2013) and to have focused discussions on the latest political developments, the reform of the judiciary, the implementation of the anti-discrimination law and the situation of refugees and IDPs. The programme of the visit can be found in Appendix 2.

3. We very much appreciated the assistance extended by Mr Vuckević, Head of the delegation of Montenegro to the Parliamentary Assembly, all the Montenegrin members and the Secretariat of the delegation for the preparation of this visit. We were able to meet the President of the Republic Mr Vujanović, the Prime Minister Mr Đukanović, the Speaker of Parliament Mr Krivokapić, the Deputy Prime Minister and Minister of Justice, the Ministers of the Interior, Human and Minorities' Rights, the Montenegrin parliamentary delegation to PACE, representatives of political parties, the judicial authorities, the Ombudsman, representatives of state agencies and the Roma community, as well as representatives of international organisations, the diplomatic community, NGOs and the media. The information provided before our visit by the delegation of Montenegro to the PACE on the implementation of Resolution 1890 (2012), based on the replies provided by 32 ministers and law enforcement agencies, was very useful. We would like to commend the delegation for this initiative. Additional information was also provided by the delegation on 21 October 2013.

4. We would like to thank Ambassador Mitja Drobnič, Head of the European Union Mission, Ambassador Lubomir Kopaj, Head of the OSCE Mission to Montenegro, and Ms Indu Mohanda, UNHCR Representative in Montenegro for sharing their experience, as well as the Turkish Ambassador to Montenegro, H.E. M. Mehmet Niyazi Tanilir for his reception. Finally, we would like to thank the Council of Europe staff members in Podgorica for the logistical support provided to our delegation.

II. Recent developments

5. Since June 2012, Montenegro continued to work closely with the Council of Europe. We were pleased to learn that Montenegro ratified on 12 February 2013 two additional Protocols, namely the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Biomedical Research (CETS No. 195) and the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes (CETS No. 203). It also ratified, on 22 April 2013, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, so-called Istanbul Convention), bringing the number of ratified conventions to 86. Montenegro also envisages signing and ratifying the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health (MEDICRIME).²

6. Montenegro launched membership talks with the EU in June 2012. So far, it has temporarily closed two chapters, 25 and 26, on Science and Research and on Education and Culture. The opening of the most challenging chapters, 23 and 24, which focus on enhancing the fight against corruption and organized crime as well as the judiciary and fundamental rights, is still pending. The 4th meeting of the Stabilisation and Association (SA) Council between the EU and Montenegro was held on 26 June 2013. The SA Council encouraged Montenegro to ensure that the reform momentum in the area of the judiciary and fundamental rights is maintained and reiterated that Montenegro needed to pay particular attention to the development of a solid track record in the area of rule of law, in particular with regard to organised crime and corruption cases, including at high level. It also stressed the need to devote further efforts to ensure the accountability and independence of the judiciary. It recalled that further efforts were needed to strengthen the capacity, accountability and integrity safeguards within the judiciary.³ In July 2013, Montenegro adopted action plans

² Information provided by the delegation of Montenegro, 19 June 2013.

³ Joint press release of the Fourth meeting of the Stabilisation and Association Council between the European Union and Montenegro, UE-ME 3605/13, 26 June 2013.

on chapters 23 and 24, which, subject to a final positive evaluation by the EU, will constitute opening benchmarks and offer a range of measures aimed at reaching EU standards in the fields.

7. Montenegro intends to remain an active partner in the stabilisation of the region. This was very much emphasized by the President of the Republic, Mr Vujanović, who underlined the good relationships established with all neighbouring countries, the active participation of Montenegro in all regional initiatives, and reiterated the political aspiration of Montenegrin authorities to integrate the EU and NATO. We congratulated Mr Krivokapić, Speaker of the Montenegrin parliament, for his election as President of the Parliamentary Assembly of the OSCE on 5 July 2013. We also took note of a recent initiative launched by Mr Luksic, the Minister of Foreign and European Affairs, to set up a “Western Balkans Six” network that would group Montenegro, Serbia, Kosovo*⁴ (in compliance with UNSC Resolution 1244), “the former Yugoslav Republic of Macedonia”, Albania, and Bosnia and Herzegovina.

8. At the time of our visit, domestic politics were dominated by economic issues and the adoption of the budget, following the economic recession faced by Montenegro and the bankruptcy of the Podgorica Aluminium Plant (KAP), one of the country's major exporters, which was privatised in 2005. According to media reports, the losses of the plant amounted to almost 100 million Euros between 2006 and 2012, while its debts are more than 300 million Euros.⁵ In addition, KAP was accused of stealing electricity from the Electrical Transmission System between 22 February 2013 and 25 May 2013, incurring a loss of more than 9.5 million Euros. In June 2013, the EU urged Montenegro to return electricity that KAP had used from the European distribution network, but not paid for. KAP was declared bankrupt on 8 July 2013, thus activating the financial guarantee given by the State. Most of the 1 200 workers went out of work. In July 2013, the Head of KAP financial department was arrested and detained.⁶ This bankruptcy had an impact on the State budget: in May 2013, the government increased the VAT tax from 17 to 19%, sparking protests from a coalition of NGOs. It also became an issue within the ruling coalition, as the Social Democratic Party (SDP), the junior partner of the Democratic Party of Socialists (DPS), expressed different views on how the state budget should be re-balanced, and recalled that they the parliament did not back the decision of the government to offer its financial guarantee at the time of the privatisation. On 3 June 2013, the opposition requested the organisation of an oversight hearing concerning the guarantees issued by the government in 2010 and 2011 to the aluminum company KAP, the Niksic steel factory, the railway infrastructure and railway transport of Montenegro and the newspaper Pobjeda. This motion, however, was not accepted.⁷

9. The development of the country's economy is a priority for the authorities, as highlighted by both the President of the Republic and the Prime Minister. In particular Mr Đukanović stressed that Montenegro's economy remains underdeveloped, and should be boosted by the development of tourism projects on the seaside, the construction of highways, the construction of a new power plant and an undersea electricity cable with Italy, and a research project to explore oil and gas resources.

III. Outcome of and follow-up to the 2012 parliamentary and 2012 and 2013 presidential elections

10. Since the adoption of Resolution 1890 (2012), two elections took place in Montenegro, namely the parliamentary elections (14 October 2012) and the presidential elections (7 April 2013), which were both observed by the Parliamentary Assembly. During our visit, we focused on the conclusions and recommendations made by the ad hoc observation committees in their reports of 14 October 2012 and 7 April 2013.

11. The Coalition for European Montenegro led by Milo Đukanović, leader of the Democratic Party of Socialists (DPS) – comprising the DPS, the Social Democratic Party (SDP) (headed by the Speaker of the Parliament Mr Krivokapic) and the Liberal Party (LP) – won 39 seats (46.33%) and could form a parliamentary majority with the Bosniak Party (3 seats, 4,24% of the votes) and the Croatian Civic Initiative (1 seat, 0,41% of the votes).

12. The opposition is composed by the Democratic Front (DF) – a newly formed coalition grouping the Movement for Changes and the New Serb Democracy party (20 seats, 23.19%) led by Mr Miodrag Lekić, by the People's Socialist Party (SNP) (9 seats, 11.24%), Positive Montenegro (7 seats, 8.37%) and a coalition of Albanian parties (i.e. Force for Unity – Forca per Bashkim (FZJ-FPB): New Democratic Power – Forca per Bashkim and Perspective and the Citizens Initiative, Democratic League in Montenegro, the Democratic Party and the Albanian Alternative) (2 seats, 2.54%).

⁴ * All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁵ <http://www.balkaninsight.com/en/article/montenegro-s-djukanovic-urges-mps-to-save-bankrupt-plant>.

⁶ <http://www.balkaninsight.com/en/article/montenegro-police-detains-executive-of-aluminum-plant>.

⁷ Information provided by Mr Bojanic in the comments by the delegation of 21 October 2013.

13. We looked at the situation of national minorities in parliament, as the Law on the Election of Councilors and Members of Parliament, as amended in 2011 to ensure authentic and proportionate representation of minorities, was applied for the first time. *Pro memoria*, this revised Law decreased both the number of signatures necessary for the ratification of electoral lists (i.e. 1 000 signatures from registered voters instead of 1% of the total number of voters; 300 signatures for specific minorities representing up to 2% of the total population) and the threshold for the allocation of seats to minority electoral lists (i.e. 0.7% of valid votes for the minorities and minority national community and 0.35% for the Croatian minority, compared to the 3% threshold for non-minority lists).

14. During our discussions, the SNP representatives emphasised that they want article 45 of the Constitution, which stipulates the 24-month residence requirement to have the right to vote, to be amended. The representative of the Bosniak party wished that minorities be better represented in state institutions and that it becomes constitutional requirement. The Croatian Civic Initiative regretted that the minorities were not involved in the EU negotiations and urged to have a round table on the new law on minorities in preparation. The Democratic Party (representing the Albanians) deplored that the new electoral law deprived the Albanians of their special constituency, bringing the number of their MPs from 4 to 2 and insisted on education in Albanian, and representation in public institutions reflecting the proportion of their group in the population. In addition, FORCA stressed the need to have an organic law on defining minorities, the need to have more space in public media and strengthening of competencies of the municipalities run by minorities.

15. We noted that the 30% requirement of female candidates on electoral lists, but without zip system, led to a representation of 17,28 % of women in the parliament, which is a progress (+50% compared to the previous term of office). The Minister of Human and Minority Rights (who had initially proposed to include a zip system in the law to ensure that every third seat would be allocated to the less represented gender) said that he intended to work more intensively, with the co-operation of political parties, to increase the participation of women in political and public life, in the framework of the new action plan for achieving gender equality (2013-2017).⁸

16. The newly elected parliament started to work on 25 November 2012. The new Rules of Procedure provides for the organization of oversight hearings on a more regular basis. An Anti-Corruption Committee, in charge of supervising the work of the state bodies in the area of the fight against organised crime and corruption, as well as a European Integration Committee were set up.

17. The new Government was elected on 4 December 2012. The Government is composed of 19 members and led by Prime Minister Mr Đjukanović. The delegation indicated that 3 out of 18 members of the government are members of minority nations (16.66%): “the deputy Prime Minister is of Bosniak ethnicity, the Minister of human and minority rights is of Muslim ethnicity, and a Minister without portfolio is Croatian”.⁹

18. On 7 April 2013, two candidates participated in the president elections: Mr Filip Vujanović, outgoing President from the Democratic Party of Socialist of Montenegro, and Mr Miodrag Lekić, an independent candidate. Mr Vujanović was elected President of the Republic with 51.21% of the votes (161 940 votes), according to the State Electoral Commission (DIK). The turnout was 63.90%. Mr Lekić contested the results, and requested the annulment of the election results and the organisation of new elections. Considering that the presidential election was a rigged election, the Democratic Front decided to boycott the parliament. During the presidential campaign, the opposition called for electoral reform, improved implementation of the rule of law and stronger fight against corruption.

19. The leak of tape recordings from a meeting of the Democratic Party of Socialists (DPS), held in preparation for the 2012 early parliamentary elections, was another political issue raised by the opposition. DPS members allegedly alluded to the possible abuse of state resources to get more voter support. We note that the issue of possible abuse of state and administrative resources was raised on several occasions by PACE election observers. It was also denounced by an NGO in a report published in November 2012.¹⁰ This case was widely covered in the media after the daily Dan published the transcripts of the statement made by the DPS officials.¹¹ In order to bring the parliamentary boycott by the Democratic Front to an end,

⁸ Information provided by the national delegation, 19 June 2013, p. 72.

⁹ Information provided by the national delegation, 19 June 2013, p. 70.

¹⁰ See the « report on the misused of state resources and public authorities in the 2012 parliamentary campaign” published by the Network for affirmation of the non-governmental sector ((MANS), November 2012.

¹¹ <http://www.osce.org/odihr/elections/100274>, Limited Election Observation Mission. Montenegro, Presidential Election 7 April 2013, Report 22 March 2013.

the parliament agreed to set up two working bodies to address these election-related issues and amend the regulations.

i. The “audio recording” case

20. Montenegrin media published the tapes' transcripts, alleging that leading DPS officials instructed other party members to use public resources and money to obtain more votes in the 2012 parliamentary elections. We discussed the content of this tape with the journalists that handled and revealed the case, and NGOs active in promoting the rule of law, and the members of the parliament. NGO and media representatives stressed that this case showed the weaknesses of the institutions and the lack of trust in the Prosecutor Office. The journalists from Dan, who published the transcripts, moreover deplored that the Prosecutor had launched an investigation against them for “violation of personal data of voters”. A representative of the opposition, for his part, regretted that the former General Prosecutor had ignored the audio evidence of the misuse of public resources and electoral rolls.¹²

21. The parliament set up an “Inquiry Committee for the purpose of collecting information and facts on the events relating to the work of state authorities regarding publishing of audio recordings and transcripts from the meetings of DPS authorities and bodies” on 24 June 2013. It had held 7 meetings by the time of our visit, when we met its Chairperson, Mr Pavlović (DF) and the Vice-Chairperson, Mr Simović (DPS). We were informed that the committee had planned to organise 15 hearings with high state officials, including with the Prime Minister Mr Đjukanović, and requested information from 105 state institutions. Mr Pavlović however regretted that investigation committees have limited powers: they have no means to apply sanctions and they could only request the Prosecutor Office to launch investigation, provided they had collected sufficient evidence. Our feeling was also, given the sensitivity of the issue, that the committee was quite polarised and would find it hard to reach political conclusions. We have been informed by the delegation since then that this committee submitted a technical report to the parliament on 31 July 2013, without drawing political conclusions though.

22. The transcripts of the leaked tape recordings by the daily newspaper *Dan* prompted authorities to act, which we discussed with the *ad interim* Chief prosecutor Mr Veselin Vucković. He confirmed that his office had launched an investigation. Mr Vucković explained that his Office had recorded all speakers on the tape, auditioned 150 persons who allegedly benefitted from allowances, and controlled 170 business employees. The Office was investigating the development of local employment during the electoral campaign, the new recruitments in public enterprises, the allocation of state aid to companies, etc. to collect evidence and identify possible criminal charges. He added that his findings would be made available to the public.

23. At this stage, taking into account the ongoing investigations, we are not in a position to draw conclusions. However, the allegations raised by the media are to be taken seriously and we expect the Prosecutor to work independently and to conduct a thorough investigation. This case, we hope, should also lead the parliament to take resolute action and set up clear rules.

ii. Launch of a “Working Group for building trust in the election process”

24. On 31 May 2013, the parliament adopted a “Proposal for the Conclusion on building trust in the electoral process”, leading to the setting-up of a “Working Group for building trust in the election process”. This working group was mandated to consult the public and entities interested in dealing with electoral issues and propose amendments to the Law on Voter Registers, the Law on Identity Card, the Law on Register of Temporary Residence, the Law on Election of Councillors and MPs, the Law on Financing of Political Parties and the Law on Montenegrin Citizenship, taking into account its own observations and the OSCE/ODIHR and Council of Europe recommendations.

25. The Working Group consists of 12 members (6 from the majority, 6 from the opposition), appointed by the parliament. During our meeting with the co-chairs of the working group, Mr Milutin Simović (DPS) and Mr Srđan Milić (SNP) both agreed that the working group was active and working in a good atmosphere.

26. The working group had initially a mandate until 10 September 2013. During this period, it organised 13 meetings and worked on amendments to most of the laws concerned, in co-operation with representatives of non-governmental organisations, and, on an ad hoc basis, with the participation of representatives of the Union of Municipalities of Montenegro. In order to continue working on the Law on Election of the President of Montenegro and Law on Financing the Election Campaign for the President of Montenegro, Mayor and

¹² Information provided by Mr Bojanic in the comments by the delegation of 21 October 2013.

President of Municipality, in accordance with previous agreements, the co-chairpersons of the working group requested the Collegium of the President of the Parliament, to prolong the deadline for the working body.

27. We had the possibility to address a number of electoral issues with our interlocutors. The government, the opposition and the non-governmental sector launched an initiative to task the Ministry of the Interior with the management of the electoral rolls, given the Ministry's advanced IT system. Mr Rasko Konjević, Minister of the Interior, recalled that citizens must have a biometric ID to be able to vote. While the law was passed in 2008, 25 000 citizens still have no such ID. New information campaigns should be launched. Mobile teams have been set up by the Ministry of the Interior to collect biometric data in the field.

28. We encourage the Montenegrin parliament to pursue this work, and to address all the issues that have been identified on several occasion by PACE ad hoc committees on the observation of elections. These improvement should ensure an electoral process free from misuse of State and administrative resources, ensure that no pressure and intimidation is employed against teachers and public civil servants to vote for the candidate backed by the parties in power, increase transparency in the funding of political parties and of the election campaign by fully implementing the GRECO recommendations¹³ and strengthen the role of the State Election Commission, improve the quality of the voters register and guarantee the right of universal suffrage for all citizens of Montenegro without the 24-month residence requirement.¹⁴

III. Reform of the judiciary

29. The adoption of constitutional amendments to de-politicise the judiciary was an accession requirement, and one of the "key issues" identified by the Parliamentary Assembly in its Resolution 1890 (2012). It was also a strong requirement from the European Commission to start the EU accession negotiations. The Montenegrin authorities had decided to submit new draft constitutional amendments related to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council to the European Commission for Democracy through Law (Venice Commission) in May 2013. At its 14 June 2013 meeting, the Venice Commission authorised the rapporteurs to send the draft opinion¹⁵ to the Montenegrin authorities prior to its adoption during the October 2013 plenary session of the Venice Commission.

30. During our fact-finding visit, discussions were still going-on between political parties. Most of them were confident that the negotiations would be finalized by the end of July. We had the opportunity to discuss these draft amendments with the highest judicial authorities. While the President of the Judicial Council supported the proposed amendments, the President and Vice-President of the Constitutional Court were much more cautious and expressed strong doubts, especially about the proposal related to the selection of 5 of the judges of the Constitutional Court after an open competition, which was considered as "expedient", would leave room for manoeuvre between political parties and would transform the Constitutional Court into a partisan body. They considered that these new constitutional amendments would destabilise the Constitutional Court, affect the mandates of incumbent judges and jeopardise legal certainty.

31. On 31 July 2013, the main political parties, with the exception of the largest opposition party Democratic Front, adopted the constitutional amendments that complied with most of the recommendations of the Venice Commission. We welcomed this must expected adoption.¹⁶ The new constitutional provisions introduce qualified majorities for the election of the judges of the Constitutional court, the Supreme State Prosecutor, members of the Judicial Council, while putting in place anti-deadlock mechanisms. The amendments read as follows (excerpts):

"In the first round of voting by two-third majority and in the second by three-fifth majority of all members of the Parliament, after at least one month, the Parliament shall elect and remove from office judges of the Constitutional Court, the Supreme State Prosecutor and four members of the Judicial Council from among eminent jurists."

"In the first round of voting, the Parliament shall elect the Supreme State Prosecutor upon proposal of the Prosecutorial Council. If the proposed candidate does not acquire the required majority, in the second round of voting, the Parliament shall elect the Supreme State Prosecutor from among all candidates who meet the legal requirements."

¹³ See [Greco RC-III \(2012\) 17E](#), Third Evaluation Round Compliance Report on Montenegro, "Incriminations (ETS No. 173 and 191, GPC 2)" "Transparency of Party Funding", adopted by GRECO at its 58th Plenary Meeting, Strasbourg, 3-7 December 2012.

¹⁴ See [Doc. 13217](#).

¹⁵ Doc [CDL\(2013\)033](#).

¹⁶ See Appendix 1.

“The President of the Supreme Court shall be elected and removed from office by the Judicial Council, by the two-third majority, upon proposal of the General session of the Supreme Court”

“The President of the Judicial Council shall be elected by the Judicial Council from amongst its members who are not judicial officials, by the two-third majority of members of the Judicial Council.”

“The Judicial Council shall be composed of the president and nine members. The members shall be the President of the Supreme Court, four members from out of judges that shall be elected and released from duty by the Conference of Judges, four members from out of reputable lawyers that shall be elected and released from duty by the Parliament and the Minister responsible for judicial affairs.

32. Further to the adoption of these amendments, the Law on the Judicial Council, the Law on Courts, the Law on Public Prosecution Office, and the Law on the Constitutional Court of Montenegro had to be harmonised with the newly adopted constitutional amendments within 45 days from the date of entering into force of the amendments, i.e. on the day of its promulgation (31 July 2013).¹⁷ At its meeting of 5 September 2013, the government drafted a proposal that was considered at the meeting by the Committee on Political System, Judiciary and Administration and the Legislative Committee in September 2013, and was adopted by the parliament on 24 September 2013.¹⁸ These laws are of utmost importance to complete the de-politicisation process of the judiciary, further to the adoption of the constitutional amendments. We would therefore encourage the Montenegrin authorities to further co-operate with the Venice Commission when assessing the implementation these new legal provisions in order to ensure the independence and the good functioning of the judiciary and the Constitutional Court, in line with Council of Europe standards.¹⁹

33. During our visit, we discussed the reform of the judiciary with the highest officials in the judiciary. Ms Medenica, President of the Supreme Court and of the Judicial Council, highlighted the progress made in the past years, with the reduction of the backlog of court cases, the setting-up of a national remedy in case of lengthy procedures in 2010 (67 claims were registered in 2013), trainings of judges, the attention paid to the case-law of the European Court of Human Rights, and the monitoring of the work of the courts by 14 NGOs. She also stressed that 150,000 new judicial cases involving 300,000 persons (i.e. half of the population) were initiated each year.

IV. Implementation of the anti-discrimination law

34. During our visit, we decided to focus on the fight against discrimination, in particular against Roma people and LGBT. We had an informative meeting with Mr Suad Numanović, Minister of Human and Minority Rights and discussed these issues also with the Ombudsman, Mr Baković. The Minister confirmed the adopted of an action plan for gender equality in 2013. The 2010 Law on minorities is currently being reviewed to determine whether it would be necessary to amend it. A Law on religious communities is also under preparation and should be reviewed by the Venice Commission. So far, bilateral agreements were signed between the State and the Vatican, as well as the Jewish and the Islamic communities. The new law should replace the 1977 law and better regulate the relations between the State and the religious communities. The issue of the properties of religious communities should be addressed in a separate law.

35. The anti-discrimination law was adopted in 2010 and the Law on the Protector of Human Rights and Freedoms (ombudsman) in 2011. We were informed that the Ministry of Human and Minority Rights established a working group (which comprises representatives of the Ombudsman’s Office, the Committee for Human Rights and Freedoms, relevant State institutions, the European Commission, the OSCE and the non-governmental sector) to prepare amendments to both laws (to take into account the recommendations of the Venice Commission and the ECRI) in order to address both direct and indirect discrimination, introduce new forms of discrimination such as harassment, sexual harassment and racial discrimination and specify the competences of the Protector.²⁰ These amendments are currently in the parliamentary pipeline.

36. We also received valuable information from Mr Jovan Kojičić, Secretary of the Anti-Discrimination Council and Advisor to the Minister for Human Rights and Protection against Discrimination, who informed us

¹⁷ This requirement was stipulated in the Constitutional Law for Implementation of Amendments I to XVI to the Constitution of Montenegro of 31 July 2013.

¹⁸ Information provided by the Montenegrin delegation on 16 September 2013.

¹⁹ The Venice Commission had previously issued an opinion on the draft on the constitutional court ([CDL-AD \(2008\)030](#)) and an opinion on the draft amendments to the Law on the State Prosecutor of Montenegro ([CDL-AD \(2008\)005](#)).

²⁰ Information provided by the delegation, 19 June 2013, p. 72.

about the latest developments. Upon the proposal of the Anti-Discrimination Council, Montenegro adopted in "Strategy for Improving Quality of Life of LGBT Persons 2013-2018", along with the 2013 Action Plan. This comprehensive strategy should lead to a number of legislative changes to improve the protection of human rights of LGBT persons. It is a strong demonstration of the government's willingness to pursue its commitment in this area. We would like to encourage the Montenegrin authorities to continue these efforts.

37. We met the representative of a newly created campaign group called "Queer Montenegro", which stressed the excellent co-operation set up with the police. This NGO intends to organize a pride parade in October 2013 in Podgorica.

38. In the meantime, the NGO Forum Progress organized its first "Seaside parade" in Budva on 24 July 2013. A number of state officials backed the event. The police ensured the protection of the demonstrators. However, violent clashes opposed the police and anti-gay protesters, who chanted homophobic slogans such as "kill the gays". We firmly condemn these violent clashes, as well as the publication of fake obituaries announcing the 'death' of Zdravko Cimbalevic, director of the Forum Progress. Unfortunately such violent events show that awareness-raising and educational programmes must remain a priority to secure human rights for all. We now expect resolute action of the police and the judiciary to prosecute and punish the perpetrators of violence and the spreaders of hate speech.

39. Concerning the situation of Romas, we welcomed the adoption of the Strategy for improving the position of Roma and Egyptians in Montenegro 2012-2016 in April 2012, and of an action plan for 2012. Mr Isen Gaši, President of the National Council of Roma of Montenegro, indicated that there are currently 6,000 Romas living in Montenegro, and 2,000 displaced Romas and Egyptians. He stated that 70% of the domiciled Romas lived in rather good conditions. 2,200 Roma children are enrolled in schools. However, 700 to 800 Roma children are not registered, and thus cannot go to school.

40. Much attention is still devoted to the situation of the displaced Romas that fled Kosovo in the late 1990 and settled down in Montenegro (see below). The Minister of Human and Minority rights conceded that the domiciled Romas suffered from this process, even though there is an increase in the school enrolment rate, employment rate and a better access to social rights. We note with satisfaction that, for the first time, the Strategy includes provisions to tackle forced and underage marriages of Roma and Egyptian women, and violence against women. On 1 July 2013, Montenegro took over the annual chairmanship of the Decade of Roma Inclusion from Croatia. Montenegro intends to reinforce its activities to further support the integration of Romas.

V. Situation of refugees and IDPs

41. During this visit, we discussed the progress made on the issue of refugees and IDPs with Mr Željko Šofranac, Director of the Bureau for the Care of Refugees and with IDPs and a representative of the Alliance of Displaced Persons, Refugees and Exiled Persons in Montenegro. There are currently 10,422 IDPs and refugees (7,733 internally displaced persons from Kosovo²¹ and 2,689 displaced persons from Bosnia and Herzegovina and Croatia resided in Montenegro²²). The number of families who wish to return voluntarily to their country of origin remains low.²³

42. In its previous report, the Assembly pointed out the issue of the legal status of IDPs and refugees. The 2011 Law on Foreigners prescribed that the displaced and internally displaced persons may submit the request for obtaining the status of foreigners with permanent residence by 31st December 2012. On 28 May 2013, the Parliament of Montenegro adopted the Law on Amendments to the Law on Foreigners, extending the deadline until 31st December 2013. We understood that this deadline would not be prolonged. IDPs and refugees who would not have a legal status by then would be considered as illegal on the Montenegrin territory. No one, however, could explain what would happen next, and whether these persons would be expelled. While more than 5,500 persons applied successfully (i.e. 49% of the IDPs and refugees have a legal status), we estimated that almost 5,600 persons still had no legal status in July 2013.²⁴ . On 25

²¹ Figures provided by the Ministry of labour and social affairs on 17 October 2013.

²² Figures provided by the Refugee Care and Support Office and the Ministry of Interior as of 20 March 2013 and by the delegation on 19 June 2013. The number of IDPs and refugees was 15,800 in 2009.

²³ 103 families expressed an interest. The return of 46 of them (238 individuals) was approved and considered as safe by the international organisations involved in this process, provided their respective municipalities would provide land parcels on which houses would be built using the donor funds allocated for returnees. According to the data provided by the Bureau for the Care of Refugees and the Ministry of Labour and Social Affairs on 17 October, 788 IDPs said they were willing to return voluntarily to Kosovo, provided their rights would be fully respected there.

²⁴ According to the latest figures, the number of application for a legal status is as follows: 5,430 out of 9,066 (app. 60%) requests for permanent residence submitted by DPs from Bosnia and Herzegovina, and Croatia and IDPs from Kosovo

September 2013, the Minister of Labour and Social Welfare, Pedrag Bošković, stated that 4,800 displaced persons living in Montenegro had not submitted an application to regulate their legal status.²⁵

43. We are aware of the efforts undertaken by the authorities and the UNHCR to help IDPs and refugees collecting ID papers in their country of origin²⁶, though it remains a problem. We have been informed that steps had been taken by the authorities of Montenegro and Kosovo that could allow a mobile team from Kosovo, with proper technical equipment to provide biometric IDs to IDPs. We hope that both authorities will manage to finalise and implement this project, as it would ease the situation of a number of IDPs, and reduce the number of potential persons with an illegal status in 2014.

44. We were also informed that IDPs and refugees with a temporary or permanent residence permit have access to all social rights, like education and health. However, they still face difficulties to access the labour market, as they cannot be recruited by public administrations or enterprises. We noted, with satisfaction, that close to 90% of the children residing in the Konik camps attend school.²⁷

45. Despite the efforts made by the authorities to facilitate access to documents in the countries of origin and despite the decrease of the administrative fees, the identification process remains difficult, expensive for IDPs (the average fees amount to 100 to 170 Euros per person) and complex, including for new-borns with refugee or IDP parents. We were informed that the Montenegrin government, together with the EU delegation and the UNHCR, would further co-operate with the countries of origin through the Working Group on Civil Documents under the Belgrade initiative, in order to lower the fees for identity documents.²⁸ The UNHCR advocates for the adoption of a Law on subsequent birth certificate for persons that would ensure universal registration.²⁹ On the other hand, the authorities stressed that they put all measures in place to facilitate transportation and registration. They fear that some IDPs refrain from seeking ID documents and register, to be able to have access to the social rights provided by both their countries of origin and residence.

46. We visited Camp Konik I (38 barracks, 214 families, 1,156 persons) and Camp Konik II (56 barracks, 67 families, 316 persons)³⁰ in the suburbs of Podgorica, which had been visited by the previous PACE rapporteurs in 2012. We would like to warmly thank Ms Indu Mohanda, UNHCR Representative in Montenegro, the UNCHR Protection Officers who facilitated our visit and provided us with valuable information. Despite the fire that damaged the camp in 2012³¹, the upgrading of the accommodation continues, through the Regional process of Sarajevo and the "Pilot Project Konik Camp" (construction of 120 residential units) launched in March 2013 and managed by the Council of Europe Development Bank, the EU IPA 2011 project on "The identification of durable solutions for internally displaced persons and residents of Konik camp" and the financial or in-kind contributions of national donors (in particular the German NGO Help, the Swiss Agency for Development and Cooperation, and the USA³²). The Minister of Human and Minority Rights hopes that the situation of the displaced Romas and Egyptians will be solved by 2015.

were accepted. 103 out of 365 (app. 28%) requests for temporary residence submitted by DPs from Bosnia and Herzegovina, and Croatia and IDPs from Kosovo were accepted.

²⁵ Information provided by the delegation on 21 October 2013.

²⁶ The Montenegrin authorities, together with the UNHCR and OSCE, conducted 16 visits to Kosovo with persons without papers, mostly Romas. 600 persons have used this facility so far and 2000 documents were collected. Information provided by the delegation on 21 October 2013.

²⁷ Information provided by the delegation on 21 October 2013.

²⁸ Information provided by the delegation on 21 October 2013.

²⁹ For further details on this issue, see the UNHCR [Report on Statelessness in South Eastern Europe](#), September 2011. In its contribution of 21 October 2013, the delegation stressed the fact that "following several meetings, the regional technical working group initiated and co-ordinated by the Ministry of the Interior of Montenegro concluded that the persons born in former SFRY and FRY republics could not become stateless, as citizenship may be acquired by origin (by means of registration, subsequent registration of determination) whereas a child, regardless of the republic or country of birth, may acquire citizenship based on that of the parents."

³⁰ Information provided by the Ministry of Labour and Social Affairs – figures as of 17 October 2013.

³¹ The fire broke out on 24 July 2012. The Vrela Ribnička settlement Camp Konik I was destroyed. 156 families with 800 family members lost their homes. 29 barracks were burnt down, as well as the office and storage of the Red Cross of Montenegro, the youth club, the community centre containing two classes of kindergarten, the Legal Center field office and the office of Roma NGOs. The Montenegrin authorities promptly resettled the homeless families, installing 210 housing containers. The supply of electricity however remained problematic. (information provided by the delegation). 548 people lost their documents issued in Montenegro, while 119 people have lost documents issued in their country of origin when the fire struck the Konik camp (*in*: "Position paper of Montenegro tabled on the occasion of the 3rd meeting of the Stabilisation and Association Council between the European Union and Montenegro" (18 December 2012).

³² The United States announced a donation of 100 housing containers, which were used in Camp Bondsteel in Kosovo, to improve the housing conditions in the camp Konik II. Information provided by the delegation, 19 June 2013.

47. In addition, the “National Housing Programme for the most vulnerable refugees and displaced persons” launched by the Ministry of Labour should provide funds for resolving housing issues for 6,063 persons (1,177 households) which belong to the most vulnerable categories (persons residing in informal collective centres and disadvantaged persons in private housing, with special regard to the Konik Camps). It will be implemented by more than 13 Montenegrin municipalities and foresees the construction of 97 housing units and 60 prefabricated houses, construction material provided for 120 housing units, and construction of 90 housing units in the senior home of Pljevlja, for a total amount of 28 million Euros.

48. During our contacts with the UNHCR, we also discussed the situation of asylum seekers. As Montenegro is becoming an attractive country, bordering an EU country (Croatia) and further moving toward EU integration, the number of asylum seekers is on the rise (1,066 requests registered in 2013, compared to 10 in 2010). We were informed that an Asylum Center with a capacity of 65 persons was ready, but not yet operational. The Ministry of Labour and Social Affairs informed us that this centre should open by the end of 2013 or 2014, with the possibility of adding 35 more places. It should primarily host the most vulnerable asylum-seekers (women, pregnant women and children).³³ The asylum system also needs to be built up by the authorities.

VI. Conclusions and proposed follow-up

49. During our visit, we could acknowledge the steady, pro-European commitment of Montenegro to comply with Council of Europe standards and EU requirements with regards to rule of law, democracy and human rights.

50. The adoption of the much-expected constitutional amendments on the judiciary is a substantial progress. We now expect the authorities to harmonise, but also amend the legislation related to the Prosecutor Office, the Judicial Council and the Constitutional Court in line with the Council of Europe standards. It is a pre-requisite to restore people’s confidence in their judicial system.

51. The “Working Group for building trust in the election process” should also contribute to increase the confidence of the citizens in their democratic institutions. We welcome the constructive dialogue between the political parties that should propose amendments to a number of important laws. The Council of Europe remains at disposal for any expertise needed. We also took note of the fact that the parliamentary inquiry committee on “the audio recording case” submitted a technical report in July 2013. We now expect the Prosecutor Office to complete a speedy investigation in order to clarify the situation.

52. Based on the findings of these two inquiry committee, and taking into account the recommendations made by PACE observers during the last elections and the recommendations of GRECO, we hope that the parliament will take all necessary action and adopt the appropriate measures and sanctions to restore the confidence of the citizens to avoid elections results being repeatedly disputed due to a lack of trust and transparency in the electoral process.

53. We welcome the continuous efforts of the Montenegrin authorities to further promote the fight against discrimination. We also look forward to the improvements under preparation in the field of minorities, anti-discrimination, the ombudsman, gender equality and also the relationship between the State and all religious communities.

54. We would like to thank the Montenegrin authorities, in co-operation with the UNHCR and the international community, for their continuous efforts to host and/or integrate refugees and IDPs. The revised Law on Foreigners facilitated access to a permanent or temporary residence permit, even though administrative and financial difficulties remain. We are in particular concerned about the 5,600 IDPs and refugees who still do not have ID papers and will be considered as illegal on the Montenegrin territory by the end of December 2013.

55. We intend to continue assessing of the implementation of Resolution 1890 (2012). We therefore ask the Monitoring Committee to authorise a new fact-finding visit to Montenegro in spring 2014, focusing this time notably on freedom of the media and the fight against corruption and organised crime.

³³ Information provided by the delegation, 21 October 2013.

APPENDIX 1

Montenegro encouraged to amend its Constitution and legislation

Strasbourg, 10.07.2013 – “We welcome the on-going discussions in the Montenegrin parliament to amend the Constitution with regard to the Constitutional Court, the State Prosecutor and the Judicial Council in light of the opinion of the Venice Commission. We hope that this process will soon be finalised. This will be an essential step to improve the independence of the judiciary,” said Nursuna Memecan (Turkey, ALDE) and Kimmo Sasi (Finland, EPP/CD), PACE co-rapporteurs for the monitoring of Montenegro, following their fact-finding visit to the country from 8 to 10 July 2013.

“We encourage all political parties to show responsibility and find the necessary compromises to meet the democratic requirements that are expected from Montenegro to comply with Council of Europe standards. We also note with appreciation the steps undertaken by the parliament to review a number of pieces of legislation, related notably to the voters’ lists, the financing of political parties and the electoral campaign, residence and citizenship, in order to build trust in the electoral system. It is of the utmost importance to have transparent, clear and undisputed regulations to enable citizens to have full confidence in their democratic institutions. Furthermore, we welcome the readiness of the Montenegrin authorities to continue to co-operate with the Council of Europe on these matters,” the co-rapporteurs added.

Ms Memecan and Mr Sasi addressed several issues with the relevant authorities, including the progress made in implementing PACE Resolution 1890 (2012), the fight against discrimination - notably against Roma and LGBT people - and the situation of refugees and IDPs. In this respect, they had contact with the UNHCR and visited the Konik camps on the outskirts of Podgorica, which hosts 2500 of the 11000 refugees and IDPs in Montenegro. “We welcome the measures undertaken by the Montenegrin authorities to find a sustainable solution and integrate those who wish to stay. However, we remain concerned by the fact that 43 per cent of refugees and IDPs still need to obtain ID documents and a legal status by December 2013, a pre-condition to be entitled to stay legally in Montenegro and have access to social rights.”

During their visit, the co-rapporteurs met the President of the Republic, the Prime Minister, the Speaker of Parliament, the Deputy Prime Minister and Minister of Justice, the Ministers of the Interior, Human and Minorities’ Rights, the Montenegrin parliamentary delegation to PACE, representatives of political parties, the judicial authorities, the Ombudsman, representatives of state agencies and the Roma community as well as representatives of international organisations, the diplomatic community, NGOs and the media.

Montenegro: monitoring co-rapporteurs welcome the adoption of constitutional amendments

Strasbourg, 06.08.2013 - Nursuna Memecan (Turkey, ALDE) and Kimmo Sasi (Finland, EPP/CD), PACE co-rapporteurs for the monitoring of Montenegro, have welcomed the adoption of the constitutional amendments on the judiciary by the Montenegrin parliament on 31 July 2013. “We commend the political forces in the parliament for reaching a compromise and adopting these long-awaited amendments to the Constitution, in line with most of the recommendations of the Venice Commission.”

“The election of the Supreme State Prosecutor, the appointment of the Presidents of the Supreme Court and the Judicial Council, and the appointment of the members of the Constitutional Court and the Judicial Council elected by the parliament, are now in compliance with European standards. This should strengthen the independence of the judiciary,” the co-rapporteurs said.

The adoption of these constitutional amendments was one of the commitments made by Montenegro when joining the Council of Europe in 2007, and a key requirement made by the Assembly in its Resolution 1890 (2012) on the honouring of obligations and commitments by Montenegro. The draft amendments had also been discussed with the Montenegrin authorities during the co-rapporteurs’ last fact-finding visit to the country on 8 to 10 July 2013.

APPENDIX 2

Programme of the fact-finding visit to Podgorica (8-10 July 2013)

Ms Nursuna MEMECAN, member of Parliament

Mr Kimmo SASI, member of Parliament

Ms Sylvie AFFHOLDER, Secretary of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe

Sunday, 7 July 2013

Arrival of the delegation

Monday, 8 July 2013

- 08:30-09:15 Meeting with Mr Zdravko CIMBALJEVIC, Executive Director, LGBT Progress Forum (excused), and Danijel KALEZIC, "director of the "Queer Campaign"
- 09:15-10:45 Roundtable with NGOs (organised by the Council of Europe Secretariat)
- Ms Ana SOĆ, Human Rights Action
 - Ms Daliborka ULJAREVIĆ, Executive Director, Center for Civic Education
 - Mr Stevo MUK, President of the Managing Board, Institute Alternative
 - Mr Vuk MARAS, Monitoring Program Director, MANS
- 11:00 Reception by Mr Ranko KRIVOKAPIC, President of Parliament
- 11:45 Meeting with Mr Želko ŠTURANOVIĆ, Vice-President of the Democratic Party of Socialists (DPS)
- 12:30 Meeting with Mr Halil DUKOVIĆEM, President of the Committee for Human Rights and Freedoms, and Ms Ljiljan ĐURAŠKOVIĆ, Vice-President
- 13:15 Lunch hosted by Mr Zoran VUKCEVIC, Head of the Delegation of the Parliament of Montenegro to the Parliamentary Assembly of the Council of Europe
- 15:00 Meeting with Mr Rifat RASTODER, Vice-President of the Social Democratic Party (SDP)
- 15:45 Joint meeting with:
- Mr Almer KALAČ, President of Bosniak Party group
 - Ms Marija VUČINOVIĆ, President of the Croatian Civic Initiative
 - Mr Andrij POPOVIČ, President of the Liberal Party
 - Mr Fatmir GJEKOM, President of the Democratic Party
 - Mr Gencij NIMANBEG, President of the Party FORCA
- 16:30 Meeting with Mr Goran DANILOVIĆ, Vice-President of the Democratic Front
- 17:15 Meeting with Mr Srdjan MILIĆ, President of the Socialist People's Party (SNP)
- 18:00 Meeting with Mr Mladen BOJANIĆ, Vice-President of Positive Montenegro
- 20:00 Working dinner with representatives of international organisations:
- Ambassador Mitja DROBNIČ, Head of the European Union Mission
 - Ambassador Lubomir KOPAJ, Head of the OSCE Mission to Montenegro
 - Ms Indu MOHANDA, UNHCR Representative in Montenegro

Tuesday, 9 July 2013

- 08:00-08:45 Working breakfast with Mr Milenko JOVANOVIĆ, Alliance of Displaced Persons, Refugees and Exiled Persons in Montenegro
- 09:00-11:30 Meeting with Ms Indu MOHANDA, UNHCR Representative in Montenegro, and UNHCR Protection officers, and visit of the Konik camps
- 12:00-13:00 Roundtable with media (organised by the Council of Europe Secretariat):
- Mr Mihailo JOVOVIĆ, Editor in Chief, Vijesti
 - Mr Nikola MARKOKIC, journalist, Dan
 - Ms Milka Tadić MIJOVIĆ, Executive Director, Monitor
 - Ms Milena MILOSEVIC, Balkan Investigative Reporting Network/Balkaninsight.com
 - Mr Rade VOJVODIC, Director of the RTCG (absent)
- 13:00 Working lunch with Mr Isen GAŠI, President of the National Council of Roma of Montenegro
- 14:00 Meeting with Mr Ivan KALEZIC, President of the State Electoral Commission
- 14:45 Meeting with Mr Sucko BAKOVIĆ, Protector of Human Rights and Freedoms (ombudsman)
- 15:30 Meeting with Mr Željko ŠOFRANAC, Director of the Bureau for the Care of Refugees
- 16:15 Meeting with Mr Milan MARKOVIĆ, President of the Constitutional Court
- 17:00 Meeting with Mrs Vesna MEDENICA, President of the Supreme Court and of the Judicial Council
- 17:45 Meeting with Mr Veselin VUCKOVIĆ, Deputy Supreme State Prosecutor and President of the Prosecutorial Council
- 18:30 Meeting with Mr Koča PAVLOVIĆ, President of the “Inquiry Committee for the purpose of collecting information and facts on the events relating to the work of state authorities regarding publishing of audio recordings and transcripts from the meetings of DPS authorities and bodies”, and Mr Milutin SIMOVIĆ, Vice-President
- 19:15 Meeting with Mr Milutin SIMOVIĆ, President of the “Working Group for building trust in the election process” and Mr Srđan MILIĆ, Vice-President
- 20:00 Reception by H.E Mr Mehmet NIYAZI TANILIR, Ambassador of Turkey to Montenegro

Wednesday, 10 July 2013

- 09:00 Meeting with Mr Suad NUMANOVIĆ, Minister of Human and Minority Rights
- 09:45 Meeting with Mr Rasko KONJEVIĆ, Minister of Interior
- 10:30 Meeting with Mr Jovan KOJIČIĆ, Secretary of the Anti-Discrimination Council and Advisor to Prime Minister for Human Rights and Protection against Discrimination
- 11:15 Meeting with Mr Dusko MARKOVIĆ, Deputy Prime and Minister and Minister of Justice
- 12:00 Meeting with Mr Milo ĐJUKANOVIĆ, Prime Minister of Montenegro
- 12:45 Meeting with Mr Filip VUJANOVIĆ, President of Montenegro
- 13:45 Press briefing
- Afternoon *Departure for the airport*