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**Working Group for Building
Trust in the Election Process**
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Recommendations for amendment of the Law on Election of Councilors and Members of Parliament

I) BASIC PROVISIONS (1-9)

- **The subject of regulation (Article 1)**

There are two possible options. One is to separate the law on the election of members of parliament and the law on the election of councilors, because of potential issues in implementation, especially the implementation of affirmative action principles at a local level.

Namely, there is a series of illogicalities made in an attempt to have the implementation of affirmative action principles be simultaneously defined at the national and local level. Minorities at the national level are not necessarily minorities at a local level, which becomes additionally complicated regarding the provisions related to minorities which represent less than 2% of the entire population. These provisions should be separated and made more precise, so that it can be clear what minority groups are there at a local level, according to the census results, and these norms should be made applicable in practice.

The other option is to start with codification and have the election law incorporate the provisions of the Law on Election of the President of Montenegro. As a reminder, already in 2007 in the document European Partnership, Montenegro obliged to codify the election legislature as a short-term priority. We believe that the creation of this election law would represent an enhancement and remove numerous problems which exist in practice due to the search for legal gaps in a number of different laws.¹

- **Independent candidates (Article 4)**

Article 4 prescribes that councilors and members of parliament should be elected only from the electoral lists of political parties, coalitions or groups of citizens. That is contrary to international democratic election standards, and both the Venetian Commission and the ODIHR have recommended on several occasions that candidature of independent candidates should be enabled.

¹ The problem was also noticed by the OSCE/ODIHR mission during the monitoring of presidential elections and they issued the following recommendation: "Removal from the election law everything that is unclear should be reconsidered in order to avoid different interpretations and be precise regarding implementation of the law in the context of presidential elections."

Disabling individual candidatures is contrary to the 1990 Copenhagen Document, which is considered to be the founding document for democratic elections containing undeniable and generally accepted standards. In item 7.5 of the document, the co-signatory countries obliged to respect “the right of citizens to try to obtain political or public functions, individually or as representatives of political parties or organization, without discrimination.”

The CDT believes that this standard has to be adopted, which would then imply the defining of rights and responsibilities of independent candidates and their representatives in all parts of the law.

- **Election silence (Article 6)**

Election silence is used in a certain number of democratic countries, because it is believed that it protects the voters from an aggressive pre-election campaign and gives them, at least briefly, the option to make their final decision without the pressure and influence of spins and political marketing. On the other hand, some democratic countries consider election silence to be a violation of freedom of expression rights.

By moving the campaign from traditional media to the Internet, election silence lost its purpose, and it should be reconsidered if there is still the need to keep it.

Election silence in Montenegro does not have its role anymore, because it does not stop the political parties field activities, which are most intense in the last few days of the campaigns and also because, in a country as small as Montenegro with well organized political parties, the media is not necessary in order to reach the majority of voters. If to that we add that citizens read social networks, blogs and alternative portals which institutions do not check for respecting election silence, it does make sense to consider abolishing election silence.

In case it is decided to keep election silence, a norm should be defined which will be respected and which will include all media, including the Internet. In addition, in the last two campaigns (as well as in earlier ones) a number of media breached election silence and were not sanctioned for that. The reason is poor and imprecise provisions regarding sanctions “those who conduct agitation violating the provision of the Article 6 of this law” (Article 116, paragraph 1, item 1), which is almost impossible to be applied in practice and prove that some media conducted “agitation”.

II) ELIGIBILITY TO VOTE (10-11)

- **Residential requirement (Article 11)**

The recommendation of the Venetian Commission and the ODIHR-a² is to abolish the residential requirement for national elections. In the previous phase of amendments to the law this recommendation did not receive the support of lawmakers, and at this stage, having in mind the limited time and the mandate of the Working Group, it does not seem realistic that entering the process of making complicated changes to the Constitution would be possible.

² Joint opinion on the Proposal for Amendments to the Law on Election of Councilors and Members of Parliament, the Venetian Commission and the OSCE/ODIHR, Opinion No. 578-2010, CDL-AD(2010)023, June 2010.

In the OSCE/ODIHR Mission report following the 2012 Parliamentary Elections, it is stated that “in line with previous recommendations by the OEBS/ODIHR, the legal framework needs to be amended in order to abolish the 24-month residence requirement. Until this amendment is adopted, consistent implementation of the existing provision needs to be ensured.” In that context, if it is not possible to abolish the residential requirement at the moment, the second part of the recommendation should be insisted on, which is to ensure consistent implementation of the current provision.

III) ELECTORAL UNITS (12)

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IV) ANNOUNCING ELECTIONS (13-16)

- **Deadlines for conducting election activities (Article 13)**

The Article 13 prescribes that the decision announcing elections determines the deadlines for conducting election activities prescribed by the Law and it also determined the election date.

In practice, the decision prescribes only a few deadlines - the start and the end date for submitting electoral lists and the start of election silence period. For years, the CDT had been preparing the election calendar, and that used to be a public document serving all interested parties for following legal deadlines. We did not do that for the last few campaigns and there were a number of participants in the process who contacted us with the dilemmas they had regarding the deadlines and how to interpret them.

We believe that either here or somewhere else in the Law, an obligation should be prescribed for State Election Commission and municipal election commissions to prepare an election calendar, no later than 72 hours following the decision to announce elections, defining all deadlines for conducting election activities from all election laws.

This was also recommended by the OSCE/ODIHR election monitoring mission in the report on the 2013 Presidential Elections.³

V) INSTITUTIONS FOR CONDUCTING ELECTIONS (17-37)

- The CDT believes that one of the basic problems with regard to the election processes in Montenegro is the poorly defined position, competences and responsibilities of institutions for conducting elections. In order to further increase the trust in the election process, redefining the election administration system, aimed at increasing the professionalism of these institutions, should be seriously considered. There are two possible ways to solve this - either by a separate Law on the State Election Commission⁴ (or institution for conducting election) or by a thorough reform, not only cosmetic changes, of this chapter of the Law.
- The State Election Commission has to consist of professional, permanent members. For municipal election commission at least the president's function has to be professional.

³ In order to further increase transparency and accountability in conducting elections, the SEC should consider officially adopting and publishing an election calendar as well as minutes from the SEC sessions.

⁴ The Action Plan for Implementing Strategy Against Corruption and Organized Crime, the Government of Montenegro prescribes issuance of the Law on State Election Commission.

- Permanent members of the State Election Commission and municipal election commission must not be political parties' candidates. A required majority has to be prescribed and, in appropriate assembly, that should enable election of the best and the most professional candidates.
- In addition, in previous elections politicized members of election boards, despite efforts to ensure “political parties balance“ of some sort, proved to be a very bad solution. Therefore, election boards have to be depoliticized.
- Other members of the institutions for the implementation of elections remains reserved for political representatives.
- The SEC should have an expert service, e.g. a secretariat, consisting of experts from all fields of the SEC activities.
- It is necessary to expand the competence and responsibilities of the State Election Commission, in accordance with the Law on Poll Book, the Law on Financing of Political Parties, and other laws related to election conducting.
- It is necessary to prescribe the obligation for the State Election Commission to continually work on the enhancement of the election system and building trust in the election process. The SEC should be obliged to make annual plans, which would include plans for their organizations and technological development and plans for enhancement of the election system. In the context, it is necessary to prescribe the obligation for the SEC to make annual plans for training and the obligation to have continuous training for all election administration institutions. For years, the SEC has not conducted any training for voters (educational campaign) over the election procedures, and that has to be one of its key activities.
- The State Election Commission should be a special budget unit in the Budget of Montenegro, because in order to regain the trust in the election process, in addition to good quality laws and the establishment of good practices, it is also necessary to have professional institutions, which require funds for their work.
- It is prescribed that each municipal election commission should have its own website where all documents and information of importance for conducting elections should be published, as well as the provisional and final election results for each electoral poll. In practice, neither did all municipal election commissions have their own website, nor did the majority of those that did have their own website publish all information they were obliged to publish in a timely manner. Responsible officials should be sanctioned and it should be insisted that the practice is enhanced.

VI) PROPOSING AND DETERMINING ELECTION LISTS (38-49)

- As mentioned above, candidature of independent candidates should be enabled.
- **Establishing the gender equality principle (Article 39a)**

It is prescribed that, in order to achieve the principle of gender equality, an election list has to consist of at least 30% female candidates. However, that is not a sufficient guarantee that female candidates will actually end up in representative bodies, because they are positioned too low on election lists. Thus, in the Parliament of Montenegro there are only 13 women (16%), which is well below democratic standards.

After the report following the 2012 Parliamentary Election, the OSCE/ODIHR issued the following recommendation: „In order to ensure higher representation of women in the Parliament, it should be considered adding to the present ration system the request to place women higher on election lists. It should also consider alternating the names of male and female candidates on election lists. “

If alternating male and female candidates on election lists is considered too ambitious for the current situation in Montenegro, we recommend that at least every third candidate on the list should be female.

- **The number of signatures required for confirming the minority lists (Article 43)**

This Article prescribes that a minority election list is confirmed if it is supported by signatures of 200 voters for the election of councilors and 1000 voters for the election of members of parliament.

In addition, it is prescribed that the election list for the election of members of parliament, which represents a minority community making up to 2% of the total population of Montenegro, is confirmed if supported by signatures of at least 300 voters. It should be prescribed how many signatures an election list at the local level should have.

- **Verifying/checking signatures (Article 47)**

It is necessary to prescribe a detailed procedure for the verification of signatures in order to confirm authenticity of the voters' signatures and ensure that the same voters did not provide their signature of support for more than one list.⁵

The process of verifying signatures has to be precisely regulated and implemented for all signatures, not only a sample. However, at the moment when verification shows that beyond any reasonable doubt that the required number of signatures has been reached, the rest of the signatures need not be verified⁶. This process should also be transparent, also including being open for monitoring by political parties' representatives, candidates and election observers.⁷

Having in mind all of the above, the deadlines for confirming election lists should be extended.

VII) INTRODUCING ELECTION LISTS APPLICANTS AND CANDIDATES FROM ELECTION LISTS (50-65)

- **Campaign duration (Article 50)**

This needs to be aligned with the Law on Financing of Political Parties.

According to the LFPP, election campaign expenses are considered to be those that occur since the day of announcing the elections (Article 9 of the LFPP), so the day of announcing the elections actually marks the official start of the campaign.

This caused a lot of problems in practice during previous elections, as well as different interpretations and application of the rules by different subjects.

We believe that the day of announcing the elections should be considered the start of the campaign.

⁵ This is also a recommendation from the OSCE/ODIHR reports on the 2012 Parliamentary Elections.

⁶ The Code of Good Practices in election matters, the Veetian Commission, 2002.

⁷ The existing obligations of the OSCE members states regarding democratic elections, OSCE/ODIHR, 2003.

- **„Free“ campaign on the RTCG (Articles 51, 53, 53a)**

This needs to be aligned with the Law on Financing of Political Parties.

According to the LFPP, 0.25% of the current budget is being allocated for financing campaign expenses. Providing “free” advertising space on RTCG is an in-kind contribution to the political parties’ campaigns, which is also covered by the state budget, which exceeds the 0.25% budget limit for campaigns.

If we multiply the duration of advertisement of political parties on public broadcasting during the election campaign for the 2012 Parliamentary Elections with the official prices of this broadcaster, we reach the amount of € 568.090⁸. This amount, pursuant to the Article 3 of the LFPP represents an in-kind contribution calculated based on market value and reported as income. Therefore, the election law has enabled political parties another source of income in the amount of 568.090€. “Free” advertisements which political parties had on RTCG have their market value and that is an extra income which political parties received from the Montenegro state.

- **Ban on publishing opinion polls (Article 63)**

It is prescribed that for the period of 10 days prior to the election day, radio and television broadcasters are not allowed to publish results of opinion polls, other studies and analyses related to voters’ decision regarding the prediction of the election results.

The ban should be expended to include other media and not only “radio and television broadcasters”.

- **The Board for monitoring implementation of the Law on Election of Councilors and Members of Parliament in the part related to the media (Article 64b)**

The CDT believes that previous elections showed that, due to lack of capacities, the Board is not capable to execute the function that is prescribed to it by the Law.

For completion of its tasks the Board requires expert services which would do the monitoring and analysis of the media coverage.

In the context of professionalization of the State Election Commission, making this a task for the SEC should be considered, in which case the SEC should be provided with the necessary media experts.

- **Sanctioning policy**

It should be ensured that this chapter of the law is accompanied by an adequate sanctioning policy, since bans on misuse of state property are also prescribed here, which is a huge problem during Montenegrin elections.

VIII) CONDUCTING ELECTIONS (65-88)

- **Reasons for dissolution of election committee**

In several places in this chapter of the Law, reasons for dissolution of electoral boards and repetition of voting are mentioned, but are insufficiently precise. Some parts state that election board could be dissolved, and some parts state decisively that “it is dissolved”. In

⁸ CDT study. Complete results can be provided upon request.

practice these kinds of decisions were always by voting and political overvoting, which led to different actions by institutions for implementing elections in identical situations.

The CDT believes that these provisions should be made more precise by prescribing exactly when election committees have to be dissolved, i.e. when and how, due to the most severe violation of the Law, election committees are to be dissolved by the force of law.

In case it is prescribed that an election committee could be dissolved, i.e. when an option is left to vote on that, it is necessary to define the measures based on which it will be determined how severely the Law was breached and whether the mistake made can be tolerated, i.e. whether and to what extent the fault could affect the outcome of the elections.⁹

- **Cancelling a ballot in case of breaching voting confidentiality (Article 69a)**

In case a voter breaches voting confidentiality by voting publicly outside the area intended for voting, or in case a voter, after voting in the intended area, shows his ballot to the election committee in a way that it is visible to them who he/she voted for, the president of the election committee, based on the previous decision of the election committee, is obliged, in the presence of the election committee and after separating the control coupon, to mark the ballot as invalid by crossing it out, packing it in a special envelope and placing it in the ballot box instead of the voter doing that.

In these situations we had different practices, so some ballots were marked as invalid, while some were not, for politically opportunistic reasons or overvoting. For reasons of legal safety, this practice has to be uniform.

The part of the sentence from this paragraph “following previous decision by the election committee” need to be erased, leaving it as an obligation for the board’s president to mark such a ballot as invalid.

- **Printing of ballots (Article 73a)**

It is prescribed that ballots are printed on specially protected 90g paper with a watermark.

We have witnessed for years that voters, but also political subjects, have objections regarding the thickness and transparency of the paper, thinking that the quality of paper that ballots are being printed on does not satisfy the voting confidentiality principle.

In order to build trust in election processes, it is necessary to prescribe that ballots are printed on better quality paper.

- **Verifying the voters’ identity (Article 80)**

The voter gives his full name to the election committee proving his identity with his ID card or passport if it contains his personal ID number or ID card number.

The part “if it contains his personal ID number or ID card number” should be erased from this paragraph, because it is outdated and creates confusion – valid passports and ID card contain the personal ID number.

- **Voting outside the polling stations (Articles 85 and 87)**

⁹ See recommendation of the VK/ODIHR in CDL (2011) 028-e, recommendation no. 53.

Voting outside polling stations is a problem almost everywhere, and there is no ideal model that is not subject to misuse. However, there are ways to significantly limit the possibility of misuse.

The way to register for voting outside the polling stations an election committee should be prescribed by the Law, and not only by a document of the SEC, because to only register for this kind of voting creates suspicion that pressures and misuse are taking place. It is necessary to prescribe that requests for voting outside the polling station have to be signed by the person requesting it. Signature verification is possible through the personal ID card, either by requesting the original document or by requesting a copy of the ID card to be submitted with the request. In case this solution is to be reviewed, it is necessary to ask for the opinion of the Agency for Protection of Personal Information.

The latest amendments to the law prescribe that voting outside polling stations is to be conducted by two representatives of the election board, each from different political parties. In addition, it is necessary to prescribe that the authorized representatives of political parties, candidates and election observers have the right to follow the entire process of voting outside polling stations.

Another vulnerable point of the process of voting outside polling stations is the counting of votes. In case only a few people in one polling station vote by mail, the confidentiality of their votes is not ensured, because it is very easy to determine their identity. Therefore, it should be considered to introduce mobile ballot boxes, which would be non-transparent and sealed, and in which ballots would be placed, without the need of placing them in envelopes. Prior to the start of the counting of votes, the content of mobile ballot boxes would be mixed up with the content of the main ballot box, thereby protecting voting confidentiality.

In order to reduce the possibility of misuse of voting outside of polling stations, opening polling stations in hospitals is something that should also be considered, in the way it is organized in detention centers or prisons.

- **Identifying voters**

One of the most widespread suspicions which led to the formation of this working group, is that voters do not vote in person, but somebody else does that for them.

The CDT recommends to the working group to organize a special session on identifying voters in order to find the most optimal solution for this problem.

IX) DETERMINING AND ANNOUNCING OF ELECTION RESULTS (89-100)

- As stated earlier, the reasons and procedures for dissolving election boards and the repetition of voting should be more precisely defined.

- **Invalid ballots (Article 89)**

It is prescribed that an invalid ballot is: one that is not filled in, one that is filled in in a way that it is impossible to determine which electoral list the person voted for, one on which more than one electoral list are circled.

During previous presidential elections, there were a number of dilemmas over whether the ballots on which something was added are invalid. The CDT experience shows that the practice is not uniform in these situations and that different election committees acted differently in the same situations.

Standards and best practices suggest that treating too many ballots as invalid should be avoided, and that in case of a dilemma an effort should be made to determine the voters' intention¹⁰. Therefore, a ballot should not be marked as invalid if it is possible to determine the voter's intention, which is also prescribed in the law.

However, in order to improve the situation, it is necessary to conduct a thorough training for members of the election administration, political parties' observers, but also a wider campaign for citizens – explaining them how to proceed in order for their vote to be a valid one.

- **Transparency of election results on polling stations (Article 90)**

During recent elections there were suspicions that election results from some polling stations were changed in the municipal election commissions.

The CDT recommends prescribing an obligation for election committees to announce the election results from their polling station at the polling station itself (at a visible place accessible to citizens – entrance, door, notice board...) and to keep it there until the final election results are announced. This is a common practice in many countries and it has proved to be very useful in case of doubts regarding election results, because it enables all interested parties to directly check election results and later compare them to those announced by the SEC.

In addition, it is prescribed that each member of election committees should receive a copy of the minutes on the election committee's activities. In practice, the copies were provided also to observers, based on the good will of election committees' presidents. The CDT believes that it should be explicitly prescribed that a copy of the minutes on the election committee's activities should also be provided to observers present during the counting of votes. That way confidence in the process is being strengthened, because in case there were some suspected irregularities, there are more addresses at which it is possible to verify the accuracy of the minutes.

- **Determining election results (Article 92)**

A possibility should be considered to enter the election results in a single database at the level of municipal election commissions, as they arrive from the polling station. That way the process of determining preliminary results and their announcement by the SEC would be faster, preventing celebrations and announcements of victory in all headquarters and increasing the trust of citizens in election process.

The procedure of delivering all materials can remain the same and it serves as a final verification prior to the announcement of the final results. However, in that case too, the shortening of some deadlines should be considered. For examples, is it really necessary to leave 12 hours for delivering election materials to municipal election commissions, or could that deadline actually be shortened?

Similar recommendations are provided in the OSCE/ODIHR report on the 2013 presidential elections.

- **Discrimination of Roma population (Article 94)**

The Article 94, paragraph 94, item 2, prescribes that "in case none of the election lists for the election of ethnic Croat members of parliament meets the requirements from paragraph 1,

¹⁰ Existing obligations of the OSCE members states regarding democratic elections, OSCE/ODIHR, 2003.

item 1 of this article, the most successful one, with at least 0.35% valid votes becomes eligible to one parliament mandate.“

That enabled ethnic Croat representatives to be elected into parliament under favorable conditions and with a special election threshold estimated to be reachable with regard to the number of this population.

The issue with regard to this provision is that, according to the latest census results, there is yet another ethnic group in Montenegro with approximately the same share in the entire population, but without the same privilege. This is the Roma population which, according to the latest census, make up 1,01% of population, while Croats make up 0,97%.

This provision could also hardly pass the constitutionality test. Therefore, the CDT recommends for this provision to be expended onto electoral lists for the election of the Roma minority representatives.

X) END OF MANDATE, REPETITION OF ELECTIONS, FILLING IN VACANT COUNCILOR AND MEMBERS OF PARLIAMENT POSITIONS AND EARLY ELECTIONS (101 - 105)

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XI) VOTERS' RIGHTS PROTECTION (106 - 111)

- **Education over voters' rights protection**

During the election procedure it is prescribed that institutions in charge of implementing elections are responsible for informing voters of their voters' rights and the ways to protect those rights. In addition, every voter has the right to submit a complaint to the competent election commissions over violating his/her voting rights during elections. In practice, voters rarely use this right and the majority of complaints come from candidates and electoral lists applicants.

The CDT believes that it would be necessary, in order to increase the trust in the process, to conduct an educational campaign for voters explaining to them what constitutes a violation of voting rights and how those rights can be protected. The campaign would include the SEC, political parties and NGOs.

The best practices show that it is also useful to make a complaint form for voters in order to simplify the procedure and eliminate formal reasons due to which complaints are often being rejected.¹¹

- **Deadlines for complaints and appeals**

In the previous election cycle, there were complaints indicating that deadlines for submitting complaints and appeals are too short. This issue should be reviewed and decided whether it is necessary to extend the deadline. Either way, international standards and good practices, prescribing that these deadlines should be as short as possible (3-5 days for complaints and first instance decision), should be taken into consideration¹².

XIa) ELECTION OBESERVERS (111a – 111e)

¹¹ Code of Good Practices in Election Matters, the Venetian Commission, 2002, p. 30 and CDL (98) 45, p. 11.

¹² Code of Good Practices in Election Matters, the Venetian Commission, 2002, p. 11 and 30

- Here it should be considered introducing a new article to include the most important principles which election observers have to respect, in accordance with the Declaration of International Elections Monitoring Principles and the Code of Conduct of International Election Observers, which are supported by all relevant international and national organizations.

XII) EXPENSES FOR CONDUCTING ELECTIONS AND ELECTION PROPAGANDA (112 – 114)

- **Usage of state property (Article 114)**

The Article 114 is contrary to the Article 50, paragraph 4. This leaves room for numerous misuses, while the Article 114 makes it impossible for anybody to be sanctioned for misusing state property for the purpose of election campaign.

Article 114: “State institutions and local government institutions make their offices, devices, means and equipment available for conducting election campaigns and provide equal conditions for their usage to all electoral lists applicants.

Institutions mentioned in the paragraph 1 of this Article are obliged, together with electoral lists applicants and within 10 days since announcing of elections, to determine the conditions and ways of using the means mentioned in the paragraph 1 of this Article.”

Article 50, paragraph 4: „Electoral lists cannot use the property (money, technical means, offices, equipment, etc.) of state institutions, public companies and foundations, local government units, or companies in which the state is one of the shareholders.“

XII) SANCTIONING PROVISIONS (115 – 117)

- Recommendations for this part can be sent upon defining the norms.